The submission deadline for this edition of the Administrative Register of Kentucky was noon, August 14, 2015.
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:

<table>
<thead>
<tr>
<th>Title</th>
<th>Chapter</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>806</td>
<td>KAR</td>
<td>50:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>155</td>
</tr>
</tbody>
</table>

Cabinet, Department, Office, Division, Board, or Agency, Specific Office, Division, Board, or Major Function Regulation

ADMINISTRATIVE REGISTER OF KENTUCKY

© 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 Harlison 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
HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

Kentucky Educational Excellence Scholarship Program
11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.
11 KAR 15:100. Comprehensive transition and postsecondary programs.

Early Childhood Development Scholarship Program
11 KAR 16:090. Early Childhood Development Scholarship Program system of monetary incentives.

SECRETARY OF STATE

Occupational License Fees
30 KAR 7:010. Standard form for occupational license fee return.

PERSONNEL CABINET

101 KAR 2:034. Classified compensation administrative regulations. (Comments Received, Not Amended After Comment)

FINANCE AND ADMINISTRATION CABINET

Retirement Systems
105 KAR 1:200. Retirement procedures and forms.

Office of the Secretary

Purchasing

GENERAL GOVERNMENT CABINET

Board of Pharmacy
201 KAR 2:220. Collaborative care agreements.
201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).

Real Estate Commission

Commission
201 KAR 11:175 & E. Instructor approval procedures and guidelines. ("E" expires 12/26/2015)
201 KAR 11:210. Licensing, education, and testing requirements.
201 KAR 11:230. Continuing education requirements.
201 KAR 11:232. Continuing education provider requirements.
201 KAR 11:460. Minimum rating requirements for instructors.

Board of Hairdressers and Cosmetologists
201 KAR 12:110 & E. School license. ("E" expires 12/14/2015)

Board of Nursing
201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.
201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.
201 KAR 20:070. Licensure by examination.
201 KAR 20:110. Licensure by endorsement.
201 KAR 20:225. Reinstatement of license.
201 KAR 20:230. Renewal of licenses.
201 KAR 20:370. Applications for licensure.

Board of Medical Imaging and Radiation Therapy
201 KAR 46:010. Definitions for 201 KAR Chapter 46. (Amended After Comments) (Deferred from August)
201 KAR 46:020. Fees. (Not Amended After Comments) (Deferred from August)
201 KAR 46:030. Education for medical imaging technologists, advanced imaging professionals and radiation therapists. (Amended After Comments) (Deferred from August)
201 KAR 46:040. Medical imaging technologist, advanced imaging processional and radiation therapist licenses. (Amended After Comments) (Deferred from August)
201 KAR 46:045. Temporary license application for medical imaging technologists, advanced imaging professionals, and radiation therapists. (Amended After Comments) (Deferred from August)
201 KAR 46:050. Provisional training license for medical imaging technologists and radiation therapists. (Not Amended After Comments) (Deferred from August)
201 KAR 46:060. Continuing education requirements. (Not Amended After Comments) (Deferred from August)
201 KAR 46:070. Violations and enforcement. (Deferred from June)
201 KAR 46:081. Limited x-ray machine operator. (Not Amended After Comments) (Deferred from August)
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

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

Fish
301 KAR 1:015. Boat and motor restrictions.
301 KAR 1:201. Taking of fish by traditional fishing methods.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

Motor Carriers
601 KAR 1:113 & E. Transportation network company. ("E" Expires 1/4/2016)

Department of Highways
Division of Maintenance

Traffic
603 KAR 5:155. Removal and pruning of vegetation. (Amended After Comments) (Deferred from August)

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
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) (Not Amended After Comments)

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control

Licensing
804 KAR 4:015 & E. Interlocking substantial interest between licensees prohibited. ("E" expires 12/20/2015)
804 KAR 4:390. License renewals. (Amended After Comments)
804 KAR 4:400 & E. ABC basic application and renewal form incorporated by reference. ("E" expires 12/20/2015)
804 KAR 4:410 & E. Special applications and registration forms incorporated by reference. ("E" expires 1/6/2016)

Quotas
804 KAR 9:040. Quota retail package licenses.
804 KAR 9:050. Quota retail drink licenses.

Department of Financial Institutions
Division of Securities

Securities
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.

Horse Racing Commission

Thoroughbred Racing
810 KAR 1:070. Kentucky thoroughbred breeders' incentive fund.
810 KAR 1:300. International medication protocol as a condition of a race. (Not Amended After Comments) (Deferred from August)

Harness Racing
811 KAR 1:300. International medication protocol as a condition of a race. (Not Amended After Comments) (Deferred from August)

Quarter Horse, Appaloosa and Arabian Racing
811 KAR 2:300. International medication protocol as a condition of a race. (Not Amended After Comments) (Deferred from August)

Department of Housing, Buildings and Construction
Division of Plumbing

Plumbing
815 KAR 20:060. Quality and weight of materials. (Not Amended After Comments)
815 KAR 20:100. Joints and connections. (Not Amended After Comments)
815 KAR 20:130. House sewers and storm water piping; methods of installation. (Not Amended After Comments)

Electrical
815 KAR 35:020. Electrical inspections.

Department of Charitable Gaming

Charitable Gaming
820 KAR 1:001. Definitions for 820 KAR Chapter 1. (Not Amended After Comments)
820 KAR 1:032. Pulltab construction. (Not Amended After Comments)
820 KAR 1:033. Electronic pulltab system, electronic pulltab device, and electronic pulltab construction. (Not Amended After Comments)
CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

State Health Plan
900 KAR 5:020. State Health Plan for facilities and services. (Amended After Comments)

Certificate of Need
900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

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. (Amended After Comments)

Office of Inspector General

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 20:180. Psychiatric hospitals; operation and services. (Deferred from June)
902 KAR 20:420 & E. Pain management facilities. ("E" expires 12/22/2015)

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. (Amended After Comments)

Department for Medicaid Services

Medicaid Services
907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services. ("E" expired 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)
907 KAR 1:055. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services. (Amended After Comments)

Division of Community Alternatives

Hospital Service Coverage and Reimbursement
907 KAR 10:020. Coverage provisions and requirement regarding outpatient psychiatric hospital services. (Amended After Comments)(Deferred from August)
907 KAR 10:025. Reimbursement provisions and requirements regarding outpatient psychiatric hospital services. (Not Amended After Comments.)(Deferred from August)

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

Institutional Care
908 KAR 3:050. Per diem rates.
908 KAR 3:060. “Means test” for determining patient liability. (Amended After Comments)

Department for Aging and Independent Living
Division of Quality Living

Aging Services
910 KAR 1:240. Certification of assisted-living communities.

Department for Income Support
Child Support Enforcement

Family Support
921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

Department for Community Based Services
Division of Family Support

K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).
921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).
921 KAR 2:017. Kentucky Works Program (KWP) supportive services.
921 KAR 2:046. Adverse action; conditions.
921 KAR 2:050. Time and manner of payments.
921 KAR 2:370. Technical requirements for Kentucky Works Program (KWP).
921 KAR 2:500. Family Alternatives Diversion (FAD).
921 KAR 2:510. Relocation Assistance Program.
921 KAR 2:520. Work Incentive or “WIN”.

Supplemental Nutrition Assistance Program
921 KAR 3:035. Certification process.
921 KAR 3:050. Claims and additional administrative provisions.
921 KAR 3:060 & E. Administrative disqualification hearings and penalties. ("E" expires 11/26/2015) (Amended After Comments)
REMOVED FROM THE SEPTEMBER AGENDA

GENERAL GOVERNMENT CABINET

Board of Medical Licensure
- 201 KAR 9:305. Continued licensure of athletic trainers. (Deferred from September)
- 201 KAR 9:310. Continuing medical education. (Deferred from September)

Real Estate Commission
- 201 KAR 11:170 & E. Real estate school and pre-license course approval. ("E" expires 12/26/2015) (Comments Received)
- 201 KAR 11:235 & E. Post-license education requirements. ("E" expires 12/26/2015) (Comments Received)
- 201 KAR 11:240 & E. Distance education requirements. ("E" expires 12/26/2015) (Comments Received)

Board of Examiners of Psychology
- 201 KAR 26:115. Psychological testing. (Comments Received)
- 201 KAR 26:121. Scope of practice and dual licensure. (Comments Received)
- 201 KAR 26:200. Definitions of terms used by the Board of Examiners of Psychology for meeting education requirements for licensure as a licensed psychologist. (Comments Received)

Board of Licensure of Marriage and Family Therapists
- 201 KAR 32:060. Continuing education requirements. (Comments Received)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice
- 505 KAR 1:100 & E. Department of Juvenile Justice Policies and Procedures: admissions. ("E" expires 12/28/2015) (Comments Received)
- 505 KAR 1:110 & E. Department of Juvenile Justice Policy and Procedures Manual: program services. ("E" expires 12/28/2015) (Comments Received)
- 505 KAR 1:130 & E. Department of Juvenile Justice Policies and Procedures: juvenile services in community. ("E" expires 12/28/2015) (Comments Received)

LABOR CABINET

Department of Workers' Claims
- 803 KAR 25:008. Procedure for adjustments of claims using litigation management systems. (Withdrawn by agency, 8/27/2015)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services
- 907 KAR 1:026. Dental services’ coverage provisions and requirements. (Comments Received)
- 907 KAR 1:626. Reimbursement of dental services. (Comments Received)

Division of Community Alternatives
- Medicaid Services
  - 907 KAR 1:626. Reimbursement of dental services. (Comments Received, SOC Ext.)

Department for Community Based Services
- Division of Protection and Permanency
  - Child Welfare
    - 922 KAR 1:310. Standards for child-placing agencies. (Comments Received)
    - 922 KAR 1:340. Standards for independent living programs. (Comments Received)
    - 922 KAR 1:390. Family preparation for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet. (Comments Received, SOC Ext.)
    - 922 KAR 1:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet. (Comments Received, SOC Ext.)
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.
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
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, to 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 designated by the county board 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;
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.
(3) Except as otherwise provided in this administrative regulation, no person shall display signs, distribute campaign literature, cards, or handbills, solicit signatures to petitions, 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.

Section 3. These 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 Thorston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

658
EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, August 11, 2015)


RELATES TO: KRS 156.095, 158.070, 160.380, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. This administrative regulation establishes the qualifications for teachers of occupation-based career and technical education and implements the testing and internship requirements of KRS 161.030.

Section 1. (1) The certificates for occupation-based career and technical education established in this administrative regulation shall be issued and renewed for occupation-based career and technical education teachers employed by the public schools, the Office of Career and Technical Education of the Department of Workforce Investment, the Kentucky Community and Technical College System, or the Kentucky Department of Education Office of Career and Technical Education.

(2) The certificates may be issued for any information technology, industrial education, public service, health science, or human services occupation area for which programs may be offered under the required Kentucky Academic Standards [Kentucky Program of Studies] established in 704 KAR 3:303.

(3) Certificates for occupation-based career and technical education established in this administrative regulation shall:

(a) [Shall] Be initially issued to teacher candidates who are employed based upon required occupational experience in the subject area to be taught; and

(b) [Shall] Not require a college degree for initial issuance.

Section 2. Issuance and Renewal of One (1) Year Provisional Certificates. (1) Initial issuance. A provisional internship certificate for teaching occupation-based career and technical education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued to an applicant who has submitted a completed CA-3 for a duration period of one (1) year upon completion of the following requirements:

(a) A minimum of a high school diploma [High school graduation] or its equivalent determined by evidence of an acceptable score on the general education development test administered by an approved testing center;

(b) Four (4) years of successful and appropriate occupational experience in the area to be taught, with:

1. At least two (2) years of the occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an accredited occupational [vocational] preparation program for the occupation to be taught; and

2. The occupational experience confirmed by the Kentucky Department of Education Office of Career and Technical Education [the Department of Workforce Investment, or the Kentucky Community and Technical College System];

(c) The testing provisions established in 16 KAR 6:020; and

(d) A national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application; and

(e) An offer of employment from a local school district, the Kentucky Department of Education, the Department of Workforce Investment, or the Kentucky Community and Technical College System.

(2) First renewal of one (1) year provisional certificates. The first renewal of the one (1) year provisional certificate shall require the successful completion of:

(a) The Kentucky Teacher Internship Program established in 16 KAR 7:010; and

(b) Three (3) semester hours of credit in occupation-based career and technical education laboratory/classroom management. This requirement may be met by successfully completing the New Teacher Institute sponsored by the Kentucky Department of Education Office of Career and Technical Education [Department of Workforce Investment].

(3) Subsequent renewal of one (1) year provisional certificate. Any subsequent renewal of the one (1) year provisional certificate to an applicant who has submitted a completed CA-3 after the successful completion of the internship shall require:

(a) The completion of a minimum of six (6) semester hours of college credit for each renewal selected from the sixty-four (64) semester hour planned program for the preparation of teachers in information technology, industrial education, public service, health science, or human services occupations established in Section 4 of this administrative regulation; and

(b) Documentation of completion of four (4) days of professional development as required by KRS 156.095 and 158.070.

(4) Credit granted by a regionally- or nationally-accredited postsecondary institution for occupational proficiency based upon past relevant experience or credit by examination shall not be applied toward the provisional certificate renewal requirements.

(5) The one (1) year provisional certificate shall be limited to nine (9) one (1) year renewals for a total validity period of ten (10) years, which do not need to be consecutive.

(6) Upon completion of the sixty-four (64) hour planned program established in Section 4 of this administrative regulation, the teacher shall:

(a) Receive the professional certificate established in Section 3 of this administrative regulation; and

(b) Adhere to the subsequent renewal requirements established in Section 3(3) of this administrative regulation.

Section 3. Issuance and Renewal of the Professional Certificate. (1) Initial issuance. A professional certificate for teaching occupation-based career and technical education, valid for teaching only the subject or subjects stated on the face of the certificate, shall be issued for a duration period of one (1) year to an applicant who has submitted a completed CA-3 upon completion of the following requirements:

(a) Compliance with Section 2(1) of this administrative regulation; and

(b) The completion of a planned program consisting of a minimum of sixty-four (64) semester hours of college credit established in Section 4 of this administrative regulation.

(2) First renewal.

(a) The first renewal shall require the successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010.

(b) Upon meeting the requirements established in paragraph (a) of this subsection, the teacher shall receive the professional certificate valid for an additional four (4) years.

(c) An occupation-based career and technical education teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial professional certificate or who is not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete...
the internship program again while serving on the professional certificate.

(3) Subsequent renewal. The professional certificate shall be renewed for subsequent five (5) year periods upon completion of:
   (a) Three (3) years of teaching or occupational experience in the occupational specialty; or
   (b) Six (6) semester hours of college credit related to the certification area.

Section 4. The planned program for occupation-based career and technical education teachers shall:

   (1) Include a minimum of sixty-four (64) semester hours of college credit with at least twenty-four (24) semester hours in academic and professional education preparation during the first four (4) years of certificate validity;
   (2) Utilize the proficiency evaluation established in 16 KAR 5:030;
   (3) Be based upon the experienced teacher standards established in 16 KAR 1:010;
   (4) Meet the specialty program association standards established in 16 KAR 4:030.

Section 6. Incorporation by Reference. (1) "CA-3," 9/15/06/13, is incorporated by reference.

This material may be inspected, copied, or obtained, subject to applicable copyright law.


(1) An applicant for Kentucky teacher or administrative preparation was completed at an out-of-state educator preparation provider, excluding providers that are solely online, located outside the Commonwealth of Kentucky shall complete all program and the curriculum requirements approved by the responsible state education agency for teacher or administrative preparation.

(2) An applicant for Kentucky teacher or administrative preparation who completes an out-of-state educator preparation program through a solely online out-of-state educator preparation provider shall have:
   (a) Completed a program of preparation that is:
      1. Accredited or approved, as applicable, by the provider's state of origin;
      2. Regionally accredited, and
      3. Accredited by the Council for Accreditation of Educator Preparation (CAEP); and
   (b) The curriculum requirements approved by the responsible state education agency for teacher or administrative preparation.

Section 3. [2] Teacher Certification. (1) An applicant for Kentucky teacher certification whose professional preparation was completed at an out-of-state educator preparation provider located outside the Commonwealth of Kentucky shall:
   (a) Possess a teacher license or certificate equivalent to the Kentucky statement of eligibility from the state, territory, or province where the applicant completed his or her preparation program;
   (b) Satisfy the degree, academic preparation, and grade point requirements established in 16 KAR 2:010;
   (c) Provide evidence that the out-of-state license or certificate was obtained by completion of an approved educator preparation program and not based on the completion of a written or verbal assessment; and
   (d) Follow the procedures for certificate application established in 16 KAR 2:010.

(2) An applicant for Kentucky teacher certification whose professional preparation was completed at an out-of-state educator preparation provider located outside the Commonwealth of Kentucky and who meets the requirements of Section 2(a) of this administrative regulation and subsection (1) of this section shall be issued a Kentucky teacher certificate or statement of eligibility established in 16 KAR 2:010 at the grade range and content area corresponding to the out-of-state preparation.

(a) Beginning July 1, 2016, in addition to any other certification renewal requirements, an applicant for Kentucky teacher, middle school, high school, Grades 5-12, and Grades P-12 teacher certification whose professional preparation was completed at an out-of-state educator preparation provider shall, within five (5) years of receiving certification, complete the following:
   1. A three (3) hour content literacy course aligned to the six (6) International Reading Association Standards 2010; Middle and High School Content over Kentucky Teacher and taught by faculty qualified to deliver literacy instruction; or
   2. Two (2) or more courses aligned to the six (6) International
Reading Association Standards 2010: Middle and High School Content Classroom Teacher and taught by faculty qualified to deliver literacy instruction.

(b) The course or courses submitted by an applicant for Kentucky teacher middle school, high school, Grades 5-12, and Grades P-12 teacher certification whose professional preparation was completed at an out-of-state educator preparation provider shall meet the following requirements:

1. The course or courses, identified in paragraph (a) of this subsection, shall be developed to ensure that each candidate demonstrates the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;

2. The syllabus for each course shall be aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher;

3. The assessments, including any scoring instruments, developed for each course shall be aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher to demonstrate the candidate’s competency to provide classroom instruction aligned to each standard; and

4. The faculty assigned to teach each course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher shall be qualified to teach a course aligned to the six (6) International Reading Association Standards 2010: Middle and High School Content Classroom Teacher.

Section 4.[3] Administrative Certification. (1) An applicant for Kentucky administrative certification whose professional preparation was completed at an out-of-state educator preparation provider[institution located outside the Commonwealth of Kentucky] shall:

(a) Possess an administrative license or certificate equivalent to the Kentucky corresponding statement of eligibility or administrative certificate from the state, territory, or province where the applicant completed his or her preparation program;

(b) Satisfy the degree, academic preparation, and grade point requirements for the administrative certificate established in 16 KAR Chapter 3;

(c) Provide evidence that the out-of-state license or certificate was obtained by completion of an approved educator preparation program consisting of a minimum of thirty (30) post Masters’ graduate-level hours in school administration; and

(d) Follow the procedures for certificate application established in 16 KAR Chapter 3.

(2) An applicant for Kentucky administrative certification whose professional preparation was completed at an out-of-state educator preparation provider[institution located outside the Commonwealth of Kentucky] and who meets the requirements of Section 2[4] of this administrative regulation and subsection (1) of this section shall be issued a Kentucky administrative certificate or statement of eligibility established in 16 KAR Chapter 3 corresponding to the out-of-state preparation.

(3) An applicant for Kentucky principal certification who was admitted to a principal preparation program located outside the Commonwealth of Kentucky prior to January 1, 2012 and who completes the program prior to January 31, 2014 shall be exempt from subsection (1)(c) of this section.

Section 5.[4] (1) An out-of-state applicant shall be subject to the testing and internship requirements of KRS Chapter 161 and implementing administrative regulations of the Education Professional Standard Board in KAR Title 16.

(2) An out-of-state applicant shall be subject to the certificate issuance, recency, reissuance, renewal, and rank change provisions of KRS Chapter 161 and KAR Title 16.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: June 8, 2015
FILED WITH LRC: June 15, 2015 at 9 a.m.
CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

PERSONNEL CABINET
(As Amended at ARRIS, August 11, 2015)


RELATES TO: KRS 18A.030(2), 18A.032, 18A.110(1)(a), (7)(c), 18A.120, 18A.150
STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(a), (7)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(a) and (7)(c) requires the Secretary of Personnel to promulgate administrative regulations which govern open competitive exams to determine the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the secretary. This administrative regulation establishes the application and examination requirements.

Section 1. Notices of Examinations. (1) An examination for entrance to the classified service shall be conducted on an open-competitive basis.

(2) The recruitment program shall:

(a) Accept an Application for Employment; and

(b) Hold an examination whenever and wherever the secretary reasonably determines[deems] it to be in the best interests of the Merit System.

(3) Eligibles shall be listed in rank order upon certification of a register based on their highest valid scores.

(4) The public notice of examination required by KRS 18A.110(7)(c) shall specify:

(a) The title and minimum salary of the job classification;

(b) The minimum qualifications required;

(c) The opening date on which an application will be received for placement of the applicant on the register; and

(d) All other pertinent information and requirements.

Section 2. Minimum Qualifications for Filing Applications. An open-competitive examination shall be available to each applicant who meets the minimum requirements determined by the secretary with regard to:

(1) Education;

(2) Experience;

(3) Training;

(4) Licensure;

(5) Certification; or

(6) Other factors that relate to the ability of the candidate to perform the essential functions of the position with reasonable efficiency.

Section 3. Filing Applications. (1) An Application for Employment shall be electronically submitted.

(2) An application shall require information concerning:

(a) Personal characteristics;

(b) Education;

(c) Experience;

(d) References; and

(e) Other pertinent information.

(3) An application shall be signed by the applicant personally or by electronic means. The truth of the statements contained in
the application shall be certified by the applicant's signature.

(4) An applicant shall:
   (a) Meet the minimum qualifications established in the job class specification as to education and experience; and
   (b) Not be guaranteed a passing grade by admission to an examination.

(5) For a job classification for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that an application shall be received until further notice.

Section 4. Advance Examinations. (1) If an applicant does not meet the minimum requirements as to education at the time of application, but will meet these requirements as a result of the completion of currently scheduled educational work within three (3) months following the date of receipt of the application, the applicant shall be allowed to take the examination.

(2) An applicant taking the examination under subsection (1) of this section shall be eligible to apply for a specific vacancy announcement up to thirty (30) calendar days prior to completing the educational requirements.

Section 5. Character of Examinations. An examination shall:

(1) Be practical in nature;

(2) Be constructed to reveal the capacity of the candidate for the particular job classification for which the applicant is competing;

(3) Consider the applicant's general background and related knowledge; and

(4) Be rated impartially.

Section 6. Conduct of Examinations. (1) An examination shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) Reasonable accommodation in testing shall be provided upon timely request and receipt of verification of need.

(3) The secretary may:
   (a) Designate monitors in various parts of the Commonwealth to conduct an examination under instructions prescribed by the secretary;
   (b) Provide for the compensation of the monitors; and
   (c) Make arrangements for the use of a public building in which to conduct an examination.

(4) Retest procedures. (a) If open continuous testing, an applicant shall not:
   [a] Be admitted to the same exam or its alternate more than two (2) times within a regular workweek; or
   [b] Take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date the test is taken.

Section 7. Rating Examinations. (1) The secretary shall determine the rating or standing of an applicant on the register for each examination at the time of certification of a register.

(2) The secretary shall determine the passing score of each examination.

(3) All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) If the selection method is rating of education and experience, the secretary shall determine a procedure for the evaluation of the education and experience qualifications of an applicant.

(2) The formula used in appraisal shall give due regard to recency and recentness of experience and quality as well as quantity of experience and the pertinence of the education.

(3) The secretary shall investigate the candidate's educational documentation.

(4) The secretary shall investigate the candidate's work history.

(5) If the results of this investigation disclose information affecting the rating of education and experience, the secretary shall:
   [a] Rate the candidate accordingly;
   [b] Make the necessary revision of the rating; and
   [c] Notify the candidate.

(6) The secretary shall determine the selection method for a qualifying job classification based upon the knowledge, skills, and abilities necessary for the job classification.

(a) The secretary shall notify the Personnel Board of the job classification and the minimum requirements for a qualifying selection method.

(b) The secretary shall maintain for public review a list of those job classifications which are qualifying along with the minimum requirements for each job classification.

Section 9. Notice of Examination Results. (1) Each applicant shall be notified of the examination score as soon as the rating of the examination has been completed.

(2) An eligible shall be entitled to information concerning his or her relative position on the register upon request and presentation of proper identification.

Section 10. Adjustment of Errors. (1) The secretary shall correct a clerical error in the rating of an examination, if the error is called to the attention of the secretary within thirty (30) days after receipt of the notice of examination results. Further, the secretary may correct an application submission error, if the error is called to the attention of the secretary within thirty (30) days of the issuance of a register certificate.

(2) A correction shall not invalidate a certification and appointment previously made.

Section 11. Examination Records. The secretary shall maintain all records pertinent to an application or examination for a period of three (3) years.


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

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 11, 2015 at 2 p.m.
CONTACT PERSON: Dinh T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

PERSONNEL CABINET
(As Amended at ARRS, August 11, 2015)

101 KAR 2:066. Certification and selection of eligible applicants for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.113, 18A.135, 18A.165
STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(b), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligibility lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination. This administrative regulation establishes the requirements for certification and selection of eligible applicants for appointment.

Section 1. Request for Certification of Eligible Applicants. To fill a vacant position in the classified service that is not filled by lateral transfer, reinstatement, reversion or demotion, the appointing authority shall submit a request for a register to the secretary. The request shall:

(1) Be for one (1) or more positions in the same:
(a) Job classification[Class]; or
(b) County;
(2) Indicate:
(a) The number and identity of the positions to be filled;
(b) The title of the job classification for each position; and
(c) Other pertinent information which the appointing authority and the secretary reasonably determine are[deem] necessary; and
(3) Be made by the appointing authority as far in advance as possible of the date the position is to be filled.

Section 2. Certification of Eligible Applicants. (1) Upon receipt of a request for a register, the secretary shall certify and submit to the appointing authority the names of eligible applicants for the position who have applied.
(a) If one (1) position is involved, the secretary shall certify the names of:
1. Each applicant who:
   a. Applied for the vacant position; and
   b. If it is a tested position, has a score included in the highest five (5) scores earned through the selection method; and
2. All internal mobility candidates who are eligible and have applied for the vacant position.
   (b) If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency's consideration in filling the total number of vacancies.
(c) Each appointment shall be made from:
1. The internal mobility candidate listing of eligible applicants who have applied for the vacant position; or
2. The eligible applicants with the five (5) highest scores who have applied for the vacant position, if applicable.
(b) The eligibles with the five (5) highest scores who self nominated to vacant positions if applicable.
(2) The life of a certificate during which action may be taken shall be ninety (90) days from the date of issue unless otherwise specified on the request for a register. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.
(3) Subject to the provisions of KRS 18A.113 and KRS 18A.135, a vacancy associated with an active register certificate may be filled by an eligible who did not apply if filled by lateral transfer, reinstatement, reversion, or demotion.

Section 3. Preferences and[Preferred] Skills Questions. (1) The secretary shall approve a list of preferences and[preferred] skills questions to assist in the determination of an applicant's qualifications and availability for a job vacancy.
(2) The appointing authority may identify preferences and[preferred] skills questions from the approved list of questions which relate to the specific job classification. The appointing authority may request that an applicant answer those preferences and[preferred] skills questions when submitting an Application for Employment. After an appointing authority has received a register, the appointing authority may consider the answers to the preferences and[preferred] skills questions to assist in applicant selection.

Section 4. Selection. The appointing authority shall report to the secretary the recommended candidate for appointment.

TIM LONGMEYER, Secretary
APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 11, 2015 at 2 p.m.
CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

PERSONNEL CABINET
(As Amended at ARRS, August 11, 2015)

101 KAR 3:045. Compensation plan and pay incentives for unclassified service.

RELATES TO: KRS 18A.110, 18A.155, 18A.202, 199.555
STATUTORY AUTHORITY: KRS 18A.030(2), 18A.155(1)(b), (e), 18A.110(2), 18A.202(1)[EO 98-1443]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees[EO 98-1443 requires the secretary to establish a state employee adoption benefit program]. This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

Section 1. New Appointments. An appointing authority shall appoint a new employee[an applicant] at a salary not to exceed the midpoint of the pay grade.

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is rehired to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments in this administrative regulation.
(2) Other reentering employees.[j] An appointing authority shall set the salary of a former classified or unclassified employee, other than a returning retiree,
(a) In accordance with the standards used for making new appointments In this administrative regulation; or
(b) Up to a salary formerly paid in the classified or unclassified service, if that salary is within the current pay grade.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater.
   An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.
(2) Demotion. If an employee is demoted,
   (a) The employee's salary shall be reduced to a rate that is not below the minimum for the job classification[Class] to which the demotion is made; or
   (b) The employee shall[be allowed to] retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.
(3) Reclassification.
   (a) An employee who is advanced to a higher pay grade through reclassification shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater.
   An appointing authority may grant a salary increase of five (5) percent per grade upon reclassification to a higher grade.
   (b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.
   (4) Reallocation.
   (a) An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater.
   An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.
   (b) An employee who is placed in a lower pay grade through
relocation shall receive the same salary received prior to relocation.

(5) Detail to special duty.
(a) An employee who is detailed to special duty in a higher grade shall receive a five (5) percent increase or an increase to the minimum of the grade, whichever is greater, for the duration of the period of the detail. An appointing authority may grant a salary increase of five (5) percent per grade for the duration of the detail.
(b) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary.

(6) Reversion.
(a) The salary of an employee who is reverted following detail to special duty in a higher pay grade shall be adjusted to:
1. The salary received prior to the detail; and
2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.
(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:
1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.
(a) If a job classification is assigned to a higher pay grade through a pay grade change, the appointing authority shall raise the employee by a dollar amount approved by the Secretary of Personnel to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:
1. The greater of the new grade minimum or five (5) percent; or
2. The greater of the new grade minimum or ten (10) percent; or
3. The greater of the new grade minimum or a dollar amount approved by the Secretary of Personnel all employees below the new minimum shall be raised to the new minimum.

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification, who is below the special entrance rate, to the new rate. If sufficient funds are available, an appointing authority may also grant a salary adjustment equal to the difference between the former entrance rate and the new special entrance rate to other employees in that job classification.

(9) Other salary adjustments.
(a) On the 16th of a month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for but did not receive an increase upon the completion of six (6) months service following promotion.
(b) On the 16th of a month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive at least a five (5) percent advancement as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an increase at the time of the grade change shall equal five (5) percent of the employee’s salary immediately prior to the grade change.
(c) An appointing authority may grant an employee who was eligible for, but did not receive an adjustment beyond the new minimum at the time the special entrance rate was established an increase equal to the difference between the old entrance rate and the new entrance rate.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and five-tenths (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee’s hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements. (1) Initial appointment increase. An appointing authority shall grant a five (5) percent increase to an employee, except an interim employee:
(a) On the first day of the month following completion of six (6) months of service; or
(b) No later than the first day following twelve (12) months of service.

(c) If the appointing authority elects not to grant the initial appointment increase upon completion of six (6) months service, the increase may be granted on the first day of any month following the date the employee was eligible, but shall be granted no later than the first day following twelve (12) months of service.

(2) Six (6) month promotional increase. An employee may receive a five (5) percent increase following the completion of six (6) months service after promotion.

(3) Annual increment dates shall be established as follows:
(a) On the date of receiving an initial appointment increase; 
(b) On the first day of the month following completion of twelve (12) months service by a former employee who is appointed or reappointed, except in the case of an interim employee; or
(c) On the first day of the month following completion of twelve (12) months service by an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change if
(when) an employee:
(a) Is in a position which is assigned a new or different pay grade;
(b) Receives a salary adjustment as a result of his position being reallocated;
(c) Is promoted;
(d) Is transferred;
(e) Is demoted;
(f) Is detailed to special duty;
(g) Receives an educational achievement award;
(h) Returns from military leave;
(i) Is reclassified; or
(j) Receives an increase six (6) months following promotion.

(5) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted when computing service for purposes of determining increment eligibility. Service as an interim employee, or in the former seasonal, temporary, or emergency-[provisional or federally funded, time limited] categories shall not be considered.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee’s increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee’s salary, except if the adjustment is based on a pay grade change or a salary schedule change.

(8) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee’s base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.
(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:
   a. Outside of work hours;
   b. While in state service;
   c. After establishing an increment date; and
   d. On or after January 1, 1984.

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test:
   a. Outside of work hours;
   b. While in state service;
   c. After establishing an increment date; and
   d. On or after January 1, 1984.

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, for the equivalent as determined by the Secretary of Personnel.

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

(c) For the Kentucky Certified Public Manager Program, the qualifying conditions shall be met if:

1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and

2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager Program.

Section 6. Salary Schedule Adjustment. If the secretary authorizes an adjustment of all grades in the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new schedule minimum for the grade.

Section 7. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee’s salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 8. Supplemental Premiums. (1) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion, or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages.

(2) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(3) Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;
2. The percentage of time the employee will use multilingual skills; and
3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any
time.

The multilingual hourly premium shall not be considered a part of base pay or wages.

Section 9. Employee Recognition Award. (1) On the 16th day of a month, an appointing authority may grant an employee an employee recognition award, or ERA, in the form of a lump sum payment of up to ten (10) percent of midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) months in state service, twelve (12) consecutive months of which is in the department granting the award;

(b) The employee has not received an ERA in the preceding twelve (12) months or an ACE or a distinguished service award in the preceding twenty-four (24) months; and

(c) The appointing authority determines that the employee’s acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department or governmental operations.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in the department in a calendar year.

(5) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee’s personnel files.

(6) An appointing authority shall submit a letter or memorandum to the cabinet to award an ERA. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department; and

2. The criteria and limitations established in this section have been met.

Section 10. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grant midpoint for a full-time employee’s base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date and has worked at least twenty-four (24) months, twelve (12) consecutive months of which shall have been served in the department granting the award;

(b) The employee has not received an ACE award or a distinguished service award in the preceding twenty-four (24) months or an employee recognition award (ERA) in the preceding twelve (12) months; and

(c) The employee has demonstrated a sustained level of exceptional job performance; or

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through agency directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall not grant an ACE to more than twenty-five (25) percent of the total number of full-time employees in the department in a calendar year.

(5) An appointing authority shall submit a letter or memorandum to the cabinet to grant an ACE award. The letter or memorandum shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Funds are available within the department’s current recurring base budget to support the award.

Section 11. Adoption Benefit Program. (1) The Personnel Cabinet shall administer a program to provide financial assistance as an incentive to a state employee in the executive branch who adopts a child on or after November 1, 1998.

(a) A state employee for adoption as a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child. Total state available funds for this program shall not exceed $150,000 in a fiscal year.

(b) The eligible employee shall receive:

1. Up to $5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

2. Up to $3,000 in unreimbursed direct costs related to the adoption of any other child.

(2) Unreimbursed direct costs related to the adoption of a special needs child or other child shall include:

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs;

(d) Court costs; and

(e) Other reasonable fees or costs associated with child adoption in accordance with the rules of the court at the time of finalization of the adoption.

(3) Application for financial assistance shall be made by submitting a completed State Employee Adoption Assistance Application to the Secretary of Personnel along with[and supported by] documentary evidence of:

(a) Finalization of the adoption;

(b) Certification by the Secretary of the Cabinet for Health and Family Services that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and

(c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the time of finalization of the adoption.

(4) If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in subsection (2) of this section.

(5) Upon approval of the application for financial assistance, the employee’s agency shall dispense funds in the amount authorized by the Secretary of Personnel if the funds authorized for the program have not been exhausted.

Section 12. Incorporation by Reference. (1) State Employee Adoption Assistance Application, May 2015 Incorporation by Reference, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

FILED WITH LRC: June 11, 2015 at 2 p.m.
CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, August 11, 2015)

201 KAR 30:070. Grievances.

RELATES TO: KRS 324A.020, 324A.050, 324A.052
STATUTORY AUTHORITY: KRS 324A.020, 324A.035, 324A.052
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

Section 1. Definitions. (1) "Formal complaint" means a formal administrative pleading authorized by the board that states a charge against a credential holder or applicant and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.
(2) "Grievance" means information that a person has allegedly violated the requirements of KRS Chapter 324A or 201 KAR Chapter 30.

Section 2. Grievance and Answers. (1)(a) The board shall process any grievance submitted against a licensee or certificant.
(b) A grievance against a licensee or a certificant shall be submitted in writing.
(c) The person or organization who submits a grievance shall be identified within the document, unless the grievance is being submitted anonymously.
(d) A grievance shall contain a concise statement of the facts, transaction, or occurrence upon which it is based.
(e) Exhibits or other documents, if applicable, shall be attached to the grievance.
(f) A copy of the grievance and attachments shall be served on the licensee or certificant by the board:
   1. At the last known address of the licensee or certificant; and
   2. By certified mail, return receipt requested.
(2)(a) If the board receives an anonymous grievance, an initial investigation shall be conducted to determine if a formal investigation is warranted.
(b) If the board receives an anonymous grievance, the board shall not be required to conduct a formal investigation if the grievance is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the grievance is meritorious.
(c) The licensee or certificant shall file with the board an answer to the grievance.
(d) The answer shall be filed with the board within twenty (20) days after service of the grievance.
(e) A copy of the answer shall be served on the grievant, unless the grievant is anonymous, by the licensee or certificant, by certified mail, return receipt requested, to the address shown on the grievance.

Section 3. Formal Investigations. (1) The board shall conduct an investigation of the facts alleged in a grievance:
(a) Upon receipt of a grievance and answer; or
(b) If an answer is not filed with the board, upon expiration of the period established in Section 2(3)(b)[2(2)(b)] of this administrative regulation.
(2) A party shall be granted access to information resulting from an investigation that:
(a) Was conducted by the board or board personnel; and
(b) Was authorized by the board or board personnel; and
(c) Is related to the subject matter of the grievance.
(3) A party may rebut or comment upon the information or investigation established in subsection (1) of this section.
(4) An investigation, or information resulting from an investigation, shall be disclosed to a party if:
(a) Was the basis for action appealed by an applicant or appraiser; or
(b) Relates to the subject matter of a complaint.
(5) The requirements of the Uniform Standards of Professional Appraisal Practice (USPAP), incorporated by reference in 201 KAR 30:040, shall not apply to the board, its agents, and employees with regard to preparing an investigation for enforcement and disciplinary cases pursuant to this administrative regulation.

Section 4. Dismissal of Grievance. The board shall dismiss a grievance if the facts stated in the grievance, or facts known to the board upon investigation, fail to establish a violation of KRS 324A.050. The board shall notify the grievant and the licensee or certificant in writing if it dismisses the grievance.

Section 5. Formal Complaints. (1) If the facts alleged constitute a prima facie violation of KRS Chapter 324A, 201 KAR Chapter 30, or the USPAP, the board shall issue a formal complaint, in accordance with KRS Chapter 13B, against the credential holder or applicant and proceed pursuant to KRS 324A.052.
(2) The board may enter into informal settlement with the credential holder.
(a) A settlement conference shall be convened upon agreement of the parties.
(b) A person with a relationship to the proceedings who is permitted to attend the settlement conference may include the board's investigator, executive director, board representative, licensee or certificate holder, and an attorney or attorneys, as applicable.
(c) If the parties to a settlement conference agree on a stipulation, proposed term, or condition for an agreed order to resolve the complaint, the agreed order shall be forwarded to the board for consideration.
(d) If the agreed order is approved by the board, the complaint shall be considered resolved, and a hearing shall not be held.

HAROLD BRANTLEY, Chairperson
APPROVED BY AGENCY: May 22, 2015
FILED WITH LRC: June 5, 2015 at 9 a.m.
CONTACT PERSON: Larry Disney, Executive Director, Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658, fax (859) 623-2598.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, August 11, 2015)

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

RELATES TO: KRS Chapters 196, 197, 439
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 439.470, and 439.551 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and
(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
(11) Permit the Board of Control to assess fines on a member high school;
(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;
(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;
(14) Conduct continual cycles of field audits of the association's entire high school membership which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;
(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);
(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;
(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, and other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public; and
(18) Not punish or sanction, in any manner, a school, student, coach, parent, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility.

Section 3. To remain eligible to maintain the designation as the agency to manage interscholastic athletics at the middle school level, [revised effective June 2, 2014-2015 Board of Governors], the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics and distribute these requirements to all middle schools and publish via the KHSAA Web site:
(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:
(a) The contest, event, or tournament is sponsored by a school or combined group of schools;
(b) Competitors wear a school issued uniform;
(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event (advertised or promoted as a school event), whether or not an entry fee is required;
(d) A school entry pays an entry fee for the student or team, including payment by booster organizations;
(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;
(f) A member of a school coaching staff (designated or hired, whether paid or unpaid) is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;
(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;
(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school (formal, informal, or team nickname);
(i) Competitors in the contest, event, or tournament are provided resources (promotional or otherwise) by the school including school media recognition, signage, and items clearly indicative of school representation;
(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school based decision making body, including financial or other approval control; or
(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policies.
(2) Require that any coach (head or assistant, paid or unpaid) desiring to coach interscholastic athletics at the middle school level meet the requirements of KRS 156.070(2)(f)2. and KRS 160.380(4) and (6);
(3) Require the adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:
(a) Each student, prior to trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(d), and shall use the form approved for use at the middle school level;
(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:
1. Heat index and heat illness programs;
2. Wrestling weight management programs; and
3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;
(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:
(a) Be autonomous with respect to the Board of Control of the KHSAA;
(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;
(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletic activity involved in interscholastic activities through local school districts;
(d) Meet not less than twice annually to review current programs and policies; make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics; and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and
(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the Kentucky Board of Education with recommendations for changes in statute, administrative regulation, or policy;
(5) Require any organization conducting a school based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:
(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and
(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;
(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;
(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445, and other requirements for coaches at the middle school level;
(8) Beginning with the 2015-2016 school year, require any student enrolled initially in grade five (5) through eight (8) during the 2015-2016 school year or thereafter who is repeating a grade for any reason, to be ineligible during the school year that the grade is repeated, to compete in interscholastic competition involving students enrolled in grades six (6) through eight (8) [while repeating a grade];
(9) Beginning with the 2015-2016 school year, require that any student who turns:
(a) Fifteen (15) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;
(b) Fourteen (14) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven
(7) and below; and
(c) Thirteen (13) years of age prior to August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;
10. Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:
(a) A defined age limitation for participating students;
(b) A policy regarding the participation of students below grade six (6);
(c) A limitation on practice time prior to the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;
(d) A limitation on the number of school based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and
(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;
11. Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850. (14) Require that the common schools at the middle school level may only compete in contests against schools, including combined elementary or middle school teams, that adhere to these provisions;
12. Issue an annual report to the Kentucky Board of Education on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy; and
13. Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation.
Section 4. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:
(a) Draft budget for the next two (2) fiscal years, including the current year;
(b) End-of-year budget status report for the previous fiscal year;
(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;
(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:
1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;
2. Eligibility rules;
3. Duties of school officials;
4. Contests and contest limitations;
5. Requirements for officials and coaches; and
6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and
(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.
(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.
Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "KHSAA Constitution", 6/2013;
(b) "KHSAA Bylaws", 8/2/2015[6/2015][6/2014];
(c) "KHSAA Due Process Procedure", 6/2014;
(d) "KHSAA Board of Control and Officials Division Policies", 8/2/2015[6/2015][6/2014];
(e) "KHSAA Form BA101- Baseball Pitching Limitation", 4/2009;
(f) KHSAA Form FB102- Football Financial Report", 9/7/2009;
(g) KHSAA Form GE01, "Application for Renewal of Membership", 5/2015[4/2014];
(h) KHSAA Form GE02, "Application for New Membership", 5/2015[4/2014];
(j) KHSAA Form GE06, "Transfer Form – Citizens of the U.S. or U.S. Territories", 8/2/2015[4/2014];
(k) KHSAA Form GE07, "Application for Foreign Exchange Student (Non Domestic) Eligibility", 8/2/2015[4/2014];
(l) KHSAA Form GE08, "Application for Foreign Student, Non Exchange (Non Domestic) Eligibility", 8/2/2015[4/2014];
(m) "KHSAA Form GE14- Contract for Athletic Contests", 4/2014;
(n) KHSAA Form GE16, "Request for Statutory Waiver of Bylaw 2", 4/2014;
(o) "KHSAA Form GE19-Titre IX Procedures Verification", 5/2011;
(p) KHSAA Form GE20, "Heat Index Measurement and Record, 4/2014;
(q) "KHSAA Form GE26, Financial Aid Report", 5/2011;
(r) KHSAA Form GE35, "Request for Waiver of 20 Day Notice", 4/2014;
(s) "KHSAA Form GE36- Add. Info for Appeal", 5/2011;
(t) "KHSAA Form GE52- District Tournament Financial Report", 4/2014;
(v) "KHSAA Form GE69- Waiver – 15 Day Exceptions", 5/2011;
(w) "KHSAA Form PPE/Physical Exam, "PPE- Physical Exam History/Physician Clearance Form (Grades 6 - 12)", 4/2015;
(x) KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Suplemental Form for Athletes With Special Needs (Grades 6 - 12)", 4/2015;
(z) KHSAA Form WR111, "Wrestling Skin Condition", 4/2014;
[aa] KHSAA Form WR126, "Minimum Weight Certification Program Assessor Designation", 4/2014; and
[bb] "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation[MS01- Physician & Parental Permission]", 4/2015[9/2013].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).
TERRY HOLLIDAY, PH.D., Commissioner
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, First Floor, Capital Plaza Tower, 500 Meridian Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.
671
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 evaluators have demonstrated proficiency in rating teachers and other professionals, for the purposes of evaluation and providing feedback. ([16] "Observer certification" 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 descriptive rating of a principal, 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 3:110, 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 [2:050].

(23) "Professional growth plan" means an individualized plan for a certified person who 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) "Professional practice" means the demonstration, in the school environment, of the evaluatee’s professional knowledge and skill.

(25) "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.

"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 responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate under Title 16 KAR 2:010 or 16 KAR 2:020.  

(35)(36) "Working conditions survey goal" means a school improvement goal set by a principal or assistant principal every two (2) years with the use of data from the department-approved working conditions survey.  

Section 2. Implementation Timeline. (1) Beginning with the 2015-2016 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 the requirements 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] evaluation 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 evaluatee 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 to reduce the 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.
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.

(a) The district shall require a principal evaluator to conduct a minimum of two (2) site visits each year.
(b) The district shall create a process for selection of peer observers.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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).

(h) The district, upon the request of a teacher or other professional, may use peer observation data in the formative process.

(i) 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.

(j) 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.

(k) The district shall require documentation of a summative evaluation of a teacher, other professional, principal, and assistant principal in the department-approved technology platform.

(l) All evidence used to produce a certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(m) 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. 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 156.657(6) and this administrative regulation.

\[\text{Section 6. Training and Testing of Evaluators and Observers.}\]

(a) 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.

(b) The district shall ensure an evaluator meets the requirements of the district's system plan and procedures prior to evaluating a certified school personnel.

(c) An evaluator shall be trained and tested, and approved on a four (4) year cycle.

(d) Year one (1) of the district's evaluator training cycle shall include the following training requirements:

(1) Training on KRS 156.557 and the requirements of this administrative regulation;

(2) 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;

(3) 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

(4) 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.

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, Designing District Policy and Practice, and Effectively Using Technology.
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] evaluated.

(3) The district shall explain and discuss the professional practice rating domains, components, and performance criteria, and the evaluation process with [a teacher] evaluatee no later than the end of the evaluatee’s[teacher’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's[Other Professionals'] Professional Practice Rating Form, 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. 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. 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. 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. 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. 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. 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 or other professional’s professional practice rating and] the[the teacher’s or other professional’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 expected or 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 expected; or
4. The professional practice rating is developed and the overall student growth rating is expected; or
5. The professional practice rating is developing and the overall student growth rating is low.

(b) A teacher’s or other professional’s overall performance rating shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is low.
2. The professional practice rating is accomplished and the overall student growth rating is expected or high.
3. The professional practice rating is accomplished and the overall student growth rating is expected; or
4. The professional practice rating is accomplished and the overall student growth rating is low; or
5. The professional practice rating is accomplished and the overall student growth rating is low.

(c) A teacher’s or other professional’s overall performance category shall be developing if:

1. The professional practice rating is accomplished and the overall student growth rating is low.
2. The professional practice rating is accomplished and the overall student growth rating is expected; or
3. The professional practice rating is accomplished and the overall student growth rating is expected; or
4. The professional practice rating is accomplished and the overall student growth rating is low; or
5. The professional practice rating is accomplished and the overall student growth rating is low.

(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 low.
2. The professional practice rating is ineffective and the overall student growth rating is expected or high.
3. The professional practice rating is ineffective and the overall student growth rating is expected; or
4. The professional practice rating is ineffective and the overall student growth rating is low.
Section 9. Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. A teacher or other professional shall be placed on an appropriate plan and summative evaluation cycle based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. (1) A teacher or other professional whose professional practice rating is exemplary or accomplished and who has an expected or high overall student growth rating shall have a professional growth plan that includes: goals set by the teacher or other professional, with evaluator input; activities that are evaluated[teacher]-directed and implemented with colleagues; a formative review annually; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle. (2) A teacher or other professional whose professional practice rating is accomplished or exemplary, with a low overall student growth rating, or developing, with a high overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional, with evaluator input; if there is a low student growth rating, one (1) goal shall focus on low students within an improvement plan with a formative review and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle. (3) A teacher or other professional whose professional practice rating is developing, with an expected overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional, with evaluator input; one (1) goal that addresses professional practice or student growth; activities that are evaluated[teacher]-directed and implemented with colleagues; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle. (4) A teacher or other professional whose professional practice rating is developing, with a low overall student growth rating, or whose professional practice rating is ineffective, with an expected or higher 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 for tenured principals and assistant principals shall be determined as 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 the 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, 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.

(iii) The district shall ensure that student growth goals are rigorous and comparable across schools in the local district. The scale for low, expected, and high student growth goals 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.

(ii) 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 high;
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 high; 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 a low to expected 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 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.

(4) 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.

Section 13. Evaluation of Certified Administrators Assigned to the District Level for Purposes of Evaluation. (1) The district shall determine the overall performance category for certified administrators assigned to the district level for purposes of evaluation.

(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 in an evaluation conference held at 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:

(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's procedures for other professional and preschool teacher evaluation, 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 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 156.740 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.
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(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 the evaluatee 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, the 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 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 2 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 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 17.18 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 not 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. [22] Incorporation by Reference. (1) The following material is incorporated by reference:
(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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, August 11, 2015)


RELATES TO: KRS[151B.025[,] 156.029(7), 156.802, 156.810(4)].

STATUTORY AUTHORITY: KRS[151B.025[,] 156.029(7), 156.802(1), 156.802(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(4) and 156.029(7) require the Kentucky Board of Education to promulgate administrative regulations managing schools and programs and governing the Department of Education, KRS 156.802(5)[151B.025(5)] requires the board [Kentucky Board of Education] to establish program standards for secondary area career and technical [vocational] education and technology centers. This administrative regulation establishes program standards for work-based learning [cooperative vocational education] in area [vocational education and] technology centers and local school districts.

Section 1. Definitions. (1) "Career and technical education" is defined by[as] KRS 158.810(4).
(2) "Cooperative education" means an educational program consisting of in-school instruction combined with program related on-the-job paid work experience in a business or industrial establishment.

(3) "Work-based learning" means an effective teaching approach used to engage students in real-life occupational experiences, that incorporates structured, work-based learning activities into the curriculum[,] and allows a student to apply knowledge and skills learned in class and connect these learning experiences in the workplace.

Section 2. Cooperative [vocational] education shall meet the following minimum requirements established in this section:

1) To participate in cooperative [vocational] education, a student shall be at least sixteen (16) years of age.
   (a) A student who is under eighteen (18) shall secure a verification of age issued by the local superintendent or schools.
   (b) A student who is between age eighteen (18) to twenty-one (21) shall have a certificate of age on file with the employer.

2) A student shall have:
   (a) Successfully completed the basic career and technical [vocational] skills prerequisites required by the preparatory program the student[is] pursuing; and
   (b) Gained sufficient knowledge and skills necessary for success in a cooperative education program.

3) A student shall be:
   (a) Enrolled in a course included within the student's chosen career pathway within the same academic year;
   (b) A career pathway completed by the conclusion of the student's junior year; or
   (c) Enrolled in an approved pre-apprenticeship program[enrolled in a related preparatory educational subject within the school year];

4) The cooperative education program shall be an integral part of the school's program of studies and be described in the school catalog.

5) A student may receive academic credit on an hour-for-hour basis equivalent to a Carnegie [Carneage] Unit only for work experience directly related to the student's individual learning [graduation] plan [ILP] and approvable under the minimum requirements for high school graduation, 704 KAR 3:305[Program of Studies for Kentucky Schools, 704 KAR 3:303].

6) A student shall receive a salary for the work experience phase of instruction in accordance with local, state, and federal minimum wage requirements.

7) The school shall arrange and coordinate with the employer for on-the-job training. A training agreement by the school, student, parent, and employer shall be placed on file with the school.

8) A student shall be excused from school attendance only for the purpose of participating in an approved cooperative education program activity.

9) The program shall include an evaluation component to assess the effectiveness of the program in assisting students in the achievement of their educational and career goals.

10) The student shall spend a minimum of ten (10) clock hours per week in a salaried position which provides work experience directly related to the student's career goals as identified in his individual learning [graduation] plan [ILP].

11) The school shall provide work site supervision of the student by a certified teacher-coordinator on a regular basis throughout the period of time a student is participating in the cooperative education program.

Section 3. Other types of work-based learning opportunities for secondary students may include service learning, mentoring, shadowing, entrepreneurship, school-based enterprises, internships, and pre-apprenticeships. Definitions of each type of work-based learning shall be [work-based-learning are] located in the Kentucky Work-Based Learning Manual. Local districts and state-operated area technology centers shall have the responsibility of coordinating work-based learning programs and shall comply with the Kentucky Work-Based Learning Manual.

Section 4. Incorporation by Reference. (1) "Kentucky Work-Based Learning Manual", March 2015, is incorporated by reference.
This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Career and Technical Education, 20th 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., Commissioner
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.

LAVOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 11, 2015)


RELATES TO: KRS 338.015(1), (2), 338.121(3), 338.161, 29 C.F.R. Part 1904

STATUTORY AUTHORITY: KRS 338.061, 338.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of Workplace Standards, represented by the commissioner to promulgate administrative regulations requiring employers to report [these] occupational safety and health statistics. 29 C.F.R. Part 1904 authorizes [establishes the federal] requirements for the recording and reporting of occupational illnesses and injuries. This administrative regulation establishes recordkeeping and reporting requirements for employers pursuant to [covered under] KRS Chapter 338.

Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue is removed.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

(4) "Loss of eye" means the physical removal of an eye from the socket.

(5) "Occupational Safety and Health Act" means KRS Chapter 338.

(6) "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

(7) "Section 11(c) of the Act" means KRS 338.121(3).

Section 2. An employer[Employers] shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions in Section 1 and the requirements of Section 3 of this administrative regulation:

(1) 29 C.F.R. Part 1904, effective [revised] July 1, 2014; and

(2) Beginning January 1, 2016, the revisions to 29 C.F.R. Part 1904 as published in the September 18, 2014 Federal Register, Volume 79, Number 181 the requirements for reporting and recording of occupational injuries and illnesses established at 29 C.F.R. Part 1904, revised as of July 1, 2008, as amended by the definitions in Section 1 of this administrative regulation and the requirements in Section 3 of this administrative regulation.

Section 3. Reporting Fatalities, Amputations, [w] In-Patient Hospitalizations, or Loss of Eye. The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(1) An employer[Employers] shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any work-related incident that[which] results in the following:

(a) [The] Death of any employee; or

(b) [The] Hospitalization of three (3) or more employees.

(2) The report required pursuant to [under] subsection (1) of this section shall be made within eight (8) hours from when the incident is reported to the employer, the employer's agent, or another employee. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742).

(3) An employer[Employers] shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any work-related incident that[which] results in the following:

(a) An amputation suffered by an employee; or

(b) An employee's loss of an eye; or

(c) The hospitalization of fewer than three (3) employees within seventy-two (72) hours following the incident.

(4) The report required pursuant to [under] subsection (3) of this section shall be made within seventy-two (72) hours from when the incident is reported to the employer, the employer's agent, or another employee.

(5) The report to report the loss of an eye pursuant to [under] subsection (3)(b) of this section shall be effective January 1, 2016.

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 12, 2015 at 11 a.m.
CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.
Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: 29 C.F.R. Part 1926, Subpart AA, Confined Spaces in Construction, published in the May 4, 2015 Federal Register, Volume 80, Number 85. [29 C.F.R. 1926.681 – 1926.684]

Subpart Z of 29 C.F.R. 1910 as adopted by 803 KAR 2:320; and, this administrative regulation does not apply to agricultural production operations.

2) This administrative regulation does not apply to employers in general industry who are covered by 29 C.F.R. 1910.146, "Permit-Required Confined Spaces", as adopted by 803 KAR 2:309.

4) This administrative regulation does not preempt any specific applicable regulation.

Section 3. Confined Space Entry: Nonemergency and Nonrescue. Except as provided in Section 4 of this administrative regulation, entry into a confined space shall not be made unless the following procedures have been accomplished:

Section 4. This administrative regulation does not preempt any specific applicable regulation.
Section 4. Confined Space Entry: Emergency and Rescue. (1) The employer shall establish a written procedure for emergency and rescue methods and operations covering all confined space entries. The procedure shall include at a minimum:
   (a) An assessment of the hazard(s);
   (b) Personnel required to perform the rescue or emergency entry;
   (c) Precautions to be taken while in the confined space;
   (d) Personal protective equipment to be used;
   (e) Rescue equipment such as but not limited to respirators, life lines, safety belts, safety harnesses, wristlets, hoisting equipment when an employee must be lifted vertically, and other equipment; and
   (f) Tools and other equipment to be used.
   (2) The employer shall establish a training program to instruct affected employees in the procedures and practices for emergency and rescue confined space entry. The training shall be repeated annually or more often as needed. The employer shall maintain records of the most recent training program conducted. The records shall include the date(s) of the training program, the instructor(s) of the training program, and the employee(s) to whom the training was given.
   (3) The employer shall assure that personnel with rescue training, basic first aid, and CPR, in the vicinity of the confined space are readily available to render emergency assistance as may be required.

LARRY ROBERTS, Chairman
APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 12, 2015 at 11 a.m.
CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 11, 2015)


RELATES TO: KRS 338.015(7), 338.121, 338.991[Chapter 338]

STATUTORY AUTHORITY: KRS 338.051[338.295]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 requires the Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This administrative regulation establishes[s sets forth] the procedure for discrimination complaints pursuant to KRS 338.121[KRS 338.121] prohibits employers from discriminating against an employee for involvement in an occupational safety and health investigation, complaint or related activity. The statute further requires the Commissioner of the Department of Workplace Standards, Kentucky Department of Labor, to investigate complaints of discrimination, determine whether a violation has occurred and issue a citation to an offending employer. The Kentucky Occupational Safety and Health Review Commission is empowered by KRS 338.121 to order all appropriate relief including reinstatement of the employee to his former position with back pay. The function of this administrative regulation is to set out the procedure to be followed by the commissioner upon receipt of a complaint alleging a violation of this statute.

Section 1. Definitions. [Unless defined herein, all definitions will be as defined in 803 KAR 50:010 and KRS 338.015.] (1) "Commissioner" is defined by KRS 338.015(7) ["Secretary" means Secretary of the Labor Cabinet].

(2) "Complainant" means any person who makes a complaint as defined by[by subsection (3) of this section]["Commissioner" means the Commissioner of the Department of Workplace Standards under the direction and supervision of the Secretary of the Labor Cabinet].

(3) "Complaint" means any oral or written communication related to an occupational safety and health concern made by an employee to an employer, governmental agency[,] or made to the commissioner or the commissioner’s designee.

(4) "Secretary" is defined by KRS 338.015(12)[(3)]. "Affected employee" means any employee discharged or otherwise discriminated against by any person because such employee has filed a complaint or has participated or testified, or is about to participate or testify in any investigation with the Labor Cabinet or proceeding before the Review Commission.

(5) "Prohibited activity" means a wrongful discharge of an employee on the basis of his/her filing a complaint or participation in any investigation instituted by the Labor Cabinet or any proceeding before the Review Commission or any other discriminatory action such as but not limited to suspensions, written reprimands, [disciplinary reprimands], consequences taken against the employee for the above stated activities or for exercising any right afforded under KRS Chapter 338.

Section 2. Procedure for Complaint to the Commissioner[Complaints]: Recipient of; Time for Filing; Form of Complaints. (1) [Any] employee or former employee may file an oral or written[ or] complaint alleging[ or] discrimination[ or] prohibited activity with the commissioner or the commissioner’s designee. [Such complaint may be made orally or in writing.]

(2) A complaint[Complaints] shall be filed no more than[within] 120 days from[the] occurrence of the alleged discriminatory[ or] violation of activity.

(3) A complaint[Complaints] shall state the name and address of the complainant[affected employee], name and address of employer, and description of alleged discrimination.[ or] violation.

(4) Notification shall be given to the employer of the receipt by the commissioner of a complaint within five (5) working days.

Section 3. Settlement. Settlement is encouraged at any stage of the proceedings if the[any such] settlement is consistent with the provisions and objectives of KRS Chapter 338[the Act]. Primary consideration shall be given in the reinstatement of a complainant[employee] to his or her former position with back pay and assurance of the future protection of the rights of all employees under KRS Chapter 338.

Section 4. Withdrawal of Complaint to the Commissioner. [Any] request by the complainant[employee] to withdraw a complaint filed with the commissioner shall[will] be given substantial weight.[j however,] The commissioner shall[will] make the final determination [as to whether] a complaint and subsequent investigation will may[will] be terminated.

Section 5. Arbitration or Other Agency Proceedings. (1) A complainant may pursue[An employee who files a complaint under KRS 338.121(3)] may also pursue remedies under striking reference to this section][an] grievance arbitration proceedings in collective bargaining agreements while requesting relief from other agencies[. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board.

(2) The commissioner’s jurisdiction to receive[entertain] KRS 338.121(3) complaints, to investigate, and to determine [whether] discrimination has occurred shall be independent of the jurisdiction of other agencies or bodies.

(3) The commissioner may investigate and issue citations against any party found in violation regardless of the pendency or determination of other proceedings.

(4) If[2] Where a complainant is pursuing remedies[,] other than those provided by KRS 338.121[postponement of] the commissioner’s determination and order shall[are] the results of the[the] proceedings may be[will] be considered[.]
Issuance of Citation. (1) Upon receipt by the Review Commission of a citation and proposed penalty, the commissioner shall issue a citation and proposed penalty. The citation shall include a reference to the Code of Federal Regulations and notice to the employer that it may be fined in a reasonable time but not to exceed sixty (60) days and the history of previous violations. Such alleged violation by the employer shall be determined by the commissioner after an investigation and a hearing as required by the Code of Federal Regulations. Any fine assessed as a result of such investigation and hearing shall be found to be based on the history of previous violations. The employer shall have the right to contest the citation and proposed penalty before the Review Commission in 803 KAR 50:010. Any fine assessed as a result of such investigation and hearing shall be based on the history of previous violations.

Section 7. Employer Contest. (1) Any citation and notice of proposed penalty shall state that it shall be deemed to be the final order of the Review Commission and not be subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of the notice, the employer notifies the Commissioner of the Department of Workplace Standards in writing that the employer intends to contest the citation and notification of proposed penalty before the Review Commission. Within seven (7) days of receipt of contest notice, the commissioner shall forward copies of the citation and proposed penalty and notice of contest to the Review Commission.

(4) If the commissioner determines there has not been a discriminatory action, the complainant shall be notified of his or her rights of review of the determination.

(b) The secretary shall affirm the determination or remand it to the commissioner for further investigation.

Section 8. (Receipt by Review Commission of Citation and Notice of Contest. Proceedings under 803 KAR 50:010.) Upon receipt by the commission of the citation and proposed penalty and employer’s notice of contest, the commission shall institute proceedings in accordance with the applicable rules as adopted by the Review Commission in 803 KAR 50:010.

Section 9. Proposed Penalties. (1) When a citation is issued, the commissioner shall notify the employer by certified mail of the proposed penalty established in KRS 338.991. The proposed penalty shall be proposed with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(3) Penalties shall be proposed with respect to an alleged discriminatory act even though after being informed of such alleged violation by the commissioner, the employer immediately abates, or initiates steps to abate, the alleged violation.

Larry L. Roberts, Chairman

APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 12, 2015 at 11 a.m.
CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 11, 2015)

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

RELATES TO: KRS 338.015(1), (2), 338.051, 338.061, 29 C.F.R. 1910.66-1910.68
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.66-1910.68 authorizes federal requirements relating to powered platforms, manlifts, and vehicle-mounted work platforms. This administrative regulation establishes the powered platforms, manlifts, and vehicle-mounted work platform standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) “Assistant Secretary of Labor” means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.


(2) “Employee” is defined by KRS 338.015(2).

(4) “Employer” is defined by KRS 338.015(1).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.66-1910.68 and Appendices, effective (revised) July 1, 2014; and


LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 12, 2015 at 11 a.m.
CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 11, 2015)

803 KAR 2:317. Special industries.

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.261 to 1910.272 authorize federal requirements relating to special industries. This administrative regulation establishes the special industries standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) “Assistant Secretary” means
Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal requirements/regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.20-1926.30 and 1926.32-1926.35, effective[revised] July 1, 2014; and


LARRY ROBERTS, Chairman
APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 12, 2015 at 11 a.m.
CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 11, 2015)


RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.950 – 968
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules, administrative regulations, and standards.

The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Commissioner" or "Commissioner, Department of Workplace Standards, Labor Cabinet.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal requirements/regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.20-1926.30 and 1926.32-1926.35, effective[revised] July 1, 2014; and


LARRY ROBERTS, Chairman
APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 12, 2015 at 11 a.m.
CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 11, 2015)


RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.950 – 968
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules, administrative regulations, and standards.

The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Commissioner" or "Commissioner, Department of Workplace Standards, Labor Cabinet.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 11, 2015)

803 KAR 2:505. Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. This administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) “Act” means KRS Chapter 338.

(2) “Assistant Secretary of Labor” means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.


(4) “Employee” is defined by KRS 338.015(2).

(5) “Employer” is defined by KRS 338.015(1).

(6) “Established federal standard” is defined by KRS 338.015(10).

(7) “National consensus standard” is defined by KRS 338.015(5).

(8) “Secretary of Labor” means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) “Standard” means “occupational safety and health standard” as defined by KRS 338.015(3).

(10) “U.S. Department of Labor” means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1400-1926.1441, effective [revised] July 1, 2014; and [2013]

(2) The amendments to 29 C.F.R. 1926.1427 published in the September 26, 2014 Federal Register, Volume 78, Number 187, 4064-1400 published in the May 29, 2013 Federal Register, Volume 78, Number 106; and


Section 3. (1) 29 C.F.R. 1926.1423(e)(1)(iiii) is amended to read as follows: “On horizontal lattice booms where the fall distance is ten (10) feet or more.”

(2) 29 C.F.R. 1926.1423(f) is amended to read as follows: “For assembly – disassembly [assembly/disassembly] work, the employer must provide and ensure the use of fall protection equipment for employees who are on a [walking – working] walking working] surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running) in the cab, or on the deck.”

(3) 29 C.F.R. 1926.1423(h)(2) is amended to read as follows: “For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking – working [walking/working] surface with an unprotected side or edge more than ten (10) feet above a lower level.”

LARRY L. ROBERTS, Chairman
APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 12, 2015 at 11 a.m.
CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, August 11, 2015)


RELATES TO: KRS 148.853(2)(b), 241.060(1), 243.030(21), 243.040(46), 243.050(18), 243.040(48)

STATUTORY AUTHORITY: KRS 241.060(1), 243.030(21), 243.040(46), 243.040(48)

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 243.050(18) 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). 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 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 243.082(243.050)[4(4) or (5)] as a convention center.

(3) “Physical confines of the center” means:

1. Nightclubs;

2. A major co...
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 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 entertainment destination center].

(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 the 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 138.

(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) 782-7905, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(As Amended at ARRS, August 11, 2015)

808 KAR 9-010. Administration and enforcement of KRS 286.9-140[Books and records] to ensure that check cashers do not violate the law against multiple transactions in excessive amounts by a customer.

RELATES TO: KRS 286.9-010(6), 286.9-075, 286.9-100(1), 286.9-140(1), 286.9-140(2), 286.9-140(10)
STANDARD AUTHORITY: KRS 286.9-010(6)(a), 286.9-090(1), 286.9-100, 286.9-140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.9-100(10) prohibits licensees [a licensee] from having more than two (2) [one (1)] deferred deposit transactions [transaction] from a customer at a time [with a face value greater than $500]. Further, the total proceeds received by a customer from all deferred deposit transactions from all licensees shall not exceed $500 at any one (1) time, KRS 286.9-140(7) directs the commissioner to implement a common database with real-time access through an internet connection accessible to the department and a licensee to verify whether any deferred deposit transactions are outstanding for a particular person and, which in addition to the general grant of authority in KRS 286.9-090(1), authorizes the commissioner [office] to promulgate an administrative regulation to enforce KRS 286.9-140[286.9-010 to 286.9-120]. This administrative regulation establishes requirements for a licensee to ensure that the database established pursuant to KRS 286.9-140 is used by licensees in accordance with KRS Chapter 286.9 to establish a method to detect and prevent instances where customers enter into a number of transactions in an excessive total amount permitted by KRS 286.9-100(10) by doing business at several branches of the licensee]
Section 1. Definitions. The following shall be additional definitions of “closed” or “close” under KRS 286.9-010(6)(e):

(1) The customer’s payment instrument was unpaid and the licensee has sold the underlying debt to a non-affiliated third party without recourse;

(2) The underlying debt represented by the customer’s payment instrument has been discharged in bankruptcy;

(3) The database provider has designated the deferred deposit transaction concerning the customer’s payment instrument as closed pursuant to KRS 286.9-140(7); or

(4) The licensee has reported to the database provider that the deferred deposit transaction concerning the customer’s payment instrument is closed following being held open pursuant to KRS 286.9-140(7).

Section 2. Deferred Deposit Database Requirements. (1) A licensee shall institute procedures and maintain an accounting system that is designed to:

(a) Prevent the licensee from entering into multiple transactions with a customer in violation of KRS 286.9-100(9)(14), including procedures for:
   (1) Maintaining a record of all current transactions with the licensee;
   (2) Checking the record of current transactions with the database prior to issuance of a new transaction; and
   (b) Generate reports that will readily permit examination and verification of compliance with KRS 286.9-100(9), KRS 286.9-140, and this section by department examiners.

(2) In addition to the data listed in KRS 286.9-140(1), licensees shall submit the following data to the database for each deferred deposit transaction:

(a) The customer’s date of birth;

(b) The check number of the payment instrument;

(c) The database verification fee charged to the customer, if any;

(d) The service fee charged to the customer; and

(e) The date the payment instrument was deposited or otherwise presented for payment.

(3) A licensee shall not cause a closed deferred deposit transaction to be reopened in the database unless all of the following conditions are satisfied:

(a) The deferred deposit transaction was closed by reason of clerical error by the licensee;

(b) The licensee causes the deferred deposit transaction to be reopened on or before the close of business on the business day after the transaction was closed; and

(c) Reopening the transaction would not cause the consumer to exceed the transaction limits set forth in KRS 286.9-100(9).

(4) A licensee shall not accept, collect, or seek payment on a deferred deposit transaction that is designated as closed in the database.

(5) A licensee that has reported to the database provider that a deferred deposit transaction is open beyond the maturity date pursuant to KRS 286.9-140(7) shall immediately notify the database provider when the transaction becomes closed.

(6) (a) Except as provided in paragraph (b) of this subsection, each licensee shall achieve compliance with this administrative regulation within sixty (60) days of the effective date of this administrative regulation.

(b) After the sixty (60) day period established in paragraph (a) of this subsection, a new licensee or an existing licensee applying for an additional location, shall demonstrate the ability to immediately comply with this administrative regulation at the time of application.

CHARLES A. VICE, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: May 15, 2015
FILED WITH LRC: May 15, 2015 at 10 a.m.
CONTACT PERSON: Jessica R. Sharpe, General Counsel, or John C. Allen, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(As Amended at ARRS, August 11, 2015)


RELATES TO: KRS 286.8-020(3), 286.8-030, 286.8-044, 286.8-048, 286.8-090

STATUTORY AUTHORITY: KRS 286.8-020(3), 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-020(3) requires a person relying upon an exemption established in KRS 286.8-020(1)(d)(b) or (2)(a)-(2)(b) to file with the commissioner an application for a claim of exemption. This administrative regulation establishes the procedure for filing a written application for a claim of exemption pursuant to KRS 286.8-020(3).

Section 1. (1) A person filing a claim of exemption under KRS 286.8-020(3) shall:

(a) Submit a completed application for a claim of exemption as required by subsection (2) of this section;

(b) Enclose with the application documentation that supports the applicant’s claim of exemption, as set forth in the applicable application form;

(c) The database provider shall designate the deferred deposit transaction for which the claim of exemption is made as closed immediately upon receipt of the application and documentation.

(2) [Follows:] (a) If relying on an exemption as a non-profit organization that has affordable housing as a primary purpose of its operations under KRS 286.8-020(1)(d)(b), the person shall file a form for a Mortgage Loan Company or Mortgage Loan Broker Exemption (Non-Profit Exemption).

(b) If relying on an exemption as a mortgage loan company or mortgage loan broker approved and regulated by the United States Department of Housing and Urban Development under KRS 286.8-020(2)(a)-(b), the person shall file a Form ML-10, Application for a Mortgage Loan Company or Mortgage Loan Broker Exemption (HUD Exemption). Application for a mortgage loan company or mortgage loan broker exemption form.

(3) Enclose in the amount of $150.

Section 2. Within ten (10) days of the change, a person who submits an application under Section 1 of this administrative regulation shall notify the commissioner as follows:

(1) Of a change of address of the applicant; or

(2) That the applicant has ceased to do business in Kentucky.

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

(a) Form ML-9, "Application for a Mortgage Loan Company or Mortgage Loan Broker Exemption (Non-Profit Exemption)", 07/2015[03/2015]; and

(b) Form ML-10, "Application for a Mortgage Loan Company or Mortgage Loan Broker Exemption (HUD Exemption)", 03/2015, version 1995, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[Office] of Financial Institutions, 1025 Capital Center Drive, Suite 200, Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m. This material may also be obtained from the department’s Web site at http://www.kfi.ky.gov.

CHARLES A. VICE, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: April 28, 2015
FILED WITH LRC: May 12, 2015 at noon
CONTACT PERSON: Jessica R. Sharpe, General Counsel, or
PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(As Amended at ARRS, August 11, 2015)

808 KAR 12:021. Licensing and registration.

RELATES TO: KRS 286.8-010, 286.8-020, 286.8-030(1), 286.8-030(2), 286.8-032, 286.8-034, 286.8-060, 286.8-060, 286.8-090(1), 286.8-100, 286.8-140(4), 286.8-255, 286.8-260, 286.8-285, 286.295.

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. This administrative regulation establishes procedures for the electronic submission of filings and fees with the Nationwide Mortgage Licensing System.

Section 1. Licensure as a Mortgage Loan Company or Mortgage Loan Broker. (1) A person applying for licensure as a mortgage loan company or mortgage loan broker shall submit the following:

(a) A completed Form MU1, NMLS Company[Uniform Mortgage Lender/Mortgage Broker] Form;

(b) A completed Form MU2, NMLS Individual[Uniform Mortgage Biographical Statement & Consent] Form for each control person designated on the direct owners and executive officers section of the Form MU1;

(c) A reviewed or audited financial statement prepared by a Certified Public Accountant in accordance with Generally Accepted Accounting Principles dated the previous year end to the date of submission of the Form MU1. A financial statement shall include a balance sheet, income statement, statement of cash flows, and all relevant notes. If applicant is a start-up company, an initial Statement of Condition and a pro-forma income statement shall be submitted in lieu of the financial statement;

(d) An original bond furnished by a surety company authorized to conduct business in Kentucky. The name of the principal insured on the bond shall match exactly the full legal name of applicant.

The bond shall be submitted on the following form in an amount not less than the amount required by KRS 286.8-060(1):

1. For a mortgage loan company, Form ML-1, Surety Bond for Mortgage Loan Company [Form];

2. For a mortgage loan broker, Form ML-2, Surety Bond for Mortgage Loan Broker [Form];

(e) A certified copy of the following:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;

2. If a limited liability company, the Articles of Organization and Operating Agreement; or

3. If a partnership or any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the Form MU1;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);

(i) A completed State License Confirmation Form for each state where applicant is licensed or otherwise authorized to conduct business as a mortgage loan company or mortgage loan broker or has been licensed or otherwise authorized to conduct business as a mortgage loan company or mortgage loan broker in the last five (5) years;

(j) If the principal office will be located in a residence, a completed Form ML-6, Disclosure of Location at a Residence Form[Form;]

(k) The fees set forth in KRS 286.8-034(1).

(2) A person applying for renewal of a mortgage loan company or mortgage loan broker license pursuant to KRS 286.8-034(3) and prior to December 1 shall complete the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Form ML-5, Annual Mortgage Activity Report [of Activity][Form, updated 07/2010]; and

(c) The fee set forth in KRS 286.8-034(3).

(3) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement pursuant to KRS 286.8-034(4) shall complete the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Form ML-5, Annual Mortgage Activity Report [of Activity][Form, updated 08/2010]; and

(c) The fees set forth in KRS 286.8-034(3) and 286.8-034(4).

Section 2. Registration of a Branch. (1) No branch shall be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2) A person applying for registration of a branch shall submit the following:

(a) A completed Form MU3, NMLS Branch[Uniform Mortgage Branch Office] Form;

(b) A copy of the lease or deed for the branch;

(c) A completed Form ML-7, Branch Authorization Form[Form, updated 08/2010];

(d) If the branch will be located in a residence, a Form ML-6, Disclosure of Location at a Residence Form[Form, updated 08/2010]; and

(e) The fee set forth in KRS 286.8-034(1)(b).

(3) A person applying for renewal of a branch registration pursuant to KRS 286.8-034(3) and prior to December 1 shall submit the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Form ML-5, Annual Mortgage Activity Report [of Activity][Form, updated 08/2010]; and

(c) The fees set forth in KRS 286.8-034(3) and (4).

Section 3. Registration of a mortgage loan originator or mortgage loan processor. (1) A person applying for registration as a mortgage loan originator or mortgage loan processor shall submit the following:

(a) A completed Form MU2, NMLS Individual[Uniform Individual Mortgage License/Registration & Consent] Form;

(b) Submit to and bear the cost of a Federal Bureau of Investigations background records check permitted under KRS 286.8-255(8) and as part of an application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(2);

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and

(d) The fee set forth in KRS 286.8-255(2)(b).

[2][3] A person applying for renewal of a mortgage loan originator or mortgage loan processor registration pursuant to KRS 286.8-255(4) shall submit the following:

(a) A completed Form MU2, NMLS Individual[Uniform Individual Mortgage License/Registration Renewal] Form available online at http://mortgage.nationwidelicensingsystem.org;

(b) Submit to and bear the cost of a Federal Bureau of Investigations background records check permitted under KRS
286.8-255(8) and as part of a renewal or reinstatement application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(4) or 286.8-255(5) if the applicant's Federal Bureau of Investigations background records check currently on file with the Kentucky Department of Financial Institutions is more than three (3) years old;
(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and
(d) The fee set forth in KRS 286.8-255(4).

[3][44] A person applying for renewal of a mortgage loan originator or mortgage loan processor registration through reinstatement pursuant to KRS 286.8-255(5) shall submit the following:
(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;
(b) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260;
(c) Submit to and bear the cost of a Federal Bureau of Investigations background records check permitted under KRS 286.8-255(6) and as part of a renewal or reinstatement application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(4) or 286.8-255(5) if the applicant's Federal Bureau of Investigations background records check currently on file with the Kentucky Department of Financial Institutions is more than three (3) years old; and
(d) The fees set forth in KRS 286.8-255(4) and 286.8-255(5).

Section 4. In addition to the requirements set forth in this administrative regulation, an applicant applying for registration, renewal, or reinstatement as a mortgage loan originator shall provide proof that the mortgage loan originator holds or is covered by a bond furnished by a surety company authorized to conduct business in Kentucky. If the mortgage loan originator is procuring his or her own bond, the bond shall be submitted on the applicable Surety Bond for Individual Mortgage Loan Originators form and in an amount determined by annual loan origination as follows:

(1) The annual loan volume of the applicant is less than $10,000,000 [ten million dollars] the surety bond shall be in an amount not less than $15,000 and the applicant shall submit Form ML-3, Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of Less than $10,000,000; or
(2) The annual loan volume of the applicant is $10,000,000 [$10 million dollars] or more, the surety bond shall be in an amount not less than $20,000 and the applicant shall submit Form ML-4, Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of $10,000,000 or Greater.

Section 5. Factors Used to Determine Approval or Disapproval of an Application. (1) [Financial Responsibility.] An applicant seeking registration or renewal under KRS 286.8-255 shall demonstrate the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of this article.
(2) Each applicant shall authorize the commissioner to obtain a credit report containing a credit score to aide in making this determination.

(3) [If the applicant possesses a threshold credit score of 600, or better, then] The applicant shall meet the following requirement of financial responsibility if he or she possesses a credit score of 600 or higher at the time of application. If the applicant possesses a credit score of less than 600, the commissioner may review the applicant’s credit report for the following information to make this determination:
(a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;
(b) Any outstanding tax liens or other governmental liens;
(c) Any foreclosures occurring within five (5) years of the date of application or renewal;
(d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and
(e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

(4) The factors of character and general fitness shall be determined by the commissioner after review of all relevant information, including information shown on the applicant's credit report such as bankruptcies, recent collections, and past due payments, as well as the applicant’s criminal history and any administrative or civil actions taken against the applicant by other jurisdictions.

Section 6. Electronic Submission of Filings and Fees through the Nationwide Mortgage Licensing System. (1) A person applying for licensure or registration pursuant to Sections 1, 2, 3, and 4 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at http://www.stateregulatoryregistry.org/NMLS, as part of the nationwide mortgage licensing system:
(a) All forms required by Sections 1, 2, 3, and 4 of this administrative regulation, as applicable;
(b) Fingerprints and any other information necessary to obtain the background records checks referenced in Section 3 of this administrative regulation; and
(c) All fees referenced in this administrative regulation.
(2) All forms, documentation, fees, or information that are not available for electronic submission directly through the Nationwide Mortgage Licensing System shall be submitted directly to the department.
(3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions set forth in subsection (1) of this section shall be borne by the applicant.

Section 7. Abandoned applications. If any applicant fails to provide or respond to a request for additional information within ninety (90) days of submission to the department, the application shall be abandoned. Any applicant seeking licensing or registration after its application has been abandoned shall reapply and resubmit the required information.

Section 8. Inactive Status for Members of the Armed Forces. (1) A member of the Armed Forces who holds a license or registration in good standing under this administrative regulation may request that the commissioner place the license or registration in inactive status during the period of time that the member is mobilized or deployed, and for a period of six (6) months following termination of the mobilization or deployment.
(2) To request inactive status for a license or registration, a person shall complete Form ML-8, Request for Inactive Status Due to Military Service, and submit it along with proof of mobilization or deployment to the commissioner for approval.
(3) A person whose license or registration has been placed in inactive status shall not engage in the activity requiring the license or registration under KRS Chapter 286.
(4) The fee set forth in KRS 286.8-255(4) shall not accrue against any person whose license or registration is in inactive status.
(5) A person may reactivate an inactive license or registration by submitting a written request to the commissioner and attaching proof of compliance with KRS 286.8-255(10) and 286.8-260, if applicable. Upon receipt of a written request and confirmation of compliance with KRS 286.8-255(10) and 286.8-260, the commissioner shall issue an approval for reactivation.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form MU1, “NMLS Company Form” Version 8.8, Drafted 3/19/2012
(b) Form MU2, “NMLS Individual Form” Version 8.8, Drafted 3/19/2012
(c) Form MU3, “NMLS Branch Form” Version 8.8, Drafted 1/25/2010

286.8-260; the
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

3/19/2012["Form MU3 Uniform Branch Office Form", 1/02/2008];
(d) Form ML-1["Form MU4 Uniform Individual Mortgage License/Registration & Consent Form", 1/25/2010];
(e) "Surety Bond for Mortgage Loan Company", updated 03/2015(08/2010);
(f) Form ML-2["Surety Bond for Mortgage Loan Broker", updated 03/2015(08/2010);
(g) Form ML-3["Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of Less than $10,000,000", updated 03/2015(08/2010);
(h) Form ML-4["Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of $10,000,000 or Greater", updated 03/2015;
(i) Form ML-5["State License Confirmation Form", updated 08/2010];
(j) "Annual Mortgage Activity Report[ of Activity Form]", updated 03/2015(08/2010); (k) Form ML-6["Disclosure of Location at a Residence Form" updated 03/2015;
(l) Form ML-7["Branch Authorization Form", updated 03/2015; and (m) "Request for Inactive Status Due to Military Service", updated 03/2015(08/2010).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.
(3)(a) The items in subsection (1)(a) to (c) may be obtained from http://mortgage.nationwidelicensingsystem.org.
(b) The items in subsection (1)(d) to (k) my[This material may _also] be obtained from the department's Web site at http://www.kfi.ky.gov.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(As Amended at ARR, August 11, 2015)


RELATES TO: KRS 286.8-020(14), 286.8-030(1), 286.8-034, 286.8-140(4), 286.8-255, 286.8-285
STATUTORY AUTHORITY: KRS 286.8-140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. This administrative regulation establishes the procedures for mortgage loan companies and mortgage loan brokers to follow in submitting a report[statement] of condition with the Nationwide Mortgage Licensing System and Registry as required by KRS 286.8-020(14).

Section 1. Reports submitted to Nationwide Mortgage Licensing System and Registry. (1) Each mortgage loan company and mortgage loan broker required to complete and submit a report of condition pursuant to KRS 286.8-020(14) shall use Form ML-11, NMLS Mortgage Call Report.
(2) The Form ML-11, NMLS Mortgage Call Report shall be submitted electronically to the Nationwide Mortgage Licensing System and Registry according to the schedule established and set forth at http://mortgage.nationwidelicensingsystem.org [http://mortgage.nationwidelicensingsystem.org].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at http://www.kfi.ky.gov.

CHARLES A. VICE, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: April 28, 2015
FILED WITH LRC: May 12, 2015 at noon
CONTACT PERSON: Jessica R. Sharpe, General Counsel, or John C. Allender, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARR, August 11, 2015)

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

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).
...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 335.130(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)(a) "Interdisciplinary team" means a group of at least four professionals, including a physician, registered nurse, certified chemical dependency counselor, and a person with a master's degree in psychology, social work, or counseling.
(b) Licensed clinical alcohol and drug counselor as defined by KRS 309.080(4).
(7) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).
(8) "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.
(9) "Qualified dietician" means:
(a) A person who has a Bachelor of Science degree in foods and nutrition, foodservice 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.
(10)(b)[(4)] "Qualified dietitian" means:
(a) A person who has a Bachelor of Science degree in foods and nutrition, foodservice 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.
(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 disorderpersons 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 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.

(3) 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 administrative regulations pertaining to the operation of chemical dependency treatment programs.

(2)(a) The governing authority shall appoint a program administrator who shall have:
1. Bachelor's degree in a health or human services field;
2. Bachelor's degree in another field supplemented with one 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.

(4)(a) Program administrator.

(a) The program administrator shall:
1. Be responsible for the daily management of the facility; and
2. Serve as the 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)(b) Administrative records and reports.

(a) A medication error, drug reaction, accident, or other incident involving a patient, visitor, or staff member, shall be documented 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.

(4)(c) 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) 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.

(7) 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) Interdisciplinary team. The chemical dependency treatment program shall have[There shall be] an interdisciplinary team responsible for:
(a) Developing individual treatment plans;
(b) Developing aftercare plans; and
(c) Conducting quality assurance reviews.

(10) Treatment director. The chemical dependency treatment program shall have a full time treatment director responsible for:
(a) Coordinating the interdisciplinary team in developing individual treatment plans;
(b) Initiating a periodic review of each patient's treatment plan;
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(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 a registered nurse is not on duty, there shall be a licensed practical nurse 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)(a) 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)(d) 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 program relating to their respective job activities.

(b) Training programs shall include;

1. Thorough job orientation for new personnel; and

2. Regular in-service training emphasizing professional competence and the human relationship necessary for effective health care.

(14)(c) Patient records of the chemical dependency treatment program’s inpatient facility.

(a) An individual record shall be maintained for each patient.

1. 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) 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.

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) years; or

2. In case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longest.


(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


(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)(d) 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)(f) 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)(d) 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. Name of the drug;

3. Strength;

4. Name of pharmacy;

5. Date;

6. Physician name;

7. Caution statement; and

8. Directions for use.

(19)(a) 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.

3. Medication for external use shall be stored separately from

4. Medication requiring refrigeration shall be kept in a separate locked box in a refrigerator.

5. 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;

2. Inspected after use or at least monthly to remove deteriorated and outdated drugs and to ensure completeness of content.

(20)(f) Restraints. Requirements for the use of restraints shall be met pursuant to KRS 202A.241 and 908 KAR 3:010, Section 9(3).
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 KAR 20:111.[2] The program shall have a physician who is licensed to order and supervise medical detoxification. The medical detoxification services provided may include, but are not limited to, the following outpatient assessments:

(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.

(2) Rehabilitation. A chemical dependency treatment program's inpatient facility 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 admission, 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. History of alcohol and drug use;
2. A determination of current emotional state;
3. Vocational history;
4. Familial relationships; and
5. Educational background.

(c) Treatment plan.

1. 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.

2. The treatment plan shall:

   1. Specify the services required for meeting the patient's needs;
   2. Identify goals necessary for the patient to achieve, maintain, or reestablish physical health and adaptive capabilities;
   3. Establish goals with both long-term and short-term objectives and the anticipated time expected to meet these goals; and
   4. Identify the location and frequency of treatment processes, including referrals for a required service not provided by the program.

3. The treatment plan shall be reviewed and updated at least weekly for the duration of the inpatient treatment.

4. The plan shall be developed prior to completion of treatment in the chemical dependency treatment program's inpatient facility by the interdisciplinary team; the patient; and, with the patient's permission, the patient's family or significant others.

5. The aftercare plan shall be designed to establish continued contact for the support of the patient.

6. The aftercare plan shall include methods and procedures to meet patient needs through direct contact or with assistance from other community human services organizations.

7. Aftercare services are provided directly, review and update periodically and periodically. Aftercare services shall be conducted with the frequency of review determined by the interdisciplinary team and the patient. With the patient's permission, the patient's family or significant others.

8. 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, certified alcohol and drug counselor, licensed 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) Psychodiagnostic assessment 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, emotional, 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;
Section 504 plan;

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;
   c. 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;

(i) 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;
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 well being 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;

(i) 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 informed consent of alcohol and drug counselor and maintained in the client’s record;

(m) Screening, brief intervention, and referral to treatment for substance use disorders which shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

2. Consist of:

a. Using a standardized screening tool to assess the individual for risky substance use behavior;

b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;

c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services and

3. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, [or a] certified alcohol and drug counselor, 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 at least:

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) 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;

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 granting agency’s 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
Section 6. Compliance with Building Codes, Ordinances and Regulations; Chemical Dependency Treatment Program's Inpatient Facility. (1) The provisions of this administrative regulation shall not[Nothing stated herein shall] relieve the licensee from compliance with building codes, ordinances, and administrative 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; and
   (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[.] 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) 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 duty shall not interfere with the sanitation, safety, or time required for regular dietary assignments.

(b) A menu shall be planned, written, and rotated to avoid repetitious bland meals.

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

(b) in accordance with Physician orders.

(c) 1. A meal served shall correspond with the posted menu.

2. If [there is] a change in the menu is necessary;

a. Substitution shall provide equal nutritive value and

b. The change shall be recorded on the menu.

3. A menu shall be kept on file for thirty (30) days.

(d) Food shall be;

1. Prepared by methods that conserve nutritive value, flavor, and appearance;

2. [shall be] Served at the proper temperature.

(e) 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 KRS 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 assures the safety and well-being of clients, personnel, and visitors.

(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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, August 11, 2015)
902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services.

STATUTORY AUTHORITY: KRS 216B.204, 216B.455, 216B.457

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires[.] KRS 216B.105 and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Health and Family Services adopt administrative regulations to govern[] health facilities and services. KRS 216B.455 and 216B.457 require[requires] the cabinet to promulgate
administrative regulations establishing requirements for psychiatric residential treatment facilities. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in Level I or Level II psychiatric residential treatment facilities, including those facilities which elect to provide outpatient behavioral health services.

Section 1. Definitions. (1) "BAMT" or "Blood Assay for Mycobacterium tuberculosis" means a diagnostic blood test that:
(a) Assesses for the presence of infection with M. tuberculosis; and
(b) Reports results as positive, negative, indeterminate, or borderline.
(2) "BAMT conversion" means a change in test result, on serial testing, from negative to positive.
(3) "Behavioral health professional" means:
(a) A psychologist 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 311.576;
(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;
(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;
(g) A physician assistant licensed under KRS 311.840 to 311.862;
(h) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;
(i) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or
(j) A licensed professional art therapist as defined by KRS 309.130(2).
(4) "Behavioral health professional under clinical supervision" means:
(a) Psychologist certified and practicing in accordance with KRS 319.056;
(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;
(c) Marriage and family therapist associate as defined by KRS 335.300(3);
(d) Social worker certified and practicing in accordance with KRS 335.080;
(e) Licensed professional counselor associate as defined by KRS 335.500(4); or
(f) Licensed professional art therapist associate as defined by KRS 309.130(3).
(5) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).
(6) "Chemical restraint" means the use of a drug that:
(a) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;
(b) Has the temporary effect of restricting the resident's freedom of movement; and
(c) Is not a standard treatment for the resident's medical or psychiatric condition.
(7) "Child with a severe emotional disability" is defined by KRS 200.503(3).
(8) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.
(9) "Direct-care staff" means residential or child-care workers who directly supervise residents.
(10) "Directly observed therapy" or "DOT" means an adherence-enhancing strategy:
(a) In which a healthcare worker or other trained person watches a patient swallow each dose of medication; and
(b) Which is the standard care for all patients with TB disease and is a preferred option for patients treated for latent TB infection (LTBI).
(11) "DOPT" means Directly Observed Preventive Therapy, which is the DOT for treatment of LTBI.
(12) "Emergency safety intervention" is defined by 42 C.F.R. 483.352 and is the use of restraint or seclusion as an immediate response to an emergency safety situation.
(13) "Emergency safety situation" is defined by 42 C.F.R. 483.352 and is an unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.
(14) "Freestanding" is defined by KRS 216B.450(3).
(15) "Governing body" means the individual, agency, partnership, or corporation in which the ultimate responsibility and authority for the conduct of the facility is vested.
(16) "Home-like" is defined by KRS 216B.450(4).
(17) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculin antigen if a person has tuberculosis infection and which is measured in accordance with Section 18(1)(12)(4) of this administrative regulation.
(18) "Latent TB infection" or "LTBI" means infection with M. tuberculosis without symptoms or signs of disease manifested.
(19) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).
(20) "Licensed behavior analyst" is defined by KRS 319C.010(6).
(21) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).
(22) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).
(23) "Licensure agency" means the Cabinet for Health and Family Services, Office of Inspector General.
(24) "Liv ing unit" means:
(a) The area within a single building that is supplied by a Level I facility for daily living and therapeutic interaction of no more than nine (9) residents; or
(b) The area within a Level II facility that is designated for daily living and therapeutic interaction of no more than twelve (12) residents.
(25) "Mechanical restraint" means any device attached or adjacent to a resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.
(26) "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.
(27) "Mental health professional" is defined by KRS 645.020(7).
(28) "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.
(29) "Personal restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a resident's body and does not include briefly holding without undue force a resident in order to calm or comfort him or her or holding a resident's hand to safely escort him or her from one (1) area to another.
(30) "Psychiatric residential treatment facility" or "PRTF" is defined in KRS 216B.450(5) as a Level I facility or a Level II facility.
(31) "Qualified mental health personnel" is defined
by KRS 215B.450(6).

(30) "Qualified mental health professional" is defined by KRS 216B.450(7).

(31) "Seclusion" means the involuntary confinement of a resident alone in a room or in an area from which the resident is physically prevented from leaving.

(32) "Serious injury" means any significant impairment of the physical condition of the resident as determined by qualified medical personnel and that may:

(a) Include:
  1. Burns;
  2. Lacerations;
  3. Bone fractures;
  4. Substantial hematoma; or
  5. Injuries to internal organs;

(b) Be self-inflicted or inflicted by someone else.

(33) "Serious occurrence" means a resident's death, a serious injury to the resident, or a resident's suicide attempt.

(34) "Time out" means the restriction of a resident for a period of time to a designated area from which the resident is not voluntarily prevented from leaving for the purpose of providing the resident an opportunity to regain self-control.

(35) "Tuberculin skin test" or "TST" means a diagnostic aid for finding M. tuberculosis infection that:

(a) Is performed by using the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD); and

(b) Has its results read forty-eight (48) to seventy-two (72) hours after injection and recorded in millimeters of induration.

(36) "Tuberculosis (TB) disease" means a condition caused by infection with a member of the M. tuberculosis complex that meets the descriptions established in Section 18(2)(f) of this administrative regulation.

(37) "TST conversion" means a change in the result of a test for M. tuberculosis in infection in which the condition is interpreted as having progressed from uninfected to infected in accordance with Section 18(3)(c) of this administrative regulation.

(38) "Two-step TST" or "two-step testing" means a series of two (2) TSTs administered seven (7) to twenty-one (21) days apart and used for the baseline skin testing of persons who will receive serial TSTs, including healthcare workers and residents of psychiatric residential facilities, to reduce the likelihood of mistaking a boosted reaction for a new infection.

(39) "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant profession.

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a Level I or Level II PRTF shall complete and submit to the Office of Inspector General an Application for License to Operate a Health Facility or Service, as required by 902 KAR 20:008, Section 2(1)(f).

(2) If an entity seeks to operate both a Level I and a Level II PRTF and is granted licensure to operate both levels, a separate license shall be issued for each level.

(3) The initial and annual fee for licensure as a Level I PRTF shall be $270.

(4) (a) The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds or less shall be $270.

(b)1. The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds to fifty (50) beds shall be $270; and

2. A fee of ten (10) dollars shall be added to the minimum fee of $270 for each bed beyond the ninth bed.

(5) If a Level I or Level II PRTF provides outpatient behavioral health services as described in Section 14(1) of this administrative regulation:

(a) The outpatient behavioral health services shall be provided:
  1. On a separate floor, in a separate wing, or in a separate building from the PRTF; or
  2. At an extension of the campus of the PRTF;

(b) The PRTF shall pay a fee in the amount of $250 per outpatient behavioral health services extension, submitted to the Office of Inspector General at the time of:

  1. Initial licensure, if applicable;
  2. The addition of a new outpatient behavioral health services extension to the PRTF’s license; and
  3. Renewal;

(c) Each off-campus extension or on-campus program of outpatient behavioral health services provided shall:

  1. Be listed on the PRTF’s license;
  2. Have a program director who may serve as the same program director described in Section 6(2) of this administrative regulation; and

(d) Employ directly or by contract a sufficient number of personnel to provide outpatient behavioral health services, and

(e) An off-campus extension or a separate building on the campus of the PRTF where outpatient behavioral health services are provided shall comply with the physical environment requirements of Section 14(6) of this administrative regulation and be approved by the State Fire Marshal’s office prior to:

  1. Initial licensure;
  2. The addition of the extension or on-campus program of outpatient behavioral health services in a separate building; or
  3. A change of location.

Section 3. Location. (1)(a) A Level I psychiatric residential treatment facility shall be located in a freestanding structure.

(b) A Level II PRTF may be located:

  1. In a separate part of a psychiatric hospital;
  2. In a separate part of an acute care hospital;
  3. In a completely detached building; or

(c) A licensed Level II PRTF shall not be located for more than fifty (50) beds.

(2) In accordance with KRS 216B.455(5), multiple Level I PRTFs may be located on a common campus if each PRTF is freestanding.

(3)(a)1. If a Level I psychiatric residential treatment facility is located on grounds shared by another licensed facility other than a PRTF, the residents of the Level I or PRTF and the licensed facility with which it shares grounds shall not have any joint activities, except for organized education activities, organized recreational activities, or group therapy for children with similar treatment needs.

2. If a Level II PRTF is located on grounds shared by a Level I PRTF or a licensed private child-caring facility, the requirements in this subparagraph shall apply.

a. The residents of the Level II PRTF and the Level I PRTF or private child-caring facility with which it shares grounds shall not have any joint activities, except for organized education activities on campus, organized recreational activities, or group therapy for children with similar treatment needs in which dedicated Level II PRTF unit staff shall be present during the activity to ensure sufficient supervision.

b. Joint activities shall be documented in the resident’s comprehensive treatment plan of care.

c. The maximum age range for joint activities shall be no more than five (5) years for residents age six (6) to twenty-one (21), and no more than three (3) years for residents in Level II facilities age four (4) to five (5).

(d) Direct-care staff of the licensed facility with which the Level I or Level II PRTF shares grounds may provide relief, replacement, or substitute staff coverage to the PRTF.

(e) For continuity of care, at least fifty (50) percent of direct care staff of the Level I or Level II PRTF shall be consistently and primarily assigned to the living unit.

Section 4. Licensure. (1) A Level I or Level II psychiatric residential treatment facility shall comply with all the conditions for licensure established in 902 KAR 20:008.

(2) A Level I or Level II psychiatric residential treatment facility shall operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with

VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

700
accepted professional standards and principles that apply to professionals providing services in a facility.  
(3) Pursuant to KRS 216B.455(3) and 216B.457(5) which require compliance with KRS 216B.105, a person shall not operate a PRTF without first obtaining a license issued by the Office of Inspector General.  
(4) Pursuant to KRS 216B.455(4) and 216B.457(6), a PRTF shall be accredited by the Joint Commission, Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards.

Section 5. Governing Body for a Level I or Level II PRTF. A PRTF shall have a governing body with overall authority and responsibility for the facility's operation. (1)(a) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(b) A Level I and a Level II PRTF that are part of the same muti-facility system, or a Level II PRTF operated by a psychiatric hospital, may share the same governing body.

(2) A facility that is part of a muti-facility system or is operated by a government agency shall have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member and the organization, there shall be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall describe the process for the following:

(a) Adopting policies and procedures;

(b) Providing sufficient funds, staff, equipment, supplies, and facilities to assure that the facility is capable of providing appropriate and adequate services to residents;

(c) Overseeing the system of financial management and accountability;

(d) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care; and

(e) Electing, appointing, or employing the clinical and administrative leadership personnel of the facility, and defining the qualifications, authority, responsibility, and function of those positions.

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) If a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 6. Level I or Level II PRTF Program Director. (1) A program director shall be responsible for the administrative management of the facility.  
(2) A program director:

(a) Shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems;

(b) Shall have at least minimum qualifications of a master's degree or bachelor's degree in the human services field including:

1. Social work;

2. Sociology;

3. Psychology;

4. Guidance and counseling;

5. Education;

6. Religion;

7. Business administration;

8. Criminal justice;

9. Public administration;

10. Child care administration;

11. Christian education;

12. Divinity;

13. Pastoral counseling;

14. Nursing; or

15. Another human service field related to working with families and children;

(c)1. With a master's degree shall have two (2) years of prior supervisory experience in a human services program; or

2. With a bachelor's degree shall have four (4) years of prior supervisory experience in a human services program; and

(d)1. Shall have three (3) professional references, two (2) personal references, and a criminal record check performed every two (2) years through the Administrative Office of the Courts or the Kentucky State Police;

2. Shall not have a criminal conviction, or plea of guilty, pursuant to KRS 17.165 or a Class A felony; and

3. Shall be subject to the provisions of KRS 216B.457(12), which requires submission to a check of the central registry, and requires an employee to be removed from contact with a child under the conditions described in KRS 216B.457(12).

(3) A program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following, unless the PRTF is part of a health care system under common ownership and governance in which the duties are assigned to, or are the responsibility of, the program director's supervisor or other staff:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of its staff;

(b) Assuring that sufficient, qualified, and appropriately supervised staff are on duty to meet the needs of the residents at all times;

(c) Approving purchases and payroll;

(d) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(e) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(f) Preparing reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(g) Maintaining a written manual that defines policies and procedures and is revised and updated at the time changes in policies and procedures occur; and

(h) Assuring that all written facility policies, plans, and procedures are followed.

Section 7. Administration and Operation of a Level I or Level II PRTF. (1) A Level I or Level II PRTF shall have written documentation of the following:

(a) An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

(b) A service philosophy with clearly defined assumptions and values;

(c) Estimates of the clinical needs of the children and adolescents served by the facility;

(d) The services provided by the facility in response to needs;

(e) The population served, including age groups and other relevant characteristics of the resident population;

(f) The intake or admission process, including how the initial contact is made with the resident and the family or significant others;

(g) The assessment and evaluation procedures provided by the facility;

(h) The methods used to deliver services to meet the identified clinical needs of the residents served;

(i) The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

(j) The methods used to create a home-like environment for all residents, including opportunities for family-style meals in which:

1. Residents dine together;
2. Residents may assist with preparation of certain dishes or help set the table; and
3. Food may be placed in serving dishes on the table;

(k) The methods, means and linkages by which the facility involves residents in community activities, organizations, and events;
(l) The treatment planning process and the periodic review of therapy;
(m) The discharge and aftercare planning processes;
(n) The facility’s therapeutic programs;
(o) How professional services are provided by qualified, experienced personnel;
(p) How mental health professionals in Level I facilities and qualified mental health professionals in Level II facilities and direct-care staff in Level I or Level II facilities who have been assigned specific treatment responsibilities are qualified by training or experience and have demonstrated competence and; or are supervised by a mental health professional or qualified mental health professional who is qualified by experience to supervise the treatment;
(q) How the facility is linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Community Based Services offices and facilities, and school systems in the facility’s service area;
(r) The means by which the facility provides, or makes arrangements for the provision of:
   1. Emergency services and crisis stabilization;
   2. Discharge and aftercare planning that promotes continuity of care;
   3. Education and vocational services;
   (s) Services the facility provides to improve stability of care and reduce re-hospitalization including:
   1. How psychiatric and nursing coverage is provided to assure the continuous ability to manage and administer medications in crisis situations except for those that may only be administered by a physician; and
   2. How direct-care staffing with supervision is provided to manage behavior problems in accordance with the residents’ treatment plans, including an array of interventions that are alternatives to seclusion and restraint, and the staff training necessary to implement them; and
   (t) If provided, a description of each outpatient behavioral health service provided pursuant to Section 14(1) of this administrative regulation.

(2) The documentation shall be:
(a) Made available to each mental health professional in a Level I PRTF or qualified mental health professional in a Level II PRTF and to the program director; and
(b) Reviewed and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility. Revisions in the documentation shall incorporate, as appropriate, relevant findings from the facility’s quality assurance and utilization review programs.

(3) Professional staff for a Level I or Level II PRTF.
(a) A Level I PRTF shall:
   1. Employ a sufficient number of mental health professionals to meet the treatment needs of residents and the goals and objectives of the facility; and
   2. Meet the requirements of this subparagraph with regard to professional staffing.
   a.i) A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed or contracted to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation.
   (ii) If a facility has residents ages twelve (12) and under, the licensed psychiatrist shall be board-eligible or board-certified in child psychiatry.
   (iii) The psychiatrist shall be present in the facility to provide professional services to the facility’s residents at least weekly. The services provided shall include a review of each resident’s progress and a meeting with the resident if clinically indicated.

VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(b) A Level I PRTF shall employ at least one (1) full-time mental health professional.
(c) A mental health professional in a Level I PRTF shall be available to assist on-site in emergencies on at least an on-call basis at all times.
(d) A psychiatrist shall be available on at least an on-call basis at all times.

(b) A Level II PRTF shall:
1. Employ or contract with a sufficient number of qualified mental health professionals to meet the treatment needs of residents and the goals and objectives of the facility;
2. Ensure that at least one (1) qualified mental health professional shall be employed or contracted to meet the treatment needs of residents and the goals and objectives of the facility; and
3. Meet the requirements established in KRS 216B.457(9) with regard to professional staff.

a. In accordance with KRS 216B.457(9)(c), the professional services provided by the licensed psychiatrist shall include meeting with each resident at least one (1) time each week unless the resident is not at the facility due to a field trip, medical appointment, or other circumstance in which the resident is not at the facility.
b. A licensed psychiatrist shall be available on at least an on-call basis at all times.
c. Clinical director.
   1. The administration of the facility shall designate one (1) full-time:
      a. Mental health professional as the clinical director for a Level I PRTF; or
      b. Qualified mental health professional as the clinical director for a Level II PRTF.
2. In addition to the requirements related to his or her profession, the clinical director shall have at least two (2) years of clinical experience in a mental health setting that serves children or adolescents with emotional problems.
3. The administration of the facility shall designate the authority and duties of the clinical director.
4. An individual may serve as both the clinical director and the program director if the qualifications of both positions are met.
5. The clinical director shall be responsible for:
   a. The maintenance of the facility’s therapeutic milieu; and
   b. Assuring that treatment plans developed in accordance with Section 12(3) of this administrative regulation are implemented.

6.a. A full-time mental health professional may be designated as clinical director for more than one (1) Level I PRTF if the Level I PRTFs are located on a common campus or in the same county.
b. A full-time qualified mental health professional designated as the clinical director of a Level II PRTF may serve as the clinical director of one (1) PRTF if the PRTFs are located on a common campus or in the same county.
c. A full-time qualified mental health professional employed by a psychiatric hospital may serve as the clinical director of a Level II PRTF located on the same campus as the hospital or in the same county.

(4) Direct-care staff for a Level I PRTF.
(a) A Level I PRTF shall employ adequate direct-care staff to ensure the adequate provision of regular and emergency supervision of all residents twenty-four (24) hours a day.
(b) Level I Direct-care staff shall:
   1. Have at least a high school diploma or equivalency; and
   2. Complete a forty (40) hour training curriculum meeting the requirements of subsection (6)(c) of this section within one (1) month of employment.
(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan for a Level I PRTF shall meet the requirements established in this paragraph.
1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for a PRTF at all times during normal waking hours when residents are not in school.
2. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents during
normal waking hours when residents are not in school.

3.a. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep.

b. A minimum of one (1) additional direct-care staff member who is a mental health associate shall be immediately available on the grounds of the PRTF to assist with emergencies or problems which might arise.

4. If a mental health professional is directly involved in an activity with a group of residents, he or she may meet the requirement for a direct-care staff member.

5. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) Written policies and procedures approved by the Level I PRTF’s governing body shall:

1. Provide for the supervision of the direct-care staff; and

2. Describe the responsibilities of direct-care staff in relation to professional staff.

5. Direct-care staff for a Level II PRTF.

(a) A Level I or Level II PRTF shall employ adequate direct-care staff to ensure the adequate provision of regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Level II direct-care staff shall:

1. Have at least a high school diploma or equivalency certificate; and

2. Complete a forty (40) hour training curriculum meeting the requirements of subsection (6)(c) of this section within one (1) month of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, a Level II PRTF shall prepare a written staffing plan pursuant to KRS 216B.457(10)(a) that is tailored to meet the needs of the specific population of children and youth that will be admitted to the facility based on the facility’s admission criteria.

(d) A Level II facility shall submit, follow, and revise a written staffing plan as required by KRS 216B.457(10)(a).

6. Staff development.

(a) Level I or Level II PRTF staff development programs shall be provided and documented for administrative, professional, direct-care, and support staff.

(b) Level I or Level II PRTF professional and direct-care staff shall meet the continuing education requirements of their profession or, if there is not a continuing education requirement for that profession, be provided with forty (40) hours per year of in-service training.

(c) Each Level I or Level II PRTF staff member working directly with residents shall receive annual training in the following areas:

1. Child and adolescent growth and development;

2. Emergency and safety procedures;

3. Behavior management, including de-escalation training;

4. Detection and reporting of child abuse or neglect;

5. Physical management procedures and techniques;

6. Infection control procedures; and

7. Training specific to the specialized nature of the facility.

(d) A Level I or Level II PRTF shall develop and implement a plan for staff to obtain training in first aid and cardiopulmonary resuscitation.

7. Employment practices in a Level I or Level II PRTF.

(a) A Level I or Level II PRTF shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The Level I or Level II PRTF’s personnel policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The Level I or Level II PRTF’s personnel policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The Level I or Level II PRTF shall maintain job descriptions that:

1. Specify the qualifications, duties, and supervisory relationship of the position;

2. Accurately reflect the actual job situation; and

3. Are revised if a change is made in the required qualifications, duties, supervision, or any other major job-related factor.

(e) The Level I or Level II PRTF shall provide a personnel orientation to all new employees.

(f) The Level I or Level II PRTF’s personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees.

2. The Level I or Level II PRTF’s facility administration shall establish a mechanism for notifying employees of changes in the personnel policies and procedures.

3. The Level I or Level II PRTF’s personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(a) A Level I or Level II PRTF’s personnel policies and procedures shall require:

(i) A criminal records check through the Administrative Office of the Courts or the Kentucky State Police for all new staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

(ii) A subsequent criminal records check on each employee or volunteer, in accordance with KRS 216B.457(11); and

(iii) A prohibition on employment or volunteer activities for any person listed on the registry, in accordance with KRS 216B.457(12).

(b) If an employee or volunteer is removed from contact with a child, a PRTF may take other action, in accordance with KRS 216B.457(12)(a), (b), (c), (d), (e), (f), (g), (h), and (i).

(c) Pursuant to KRS 216B.457(12)(a), any employee or volunteer in a Level I or Level II PRTF has committed or is charged with the commission of a violent offense as specified in KRS 439.3401, a sex crime specified in KRS 17.500, or a criminal offense against a victim who is a minor as specified in KRS 17.500 shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge.

(d) Pursuant to KRS 216B.457(12)(b), an employee or volunteer in a Level I or Level II PRTF under indictment, legally charged with a felony, or subject to a cabinet investigation shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge.

(e) Pursuant to KRS 216B.457(12)(c), the employee or volunteer in a Level I or Level II PRTF shall not be allowed to work with the child until a prevention plan has been written and approved by the cabinet, the person is cleared of the charge, or a cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child abuse, neglect, or exploitation.

(f) Pursuant to KRS 216B.457(12)(d), each employee or volunteer in a Level I or Level II PRTF shall submit to a check
7. A Level I or Level II PRTF shall not employ or allow any person to volunteer if that individual is listed on the central registry.

8. Pursuant to KRS 216B.457(12)(e), any employee or volunteer removed from contact with a child may be terminated, reassigned to a position involving no contact with a child, or placed on administrative leave with pay during the pendency of the investigation or proceeding.

(i) The Level I or Level II PRTF’s personnel policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel, or custodians.

(j) A Level I or Level II PRTF’s personnel record shall be kept on each staff member and shall contain the following items:

1. Name and address;
2. Verification of all training and experience and of licensure, certification, registration, or renewals;
3. Verification of submission to the background checks required by paragraph (h) of this subsection;
4. Performance appraisals;
5. Employee incident reports; and
6. Record of health exams related to employment, including compliance with the tuberculosis testing requirements of Section 25(24) of this administrative regulation.

(k) The Level I or Level II PRTF’s personnel policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l) Performance appraisals shall relate job description and job performance and shall be written.

Section 8. Resident Rights. (1) A Level I or Level II PRTF shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the Level I or Level II PRTF’s governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, a Level I or Level II PRTF shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's right to access treatment, regardless of race, religion, or ethnicity;
(b) Each resident's right to recognition and respect of his or her personal dignity in the provision of all treatment and care;
(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;
(d) Each resident's right to an individualized treatment plan;
(e) Each resident's and family's right to participate in planning for treatment;
(f) The nature of care, procedures, and treatment that the resident shall receive;
(g) The right to informed consent related to the risks, side effects, and benefits of all medications and treatment procedures used;
(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice; and
(i) The right to be free from restraint or seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation.

(4) The rights of residents in a Level I or Level II PRTF shall be written in language which is understandable to the resident, his or her parent, guardian, or custodians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning Level I or Level II PRTF resident rights shall assure and protect the resident's personal privacy within the constraints of his or her treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;
(b) Sending and receiving mail without hindrance or censorship; and
(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy are limited, the resident and his or her parent, guardian, or custodian shall receive a full explanation from the Level I or Level II PRTF. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the Level I or Level II PRTF’s governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed; and
(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his or her parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, videotapes, monitors, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his or her record maintained by the Level I or Level II facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10)(a) A Level I or Level II resident shall be allowed to work for the facility only under the following conditions:

1. The work is part of the individual treatment plan;
2. The work is performed voluntarily;
3. The patient receives wages commensurate with the economic value of the work; and
4. The work project complies with applicable law and administrative regulation.

(b) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) A Level I or Level II PRTF's written policy developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) A Level I or Level II PRTF shall prohibit all cruel and unusual disciplinary measures including the following:

(a) Corporal punishment;
(b) Forced physical exercise;
(c) Forced fixed body positions;
(d) Group punishment for individual actions;
(e) Verbal abuse, ridicule, or humiliation;
(f) Denial of three (3) balanced nutritional meals per day;
(g) Denial of clothing, shelter, bedding, or personal hygiene needs;
(h) Denial of access to educational services;
(i) Denial of visitation, mail, or phone privileges for punishment;
(j) Exclusion of the resident from entry to his or her assigned living unit; and
(k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit Level I or Level II PRTF residents from administering disciplinary measures upon one another and prohibit persons other than professional or direct care staff from administering disciplinary measures to residents.

(14)(a) Written rules of Level I or Level II PRTF resident
conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body.

(b) Residents shall participate in the development of the rules to a reasonable and appropriate extent.

(c) These rules shall be based on generally acceptable behavior for the resident population served.

(15) The application of disciplinary measures in a Level I or
Level II PRTF shall relate to the violation of established rules.

Section 9. Resident Records. (1) A Level I or Level II PRTF shall:

(a) Have written policies concerning resident and, if provided, outpatient client records approved by the governing body; and

(b) Maintain a written[resident or, if applicable, outpatient client] record to be directly accessible to staff members caring for the resident or outpatient client.

(2) The Level I or Level II PRTF resident record shall contain at a minimum:

(a) Basic identifying information;

(b) Appropriate court orders or consent of appropriate family member, or guardians for admission, evaluation, and treatment;

(c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

(d) The report by the parent, guardian, or custodian of the patient's immunization status;

(e) A psychosocial assessment of the resident and his or her family, including:

1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and

2. A summary of the resident's psychosocial needs;

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, if applicable;

(h) The family’s, guardian’s, or custodian’s expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning;

5. Immunization status; and

6. The results of the tuberculosis testing required by Sections 20 and 21[b] of this administrative regulation; and

(j) In a Level II PRTF that opts to provide bedrooms with sleeping accommodations for two (2) residents, documentation of plans, if not in a single occupancy bedroom if recommended by the multidisciplinary team. The basis for the team's recommendation for a single occupancy bedroom shall be maintained in the record.

(3) The Level I or Level II PRTF resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident;

(b) Professional progress notes, which shall:

1. Be completed following each professional service:

   a. Daily; or

   b. If the service is provided daily to groups of residents, through a weekly summary;

2. Be signed and dated by the;

   a. Mental health professional who provided the service in a Level I PRTF; or

   b. Qualified mental health professional who provided the service in a Level II PRTF;

(c) Direct-care progress notes which shall:

1. Record implementation of all treatment and any unusual or significant events which occur for the resident;

2. Be completed at least by the end of each direct-care shift and summarized weekly; and

3. Be signed and dated by the direct-care staff making the entry;

(d) Special clinical justifications for the use of unusual treatment procedures, including emergency safety interventions, and reports;

(e) Discharge summary;

(f) If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and

(g) Documentation that any serious occurrence involving the resident was reported to the Department for Medicaid Services and to Kentucky Protection and Advocacy, and that any resident death was reported to the Centers for Medicare and Medicaid Services (CMS) regional office, as required by Sections (4) and (10) of this administrative regulation.

(4) An outpatient client record shall be maintained for each client receiving outpatient behavioral health services under Section 14(1) of this administrative regulation.

(a) Each entry shall be dated, signed, and indexed according to the outpatient service received.

(b) Each outpatient client record shall contain:

1. An identification sheet, including the client’s name, address, age, gender, marital status, expected source of payment, and referral source;

2. Name, address, and telephone number of the client and the client’s parent or guardian;

3. Intake interview;

4. The signed and dated consent for treatment from the client’s parent or guardian;

5. The report of the behavioral health assessment and other assessments as appropriate, which may include psychological testing;

6. The plan of care as described in Section 14(5) of this administrative regulation;

7. Examination, diagnosis, and progress notes by the physician, nurse, or other behavioral health professionals or treatment staff that relate to the implementation of plan of care objectives;

8. A record of all contacts with other providers, family members, community partners, or other contacts;

9. A record of medical treatment and administration of medication, if administered;

10. An original or original copy of all physician medication and treatment orders, if applicable; and

11. Documentation of orientation to the program and program rules.

(5) A Level I or Level II PRTF shall maintain confidentiality of resident and, if applicable, outpatient client records. Resident or outpatient client information shall be released only on written consent of the resident, outpatient client, or his or her parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 10. Quality Assurance. (1) A Level I or Level II PRTF shall have an organized quality assurance program designed to enhance resident treatment and care, including outpatient services if provided, through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) A Level I or Level II PRTF shall establish a quality assurance program designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, including outpatient services if provided, and that provides for appropriate response to findings.

(3) A Level I or Level II PRTF shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence,
fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record shall be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

(4)(a) A Level I or Level II PRTF shall report any serious occurrence involving a resident to the Department for Medicaid Services and to Kentucky Protection and Advocacy by no later than close of business the next business day after the serious occurrence.

(b) The report shall include:
1. The name of the resident involved in the serious occurrence;
2. A description of the occurrence; and
3. The name, street address, and telephone number of the facility.

(5) A Level I or Level II PRTF shall report the death of any resident to the Centers for Medicare and Medicaid Services (CMS) regional office by no later than close of business the next business day after the resident’s death.

Section 11. Admission Criteria. (1) A Level I or Level II PRTF shall have written admission criteria that are:

(a) Approved by the governing body; and
(b) Consistent with the facility’s goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);
(b) Age and sex of accepted residents;
(c) Criteria that preclude admission in a Level I or Level II PRTF;
(d) Clinical needs and problems typically addressed by the facility’s programs and services;
(e) Criteria for discharge;
(f) Any preplacement requirements of the resident, his or her parent, guardian, or custodian; and
(g) Residency requirements. In a Level II PRTF that opts to provide bedrooms with sleeping accommodations for two (2) residents, the facility shall:

1. Place each newly admitted resident in a single occupancy bedroom until completion of the comprehensive treatment plan of care, which shall be completed within ten (10) calendar days of admission pursuant to Section 12(4)(c) of this administrative regulation;
2. Maintain a resident in a single occupancy bedroom if recommended in the comprehensive treatment plan of care; and
3. Provide notification and general information to each Level II resident’s parent, guardian, or custodian about the installation of the electronic surveillance system required by 902 KAR 20:330, Section 6(3)(d), if the resident is placed in a bedroom shared with another resident.

(3) Pursuant to 42 C.F.R. 483.356, at admission, a facility shall:

(a) Inform both the incoming resident and the resident’s parent or legal guardian of the facility’s policy regarding the use of restraint or seclusion during an emergency safety situation that may occur while the resident is in the program;
(b) Communicate its restraint and seclusion policy in a language that the resident or his or her parent or legal guardian understands (including American Sign Language, if appropriate) and if necessary, the facility shall provide interpreters or translators;
(c) Obtain an acknowledgment, in writing, from the resident’s parent or legal guardian that he or she has been informed of the facility’s policy on the use of restraint or seclusion during an emergency safety situation. Staff shall file this acknowledgment in the resident’s record; and
(d) Provide a copy of the facility policy to the resident’s parent or legal guardian. The facility’s policy shall provide contact information, including the phone number and mailing address for Kentucky Protection and Advocacy.

(4) Age limits. (a) Residents admitted to a Level I PRTF shall have obtained age six (6), but not attained age eighteen (18).

(b) Residents in a Level I PRTF may remain in care until age twenty-one (21) if admitted by their 18th birthday.

(c) Pursuant to KRS 216B.450(5)(b), a Level II PRTF may provide inpatient psychiatric residential treatment and habilitation to persons who are age four (4) to twenty-one (21) years.

(d) Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit for residents six (6) years of age and older.

2. If a Level II PRTF admits residents who are four (4) or five (5) years of age, the age range shall not be more than three (3) years in the living unit.

(5) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted to a Level I PRTF.

(6)(a) Except for paragraph (b) of this subsection, a Level II PRTF shall not refuse to admit a patient who meets the medical necessity criteria and facility criteria for Level II facility services pursuant to KRS 216B.457(2).

(b) A Level II PRTF shall refuse to admit a patient if the admission exceeds the facility’s licensed bed capacity.

Section 12. Resident Management. (1) Intake.

(a) A Level I or Level II PRTF shall have written policies and procedures approved by the facility administration for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;
2. Criteria for determining the eligibility of individuals for admission;
3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and
4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(b) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident’s stay in the facility;
2. Legal, custody and visitation orders; and
3. Proposed discharge plan and anticipated length of stay.

(c) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;
2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and
3. Preparation of the staff and residents of the facility for the new resident.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes at least physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.

(b) An initial health screening for illness, injury, and communicable disease or other immediate needs shall be conducted within twenty-four (24) hours after admission by a nurse.

(c) A physician, nurse practitioner, or physician’s assistant shall conduct a physical examination of each resident within fourteen (14) days after admission. Communication to schedule the physical examination of each resident shall be initiated within twenty-four (24) hours after admission. The physical examination shall include at least evaluations of the following:

1. Motor development and functioning;
2. Sensormotor functioning;
3. Affiliative behavior and social interaction;
3. Speech, hearing, and language functioning;
4. Visual functioning; and
5. Immunization status. If a resident's immunization is not complete as required by 902 KAR 2:060, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.

(d) If the resident has had a complete physical examination by a qualified physician, nurse practitioner, or physician's assistant within the previous three (3) months which includes the requirements of paragraph (c) of this subsection and if the facility obtains complete copies of the record, the physician, nurse practitioner, or physician's assistant may determine after reviewing the records and assessing the resident's physical health that a complete physical examination is not required. If that determination is made, the examination performed in the previous three (3) months shall be used to meet the requirement for a physical examination in paragraph (c) of this subsection.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;
2. The resident's current emotional and behavioral functioning, risk factors, protective factors and needs;
3. A direct psychiatric evaluation;
4. If indicated, psychological assessments, including intellectual, projective, and personality testing;
5. If indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and
6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe cognitive/personality disorder/deterioration or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:
1. Environment and home;
2. Religion;
3. Childhood history;
4. Financial status;
5. The social, peer-group, and environmental setting from which the resident comes; and
6. The resident's family circumstances, including the constellation of the family group, the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age fourteen (14) and older, a vocational assessment of the resident shall be done which includes the following:
1. Vocational history;
2. Education history, including academic and vocational training; and

3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with an attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) If appropriate, a legal assessment of the resident shall be undertaken and shall include the following:
1. A legal history; and
2. A preliminary discussion to determine the extent to which the legal situation will influence his or her progress in treatment and the urgency of the legal situation.

(3) Level I treatment plans.

(a)1. Within seventy-two (72) hours following admission, a mental health professional shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status.

2. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b)1. A comprehensive treatment plan of care shall be developed by a multidisciplinary team conference in conformity with 42 C.F.R. 441.156 within ten (10) days of admission for any resident remaining in treatment. It shall:

a. Be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section;

b. Include a substantiated diagnosis and the short-term and long-range treatment needs; and
c. Address the specific treatment modalities required to meet the resident's needs.

2. The comprehensive treatment plan of care shall:

a. Contain specific and measurable goals for the resident to achieve;
b. Describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure; and
c. Specify criteria to be met for termination of treatment; and
d. Include any referrals necessary for services not provided directly by the facility.

3. The resident shall participate to the maximum extent feasible in the development of his or her comprehensive treatment plan of care, and the participation shall be documented in the resident's record.

4.a. A specific plan for involving the resident's family or significant others shall be included in the comprehensive treatment plan of care.

b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's comprehensive treatment plan of care.

c. The comprehensive treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.

5. The comprehensive treatment plan of care shall be reviewed and updated through multidisciplinary team conferences as clinically indicated and at least thirty (30) days following the first ten (10) days of treatment. The comprehensive treatment plan of care shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

6. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The comprehensive treatment plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(4) Level II PRTF treatment plans.

(a) A Level II PRTF shall develop and implement an initial treatment plan of care for each resident as required by KRS 216B.457(13).

(b) Appropriate therapeutic efforts shall begin before a comprehensive treatment plan of care is finalized.

(c)1. A comprehensive treatment plan of care shall be developed by a multidisciplinary team conference in conformity
with 42 C.F.R. 441.156 and KRS 216B.457(14).

2. In a Level II PRTF that opts to provide bedrooms with sleeping accommodations for two (2) residents, the comprehensive treatment plan of care shall document whether the facility's multidisciplinary team recommends placement of the resident in a private bedroom or in a double occupancy bedroom with another resident.

3. The comprehensive treatment plan of care shall:
   a. Contain specific and measurable goals for the resident to achieve;
   b. Describe the services, activities, and programs to be provided to the resident; and
   c. Specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

4. The resident shall participate to the maximum extent feasible in the development of his or her comprehensive treatment plan of care, and the participation shall be documented in the resident's record.

5. A specific plan for involving the resident's family or significant others shall be included in the comprehensive treatment plan.

b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's comprehensive treatment plan of care.

c. The comprehensive treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.

(d) The comprehensive treatment plan of care shall be reviewed and documented as required by KRS 216B.457(15).

(5) Level I and Level II PRTF progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:
   1. Documentation of implementation of the treatment plan;
   2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and
   3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, if available, to include them in the resident's record.

(d) The resident's progress and current status in meeting the goals and objectives of his or her treatment plan shall be regularly recorded in the resident record.

(6) Discharge planning. A Level I or Level II PRTF shall have written policies and procedures for discharge of residents.

(a)1. Discharge planning shall begin at admission and be documented in the resident's record.

2. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan.

3. This plan shall be maintained in the resident's record and reviewed and updated with the comprehensive treatment plan of care.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for any aftercare service, and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall inform the resident's family of the available resources. The facility shall document in the resident's record any written or face-to-face communications with the resident's family.

(d) A Level I facility deciding to release a resident on an unplanned basis shall:

   1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;
   2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency copies of the resident's records and discharge summary; and
   3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that the placement reasonably meets the needs of the resident.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

   1. Name, address, phone number, and relationship of the person to whom the resident was released.
   2. Description of circumstances leading to admission of the resident to the facility;
   3. Significant problems of the resident;
   4. Clinical course of the resident's treatment;
   5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;
   6. Special clinical management requirements including psychotropic drugs;
   7. Brief descriptive overview of the aftercare plan designed for the resident; and
   8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

Section 13. Services. A Level I or Level II PRTF shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident. Services shall include the opportunity for the resident to participate in community activities, organizations and events and shall provide a normalized environment for the resident. (1) Level I or Level II mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 12 of this administrative regulation.

(b) The mental health services available through the Level I or Level II PRTF shall include the services listed in this paragraph provided by staff of the Level I or Level II PRTF:

   1. Case coordination services to assure the full integration of all services provided to each resident. Case coordination activities shall include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan;
   2. Planned on-site therapies including individual, family, and group therapies as indicated by the comprehensive treatment plan of care.
      a. These therapies shall include psychotherapy, interventions, or face-to-face contacts, which may be made verbally or using assistive communication, between staff and the resident to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit.
      b. Contacts that are incidental to other activities shall be excluded from this service.
   3. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself or herself, and to function effectively in community settings. Task and skill training activities shall include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

   (2) Level I or Level II PRTF physical health services shall include the following services

   (a) The physical health services available through the Level I or Level II PRTF facility shall include the following services
provided either directly by the facility or written agreement:
1. Assessments and evaluations as required in Section 12 of this administrative regulation;
2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;
3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;
4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;
5. Health and sex education; and
6. An ongoing immunization program.
(b) If physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:
1. Referral of residents;
2. Qualifications of staff providing services;
3. Exchange of clinical information; and
(c) A Level I or Level II PRTF shall not admit a resident who has a communicable disease or acute illness requiring treatment in an acute care inpatient setting.
(3) Level I or Level II dietary services.
(a) A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for the provision of dietary services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.
(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietary service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.
(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a licensed dietician pursuant to KRS 310.021 and employed by the facility as a staff member or consultant.
(d) The food shall be served to residents and staff in a common eating place and:
1. Shall account for the special food needs and tastes of residents;
2. Shall not be withheld as punishment; and
3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.
(e) Residents shall participate in the preparation and serving of food as appropriate.
(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.
(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.
(4) Level I or Level II emergency services.
(a) A Level I or Level II PRTF shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, emergency safety intervention, elopement, or death.
(b) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather.
2. The plan shall be posted.
3. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building.
4. Fire drills shall be practiced monthly, with a written record kept of all practiced fire drills, detailing the date, time, and residents who participated.
(c) The facility shall have written procedures to be followed by staff if a psychiatric, medical, or dental emergency of a resident occurs that specifies:
1. Notification of designated member of the facility's chain of command;
2. Designation of staff person who shall decide to refer resident to outside treatment resources;
3. Notification of resident's parent, guardian, or custodian;
4. Transportation to be used;
5. Staff member to accompany resident;
6. Necessary consent and referral forms to accompany resident; and
7. Name, location, and telephone of designated treatment resources.
(d) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:
1. Licensed physician and an alternate designee;
2. Licensed dentist and an alternate designee;
3. Licensed hospital; and
4. Licensed hospital with an accredited psychiatric unit.
(5) Level I or Level II pharmacy services. A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the requirements established in this subsection.
(a)1. Medications shall be administered by a registered nurse, physician, or dentist, except if administered by a licensed practical nurse, certified medication aide, or direct care staff under the supervision of a registered nurse.
2. Direct care staff who administer medications shall have successfully completed a medicine administration course approved by the Kentucky Board of Nursing.
(b)1. Medications shall not be given without a written order signed by a physician, dentist, advanced practice registered nurse as authorized in KRS 314.011(8) and 314.042(8), therapeutically-certified optometrist as authorized in KRS 320.240(14), or physician assistant as authorized by KRS 311.858.
2. Telephone orders for medications shall be given only to licensed nurses or a pharmacist and signed by a physician, dentist, advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant within seventy-two (72) hours from the time the order is given.
(c) Medications shall be prescribed only if clinically indicated. The facility shall ensure that medication is not administered solely for the purpose of program management or control, and that medication is not prescribed for the purposes of experimentation or research.
(d) All medications shall require "stop orders".
(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal.
(f) There shall be a systematic method for prescribing, ordering, receiving, storing, dispensing, administering, distributing and accounting for all medications.
(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles.
(h) Self-administration of medication shall be permitted only if specifically ordered by the responsible prescriber and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and made available to the resident at the time of administration.
(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered.
(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs shall be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.
(6) Level I or Level II education and vocational services.
(a) Educational and vocational services available through a PRTF shall include the minimum requirements of Kentucky Revised statutes and federal laws and regulations regarding regular education, vocational education, and special education as
appropriate to meet the needs of the residents.

1. Educational services shall be provided by:
   a. The facility;
   b. The local school district in which the facility is located; or
   c. A nonpublic school program which is specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

2. If the educational services are provided by the facility, the school program shall be specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

3. Educational services provided by a local school district shall be provided within the facility or within the local school district.

4. The facility’s multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. Education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the PRTF.

   a. All of the education services are not provided directly by the facility, there shall be a written plan for the provision of education services. The education provider shall be a state education department-approved program. The written plan shall, at a minimum, address:
      1. Qualifications of staff providing educational services;
      2. Participation of educational and vocational staff in the plan for the provision of educational services;
      3. Access by staff of the facility to educational and vocational programs and records; and

   b. The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident’s comprehensive treatment plan of care.

   c. The facility shall ensure that education services are developed and implemented with input from the child’s education staff in conjunction with the comprehensive treatment plan of care and meet the requirements established in this paragraph.

1. Each resident’s comprehensive treatment plan of care shall include formal academic goals for remediation and continuing education.

2. Each resident who is eligible for special education services shall have treatment activities developed by the multidisciplinary team, which shall be incorporated, as applicable, into the individualized education plan developed by the local school district.

3. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for children with disabilities pursuant to 20 U.S.C. 1400 shall be developed with the opportunity for input from both school personnel and the PRTF.

4. The schedule shall be for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities which may include physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community if appropriate; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

   a. Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

   b. The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

   c. Speech, language, and hearing services. A Level I or Level II PRTF shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:
      (a) Referral of residents;
      (b) Qualifications of staff providing services;
      (c) Exchange of clinical information; and
      (d) Financial arrangements.

Section 14. Provision of Outpatient Behavioral Health Services, Requirements for Case Managers, Plan of Care, and Physical Environment Requirements. (1) A Level I or Level II PRTF may provide one (1) or more of the following outpatient behavioral health services:

   a. Screening which shall be provided to a client age twenty-one (21) or younger by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice to determine the:
      1. Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and
      2. Need for an assessment; and
      (b) Assessment which shall:
      1. Be provided to a client age twenty-one (21) or younger by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice who gathers information and engages in a process with the client, thereby enabling the professional to:
         a. Establish the presence or absence of a mental health, substance use, or co-occurring disorder;
         b. Determine the client’s readiness for change;
         c. Identify the client’s strengths or problem areas which may affect the treatment and recovery processes; and
         d. Engage the client in developing an appropriate treatment relationship;
      2. Establish or rule out the existence of a clinical disorder or service need;
      3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and
      4. Not include psychological or psychiatric evaluations or assessments;
      (c) Psychological testing which shall:
      1. Be performed by a licensed psychologist, licensed psychological associate, or licensed psychological practitioner for a client age twenty-one (21) or younger; and
2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention which:
1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;
2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;
3. Shall be provided to a client age twenty-one (21) or younger:
   a. On-site in the facility where the licensee provides outpatient behavioral health services;
   b. As an immediate relief to the presenting problem or threat; and
   c. In a face-to-face, one (1) on one (1) encounter;
4. May include verbal de-escalation, risk assessment, or cognitive therapy;
5. Shall be provided by one (1) or more of the following practicing within his or her scope of practice(a):
   a. Behavioral health professional;
   b. Behavioral health professional under clinical supervision;
   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;
   c. Mobile crisis services which shall:
      1. Be provided to a client age twenty-one (21) or younger;
      2. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
      3. Be provided for a duration of less than twenty-four (24) hours;
      4. Not be an overnight service;
      5. Be a multi-disciplinary team based intervention that ensures access to acute mental health and substance use services and supports to:
         a. Reduce symptoms or harm; or
         b. Safely transition an individual in an acute crisis to the appropriate, least restrictive level of care;
      6. Involve all services and supports necessary to provide:
         a. Integrated crisis prevention;
         b. Assessment and disposition; and
         c. Interventions;
      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 practicing within his or her scope of practice; and
            e. According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and
6. Not include a therapeutic clinical service that is included in a child’s individualized education plan;

(g) Peer support which:
1. Shall be provided by a peer support specialist;
2. Shall be structured and scheduled nonclinical therapeutic activity with a client or group of clients;
3. Shall promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills;
4. Shall be identified in the client’s plan of care; and
5. If provided by a family peer support specialist who meets the requirements of 908 KAR 2:230, may be provided to an individual over the age of twenty-one (21) as follows:
   a. The individual shall be a family member of a client age twenty-one (21) or younger who receives outpatient behavioral health services from the Level I or Level II PRTF; and
   b. The family peer support services shall focus on the needs and treatment of the client as identified in the client’s plan of care;
6. Intensive outpatient program services which shall:
   1. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;
   2. Be provided to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client’s plan of care;
   3. Be provided at least three (3) hours per day at least three (3) days per week;
7. Include the following:
   a. Individual outpatient therapy;
   b. Group outpatient therapy;
   c. Family outpatient therapy unless contraindicated;
   d. Crisis intervention;
8. 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;
9. Include a treatment plan which shall:
   a. Be individualized; and
   b. Focus on stabilization and transition to a lesser level of care;
6. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice;

7. Include access to a board-certified or board-eligible psychiatrist for consultation;

8. Include access to a pharmacist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

9. Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person:
   a. Professional outpatient therapy which shall:
      i. Be provided to promote the health and wellbeing of the client; or
      ii. Recovery from a substance related disorder;
   b. Be provided to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client’s plan of care;
   c. A face-to-face encounter with the client; and
   d. A behavioral health therapeutic intervention provided in accordance with the client’s plan of care;

4. Be at:
   a. Reducing adverse symptoms;
   b. Reducing or eliminating the presenting problem of the client; and
   c. Improving functioning;

5. Not exceed three (3) hours per day; and

6. Be provided by a behavioral health professional, a behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice:

   i. Group outpatient therapy which shall:
      a. Be provided to promote the:
      b. Be provided to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client’s plan of care;
   c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client’s plan of care;

4. Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;

5. Focus on the psychological needs of the client as evidenced in the client’s plan of care;

6. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

7. Not include physical exercise, a recreational activity, an educational activity, or a social activity;

8. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;

9. Ensure that the group has a deliberate focus and defined course of treatment;

10. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

11. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice who shall maintain individual notes regarding each client within the group in the client’s record;

1. Consist of a face-to-face behavioral health therapeutic intervention provided through scheduled therapeutic visits between the therapist, at least one (1) member of the client’s family, and the client unless the client’s presence is not required in his or her plan of care;

2. Focus on the needs and treatment of a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client’s plan of care;

3. Address issues interfering with the relational functioning of the family;

4. Seek to improve interpersonal relationships within the client’s home environment;

5. Be provided to promote the health and wellbeing of the client or recovery from a substance use disorder;

6. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;

7. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice:

   i. Collaborative outpatient therapy which shall consists of a face-to-face behavioral health consultation:
      a. 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;
      b. Provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice.

   1. Assist a client in creating an individualized plan for services needed for maximum reduction of the effects of a mental health disorder:
   2. Restore a client’s functional level to the client’s best possible functional level; and
   3. Develop a service plan which:
      a. Shall be directed by the client; and
      b. May include:
      i. A mental health advance directive being filed with a local hospital;
      ii. A crisis plan or;
      iii. A relapse prevention strategy or plan;
      iv. Screening, brief intervention, and referral to treatment for substance use disorders which shall:
         a. 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;
      b. Consist of:
         a. Using a standardized screening tool to assess the individual for risky substance use behavior; and
         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, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice to a client age twenty-one (21) or younger;

(o) Assertive community treatment for mental health disorders which shall:
1. Be provided to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client's plan of care;
2. Include assessment, treatment planning, case management, psychiatric services, medication prescribing and monitoring, individual and group therapy, peer support, mobile crisis services, mental health consultation, family support, and basic living skills;
3. Be provided by a multidisciplinary team of at least four (4) professionals, including a psychiatrist, nurse, case manager, peer support specialist, and any other behavioral health professional or behavioral health professional under clinical supervision; and
4. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team;

(p) Comprehensive community support services which shall:
1. Be provided to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client’s plan of care;
2. Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client’s treatment plan;
3. Consist of using a variety of psychiatric rehabilitation techniques to:
   a. Improve daily living skills;
   b. Improve self-monitoring of symptoms and side effects;
   c. Improve emotional regulation skills;
   d. Improve crisis coping skills; and
   e. Develop and enhance interpersonal skills; and
4. Be provided by a:
   a. Behavioral health professional;
   b. Behavioral health professional under clinical supervision;
   c. Community support associate;
   d. Licensed behavior analyst; or
   e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(q) Therapeutic rehabilitation program for a child with a severe emotional disability which shall be provided to a client under twenty-one (21) years of age and shall:
1. Include services designed to maximize the reduction of the emotional disability and restoration of the client's functional level to the individual's best possible functioning;
2. Establish the client's own rehabilitative goals within the person-center plan of care;
3. Be delivered using a variety of psychiatric rehabilitation techniques focused on:
   a. Improving daily living skills;
   b. Self-monitoring of symptoms and side effects;
   c. Emotional regulation skills;
   d. Crisis coping skills; and
   e. Interpersonal skills; and
4. Be provided individually or in a group by a:
   a. Behavioral health professional;
   b. Behavioral health professional under clinical supervision; or
   c. Peer support specialist; or

(r) Targeted case management services which shall:
1. Include services to one (1) or more of the following target groups:
   a. A client under age twenty-one (21) with substance use disorder; and
   b. A client under age twenty-one (21) with co-occurring mental health or substance use disorder and chronic or complex physical health issues; or
   c. A child with a severe emotional disability as defined by KRS 200.503(3);
2. Be provided by a case manager as described in subsection (2), (3), or (4) of this section; and
3. Include the following assistance:
   a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;
   b. Development of a specific care plan which shall be based on information collected during the assessment and revised if needed upon reassessment;
   c. Referral and related activities, which may include:
      i. Scheduling appointments for the client to help the individual obtain needed services; or
      ii. Activities that help link the client with medical, social, educational providers, or other programs and services which address identified needs and achieve goals specified in the care plan;
4. 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
   c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and

(g)1. 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;
(g)2. Have a minimum of one (1) year of full-time employment working directly with adolescents in a human service setting after completion of a bachelor’s degree as described in paragraph (a) of this subsection; or
2. Have a master’s degree in a human services field as described in paragraph (a) of this subsection;
(g)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; and
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) 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) Have successfully completed case management training
in accordance with 908 KAR 2:260; and
2. Successfully complete continuing education requirements in
accordance with 908 KAR 2:260; and
(d) For a bachelor’s level case manager, be supervised by a
behavioral health professional who:
1. Has completed case management training in accordance
with 908 KAR 2:260; and
2. Has supervisory contact at least three (3) times per month
with at least two (2) of the contacts on an individual, in person
basis.
4. A case manager who provides targeted case management
services to children with a severe emotional disability or clients
with severe mental illness shall:
(a) Meet the requirements of subsection (2)(a) of this section;
(b) Have a minimum of one (1) year of full-time employment
working directly with individuals with behavioral health needs after
completion of a bachelor’s degree in a behavioral science field as
described in subsection (2)(a) of this section; or
2. Have a master’s degree in a human services field as
described in subsection (2)(a) of this section;
(c) Have successfully completed case management training
in accordance with 908 KAR 2:260; and
2. Successfully complete continuing education requirements in
accordance with 908 KAR 2:260; and
(d) Be supervised by a behavioral health professional who:
1. Has completed case management training in accordance
with 908 KAR 2:260; and
2. Has supervisory contact at least two (2) times per month
with at least one (1) of the contacts on an individual in person
basis.
5. Plan of care
(a) Each client receiving outpatient behavioral health services
from a Level I or Level II PRTF shall have an individual plan of care
signed by a behavioral health professional;
(b) A plan of care shall:
1. Describe the services to be provided to the client, including
the frequency of services;
2. Contain measurable goals for the client to achieve, including
the expected date of achievement for each goal;
3. Describe the client’s functional abilities and limitations or
diagnosis listed in the current edition of the American Psychiatric
Association Diagnostic and Statistical Manual of Mental Disorders;
4. Specify each staff member assigned to work with the client;
5. Identify methods of involving the client’s family or significant
others if indicated;
6. Specify criteria to be met for termination of treatment;
7. Include any referrals necessary for services not provided
directly by the chemical dependency treatment program; and
8. State the date scheduled for review of the plan.
(c) The client shall participate to the maximum extent feasible
in the development of his or her plan of care, and the participation
shall be documented in the client’s record.
(d) 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.
1. 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. Physical environment of an off-campus extension or
separate building on the campus of the Level I or Level II PRTF
where outpatient behavioral health services are provided,
(a) Accessibility: The off-campus extension or separate
building on the campus of the PRTF shall meet requirements for
making buildings and facilities accessible to and usable by
individuals with physical disabilities pursuant to KRS 198B.260 and
815 KAR 7:120.
(b) Physical location and overall environment.
1. The program shall:
   a. Comply with building codes, ordinances, and administrative
   regulations which are enforced by city, county, or state
   jurisdictions;
   b. Display a sign that can be viewed by the public that contains
   the facility name, hours of operation, and a street address;
   c. Have a publicly listed telephone number and a dedicated
   phone number to send and receive faxes with a fax machine
   that shall be operational twenty-four (24) hours per day;
   d. Have a reception and waiting area;
   e. Provide a restroom; and
   f. Have an administrative area.
2. The condition of the physical location and the overall
environment shall be maintained in such a manner that the safety
and well-being of clients, personnel, and visitors are assured.
(c) Prior to occupancy, the facility shall have final approval from
appropriate agencies.
Section 15. Use of Emergency Safety Interventions in a Level I
or Level II PRTF. (1) Pursuant to 42 C.F.R. 483.356(a)(3), restraint
or seclusion shall not result in harm or injury to the resident and
shall be used only:
(a) To ensure the safety of the resident or others during an
emergency safety situation; and
(b) Until the emergency safety situation has ceased and the
resident’s safety and the safety of others can be ensured, even if
the restraint or seclusion order has not expired.
(2)(a) The use of mechanical restraint shall be prohibited in a
Level I or Level II PRTF;
(b) Residents of a Level I or Level II PRTF shall not be held in
a prone position during restraint. A Level I or Level II PRTF may
use a supine hold:
1. As a last resort if other less restrictive interventions have
proven to be ineffective; and
2. Only by staff who are trained to identify risks associated with
positional, compression, or restraint asphyxiation, and who monitor
tenure that the resident’s breathing is not impaired.
(3) Emergency safety interventions shall not be used as a
means of coercion, punishment, convenience, or retaliation.
(4) Orders for restraint or seclusion shall be:
   a. By a physician or other licensed practitioner acting within
   his or her scope of practice who is trained in the use of emergency
   safety interventions;
   b. Carried out by trained staff;
   c. If the resident’s treatment team physician is available, given
   only by that physician; and
   d. The least restrictive emergency safety intervention that is
   most likely to be effective in resolving the emergency safety
   situation based on consultation with staff.
(5) A Level I or Level II PRTF shall have a written plan
approved by the governing body for the use of emergency safety
interventions which at a minimum shall meet the following
requirements:
   a. Any use of an emergency safety intervention shall require
   clinical justification;
(b) A rationale and the clinical indications for the use of an emergency safety intervention shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inappropriateness of less restrictive intervention techniques;
(c) The plan shall specify the length of time for which a specific procedure is used;
(d) The plan shall specify the length of time the emergency safety intervention may be utilized; and
(e) The plan shall specify when continued or repeated emergency safety interventions shall trigger multidisciplinary team review.

(6) If an emergency safety situation requires restraint or seclusion and a practitioner authorized to order restraint or seclusion is not available in a Level I or Level II PRTF, a verbal order for restraint or seclusion may be obtained and carried out under the following conditions:
(a) The verbal order shall be given by a licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice and is trained in the use of emergency safety interventions;
(b) The verbal order shall be received by a licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice;
(c) The physician or ordering practitioner shall be immediately available, at least by telephone, for consultation during the time that restraint or seclusion is being carried out; and
(d) The verbal order shall be countersigned by the physician or ordering practitioner within seven (7) days of the date that the order was given, and included in the resident's record.

(7) An order for restraint or seclusion shall not exceed the shortest of:
(a) The duration of the emergency safety situation;
(b) Four (4) hours for a resident eighteen (18) to twenty-one (21) years of age;
(c) Two (2) hours for a resident nine (9) to seventeen (17) years of age;
(d) One (1) hour for a resident seven (7) to eight (8) years of age; or
(e) Thirty (30) minutes for a child four (4) to six (6) years of age.

(8) If an emergency safety situation exists beyond the time limit for the use of restraint or seclusion, a new order for restraint or seclusion shall be obtained.

(9) A resident that is placed in restraint or seclusion shall receive a face-to-face evaluation to determine physical and psychological well being. The evaluation shall:
(a) Be conducted by a licensed practitioner who is acting within his or her scope of practice and is trained in the use of emergency safety interventions;
(b) Include the resident's physical and psychological status, resident's behavior, appropriateness of the intervention measures, and any complications resulting from the intervention; and
(c) Be conducted within one (1) hour of restraint or seclusion being initiated.

(10) Each order for restraint or seclusion shall include:
(a) The name of the ordering physician or other licensed practitioner, acting within his or her scope of practice and trained in the use of emergency safety interventions;
(b) The date and time of restraint or seclusion began; and
(c) The emergency safety intervention ordered, including the length of time for which the physician or other licensed practitioner authorized its use.

(11) (a) Staff shall document the emergency safety intervention in the resident’s record.
(b) The documentation shall be completed by the end of the shift in which the intervention occurs.
(c) If the intervention does not end during the shift in which it began, documentation shall be completed during the shift in which it ends. Documentation shall include:
   1. Each order for restraint or seclusion as described in subsection (10) of this section;
   2. The time the emergency safety intervention actually began and ended;
   3. The time and results of the evaluation required by subsection (9) of this section;
   4. The emergency safety situation that required the resident to be restrained or placed in seclusion; or
   5. The name of staff involved in the emergency safety intervention;
(b) Staff who implement emergency safety interventions shall:
(a) Have documented training in the proper use of restraint or seclusion;
(b) Be certified in physical management by a nationally-recognized training program in which certification is obtained through skills-based testing; and
(c) Receive annual training and recertification in crisis intervention and behavior management.

(13) Staff authorized by a Level I or Level II PRTF shall:
(a) Be constantly, physically present with a resident being restrained;
(b) Monitor the physical and psychological well being of a resident being restrained, and monitor the safe use of restraint throughout the duration of the emergency safety intervention; and
(c) Document observations of, and actions taken for, a resident being restrained.

(14) Within one (1) hour of initiation of restraint or seclusion, a physician or licensed practitioner acting within his or her scope of practice and trained in the use of emergency safety interventions shall conduct a face-to-face evaluation of the resident's physical and psychological well-being.

(15) Staff shall provide constant visual attention to a resident who is in seclusion, through physical presence or a window.

(16) Staff authorized by a Level I or Level II PRTF shall:
(a) Monitor the physical and psychological well being of the resident;
(b) Ensure that a resident in seclusion is provided:
   1. Regular meals;
   2. Hydration;
   3. Bathing; and
   4. Use of the toilet; and
(c) Document observations of, and actions taken for, a resident in restraint every fifteen (15) minutes.

(17) A procedure shall not be used at any time in a manner that causes harm or pain to a resident.

(18) (a) A Level I or Level II PRTF shall notify the parent, guardian, or custodian of the resident who has been restrained or placed in seclusion as soon as possible after the initiation of each emergency safety intervention.
(b) The facility shall document in the resident's record that the parent, guardian, or custodian has been notified of the emergency safety intervention, including the date and time of notification and the name of the staff person providing the notification.

(19) (a) Within twenty-four (24) hours after use of restraint or seclusion, staff involved in an emergency safety intervention and the resident shall have a face-to-face discussion.
(b) The discussion shall include all staff involved in the intervention except if the presence of a particular staff person may jeopardize the well-being of the resident. The discussion may include other staff and the resident's parent, guardian, or custodian.

(20) Within twenty-four (24) hours after the use of restraint or seclusion, all staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes a review and discussion of:
(a) The emergency safety situation that required the intervention, including a discussion of the precipitating factors that led up to the intervention;
(b) Alternative techniques that might have prevented the use of the restraint or seclusion;
(c) The procedures, if any, that staff are to implement to prevent any recurrence of the use of restraint or seclusion; and
(d) The outcome of the intervention, including any injuries that may have resulted from the use of restraint or seclusion.

(21) Application of time out.
(a) A resident in time out shall not be physically prevented from leaving the time out area.
(b) Time out may take place away from the area of activity or from other residents.
(c) Staff shall monitor the resident while he or she is in time out.

(22) A Level I or Level II PRTF shall not use extraordinary risk procedures, including experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, or investigational and experimental drugs.

(23) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:
(a) The proposed unusual treatment shall be reviewed and interpreted by the child's psychiatrist addressing:
1. The rationale for use;
2. Methods to be used;
3. Specified time to be used;
4. Who will provide the treatment; and
5. The methods that will be used to evaluate the efficacy of the treatment.
(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.
(c) The clinical director or designee shall review all uses of unusual treatment procedures, including emergency safety interventions, on a daily basis. This daily review shall include an evaluation for the possibility of unusual or unwarranted patterns of use.

Section 16. Housekeeping Services. (1) A Level I or Level II PRTF shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:
(a) The use, cleaning, and care of equipment;
(b) Assessing the proper use of housekeeping and cleaning supplies;
(c) Evaluating the effectiveness of cleaning; and
(d) The role of the facility staff in maintaining a clean environment.
(2) A laundry service shall be provided by a Level I or Level II PRTF or through contractual agreement.
(3) Pest control shall be provided by a Level I or Level II PRTF or through contractual agreement.

Section 17. Infection Control. (1) Because infections occurring in a Level I or Level II PRTF or brought into a Level I or Level II PRTF from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.
(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.
(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.
(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.
(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.
(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.
(7) A Level I or Level II PRTF shall document that in-service education in infection prevention and control is provided for all services and program components.

Section 18. Tuberculosis Testing Requirements. (1) Induration Measurements. The diameter of the firm area shall be measured transversely to the nearest millimeter to gauge the degree of reaction, and the result shall be recorded in millimeters.
(a) A reaction of ten (10) millimeters or more of induration shall be considered highly indicative of tuberculosis infection in a healthcare setting.
(b) A reaction of five (5) millimeters or more of induration may be significant in certain individuals, including HIV-infected persons, persons with immunosuppression, or recent contacts of persons with active TB disease.
(2) Tuberculosis (TB) disease.
(a) A person shall be diagnosed as having tuberculosis (TB) disease if the infection has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present, including radiographic abnormalities) illness.
1. Tuberculosis that is found in the lungs shall be called pulmonary TB and may be infectious.
2. Tuberculosis that occurs at a body site outside the lungs shall be called extra pulmonary disease and may be infectious in rare circumstances.
(b) If the only clinical finding is specific chest radiographic abnormalities, the condition shall be termed "inactive TB" and may be differentiated from active TB disease, which shall be accompanied by symptoms or other indications of disease activity, including the ability to culture reproducing TB organisms from respiratory secretions in specific chest radiographic finding.
(3)(a) A TST conversion shall have occurred if there is a greater than ten (10) millimeters increase in the size of the TST induration during a two (2) year period in:
1. A health care worker with a documented negative (<10 mm) baseline two (2) step TST result; or
2. A person who is not a health care worker with a negative (<10 mm) TST result within two (2) years.
(b) A TST conversion shall be presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.

Section 19. Admission of Residents under Treatment for Pulmonary Tuberculosis Disease. (1) A Level I or Level II PRTF shall not admit a person under medical treatment for pulmonary tuberculosis disease unless the person is declared noninfectious by a licensed physician in conjunction with the local or state health department.
(2) Documentation of noninfectious status shall include:
(a) Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;
(b) Documentation of clinical improvement on therapy;
(c) Three (3) consecutive sputum smears negative for acid-fast bacilli within the one (1) month period prior to admission; or
(d) Three (3) negative sputum cultures for TB.

Section 20. Tuberculin Skin Tests or BAMTs of Residents. (1) For residents entering a facility, a TST or BAMT shall not be required if one (1) of the following is documented:
(a) A previously documented TST has shown ten (10) or more millimeters of induration;
(b) A previously documented TST has shown five (5) or more millimeters of induration for a resident who has medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive;
(c) A positive BAMT;
(d) The resident is currently receiving or has completed treatment of LTBI with nine (9) months of isoniazid or four (4) months of rifampin, or has completed a course of multiple-drug therapy for active TB disease; or
(e) The resident can document that he or she has had a TST or BAMT within three (3) months prior to admission and has previously been in a serial testing program at a medical facility.
(2)(a) If a resident does not meet the criteria of subsection (1) of this section, a TST or a BAMT shall be required upon admission.
to the Level I or Level II facility.
(b)1. A TST shall be required for residents less than five (5) years of age.
2. A TST result of five (5) or more millimeters of induration may be positive for those residents who have medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive.
3. For a resident without medical reasons as identified in subparagraph 2. of this paragraph whose initial TST shows less than ten (10) millimeters of induration, two-step TSTs shall be required for:
(a) A resident age fourteen (14) years and older; or
(b) A resident expected to stay longer than twelve (12) months unless the resident is able to document that he or she has had a TST within one (1) year prior to initial testing upon admission to the facility.
(3)(a) The TST result of each resident shall be documented through recording of the date and millimeters of induration of the most recent skin test in the medical record.
(b) The medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation “TST Positive” for each resident with a reaction of ten (10) or more millimeters of induration and for each resident with a reaction of five (5) or more millimeters of induration who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive.
(c) If performed and the result is positive or negative, only one (1) BAMT result shall be required on admission.
(b) A second BAMT shall be performed if the BAMT result is borderline or indeterminate.
(c) If a resident has a positive BAMT, the medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation “BAMT Positive.”

Section 21[22] Medical Evaluations and Chest X-rays of Residents. (1) A resident shall receive a medical evaluation, which may include an HIV test, if the resident is found at the time of admission to have a:
(a) TST of ten (10) or more millimeters of induration;
(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive;
(c) Positive BAMT.
(d) A chest x-ray shall be performed unless a chest x-ray done within two (2) months prior to admission showed no evidence of tuberculosis disease.
(2)(a) A resident who meets the criteria listed in subsection (1) of this section and who has no clinical evidence of active TB disease upon evaluation by a licensed physician and a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.
(b) A resident who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements established in Section 22[24] of this administrative regulation.
(3) A resident with an abnormal chest x-ray, consistent with TB disease, shall be:
(a) Evaluated for active tuberculosis disease; and
(b) If the resident is diagnosed with active tuberculosis disease, transferred to a facility with an airborne infection isolation (AI) room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 22[24] Monitoring of Residents with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) A resident shall be monitored for development of pulmonary symptoms, including cough, sputum production, or chest pain, if the resident has a:
(a) TST result with ten (10) or more millimeters of induration;
(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive;
(c) Positive BAMT;
(d) TST conversion; or
(e) BAMT conversion.
(2) If pulmonary symptoms, including cough, sputum production, or chest pain, develop and persist for three (3) weeks or longer:
(a) The resident shall have a medical evaluation;
(b) A chest x-ray shall be taken; and
(c) Three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health, Frankfort, Kentucky, for tuberculosis culture and smear.
3. A resident with suspected or active TB disease shall be transferred to a facility with an AI room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 23[22] Monitoring of Residents with a Negative TST or a Negative BAMT who are Residents Longer than One (1) Year. (1) Annual testing shall be required on or before the anniversary of the resident’s last TST or BAMT.
(2) A TST shall be required for residents less than five (5) years of age.
(3) If pulmonary symptoms develop and persist for three (3) weeks or more:
(a) The resident shall have a medical evaluation;
(b) The tuberculin skin test shall be repeated;
(c) Three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky for tuberculosis culture and smear;
(d) A chest x-ray shall be taken.
(4) A resident with suspected or active TB disease shall be transferred to a facility with an AI room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 24[23] Tuberculin Skin Tests or BAMTs for Staff. (1) The TST or BAMT status of all PRTF facility staff members who have direct contact with residents shall be documented in the employee’s health record.
(2) A TST or BAMT shall be initiated on each new staff member who has direct contact with residents before or during the first week of employment and the results shall be documented in the employee’s health record within the first month of employment.
(3) A TST or BAMT shall not be required at the time of initial employment if the employee documents one of the following:
(a) A prior TST of ten (10) or more millimeters of induration;
(b) A prior TST of five (5) or more millimeters of induration if the employee has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;
(c) A positive BAMT;
(d) A TST conversion;
(e) A BAMT conversion; or
(f) The employee is currently receiving or has completed treatment for LTBI.
(4)(a) If performed and the result is positive or negative, one (1) BAMT test result shall be required on initial employment.
(b) A second BAMT shall be performed if the BAMT result is borderline or indeterminate.
(5) A TST result of five (5) or more millimeters of induration may be positive for a new employee who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive.
(6) A two-step TST shall be required for a new employee who does not have a medical reason as described in subsection (5) of this section and whose initial TST shows less than ten (10) millimeters of induration, unless the individual documents that he or she has had a TST within one (1) year prior to his or her current employment.
(7) A staff member who has never had a TST of ten (10) or more millimeters induration or a positive BAMT shall have a TST or
BAMT annually on or before the anniversary of his or her last TST or BAMT.

Section 25.[24] Medical Evaluations and Chest X-rays and Monitoring of Staff with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) At the time of initial employment testing or annual testing, a staff member who has direct contact with residents shall have a medical evaluation, which may include an HIV test, if the staff member is found to have a:
(a) TST of ten (10) or more millimeters induration;
(b) TST result of five (5) or more millimeters of induration if the staff member has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;
(c) Positive BAMT;
(d) TST conversion; or
(e) BAMT conversion.

(2) A chest x-ray shall be performed unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis disease.

(a) A staff member with a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A staff member who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements established in Section 28.[22] of this administrative regulation.

(c) A staff member with an abnormal chest x-ray shall be evaluated for active tuberculosis disease, and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health, Frankfort, Kentucky, for tuberculosis culture and smear.

(b) A staff member shall remain off work until cleared as being noninfectious for TB by a licensed physician.

(c) A staff member whose medical evaluation and laboratory tests are suspect for active tuberculosis disease shall be isolated (e.g. in an All room or in home isolation) and started on four (4) drug antituberculosis treatment that is administered by DOT.

(d) A staff member under treatment for pulmonary tuberculosis disease may return to work in the facility after being declared noninfectious by a licensed physician in conjunction with the local or state health department.

(3) Documentation of noninfectious status shall include:
1. Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;
2. Documentation of clinical improvement on therapy;
3. Three (3) consecutive sputum smears negative for acid-fast bacilli within the month prior to the employee’s anticipated return to work; or
4. Three (3) negative sputum cultures for TB.

Section 26.[25] Responsibility for Screening and Monitoring Requirements. (1) The program director or clinical director of the facility shall be responsible for ensuring that all TSTs, BAMTs, chest x-rays and sputum samples submissions are done in accordance with Sections 18 through 29.17 through 27.1 of this administrative regulation.

(2) If a facility does not employ licensed professional staff with the technical training to carry out the screening and monitoring requirements, the program director or clinical director shall arrange for professional assistance from the local health department.

(a) Dates of all TSTs or BAMTs and results, all chest x-ray reports and all sputum sample culture and smear results for residents shall be recorded as a permanent part of the resident’s medical record and be summarized on the individual’s transfer form if an interfacility transfer occurs.

(b) The TST or BAMT status of all staff members and any TB related chest x-ray reports shall be documented in the employee’s health record.

Section 27.[26] Reporting to Local Health Departments. The following shall be reported to the local health department having jurisdiction by the program director or clinical director of the facility immediately upon becoming known:

1. All residents and staff who have a TST of ten (10) millimeters or more induration;
2. A TST result of five (5) or more millimeters of induration for all residents or staff who have medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for their TST result to be interpreted as positive;
3. A positive BAMT at the time of admission of a resident or employment of a staff member who has direct contact with residents;
4. TST conversions or BAMT conversions on serial testing or identified in a contact investigation;
5. Chest x-rays which are suspicious for TB disease;
6. Sputum smears positive for acid-fast bacilli;
7. Sputum cultures positive for Mycobacterium tuberculosis; or

Section 28.[27] Treatment for LTBI. (1) A resident or staff member with a TST conversion or a BAMT conversion shall be considered to be recently infected with Mycobacterium tuberculosis.

(b) Recently infected persons shall have a medical evaluation, which may include an HIV test, and shall include a chest x-ray.

(a) If a resident or staff member refuses treatment for LTBI or has a medical contraindication, the individual shall be advised of the clinical symptoms of active TB disease, and have an interval medical history for clinical symptoms of active TB disease every six (6) months during the two (2) years following conversion.

(b) A resident less than five (5) years of age who has a status change on admission to the facility or on annual testing shall be seen and monitored by a pediatrician.

(c) A resident or staff member who has a TST result of ten (10) millimeters or more induration or a positive BAMT at the time of admission of the resident or employment of the staff member shall be offered treatment for LTBI.

(d) A resident or staff member who has a TST result of five (5) or more millimeters of induration at the time of admission or employment and who has medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive shall be offered treatment for LTBI.

(e) If a resident or staff member refuses treatment for LTBI detected on admission or employment or has a medical contraindication, the individual shall be educated about the clinical symptoms of active TB disease, and have an interval medical history for symptoms of active TB disease every six (6) months during the two (2) years following admission or employment.

(f) The education shall be documented in either the resident’s medical record or the employee’s health record.

(5) A resident who stays longer than one (1) year in the facility or staff member who documents completion of treatment for LTBI shall:

(a) Be exempt from further requirements for TSTs or BAMTs; and
(b) Receive education on the symptoms of active TB disease during his or her annual tuberculosis risk assessment and any other monitoring in accordance with Sections 21 or 26.[20 or 25], or this section of this administrative regulation.

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: April 9, 2015
FILED WITH LRC: April 10, 2015 at 1 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services.

718
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, August 11, 2015)


RELATES TO: KRS Chapter 211
STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1), 211.090(2), 211.180(11), 211.190(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.190(11) requires [211.190(10)] directs the Cabinet for Health and Family Services [Human Resources] to provide public health services that include water fluoridation programs for the protection of dental health. This administrative regulation establishes [sets forth] the requirements for the programs.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1).

(2) "Consecutive supply" means a supply that purchases its water from another water system.

Section 2. Community Implementation. The population served by a water system includes its own population and the population served by its consecutive supplies. (1) [All community water system[systems] serving a community population of 3,000 or more, including consecutive supplies, shall adjust fluoride-deficient [fluoride deficient] waters to protect the dental health of the people served by the supply. [For the purposes of this administrative regulation, a consecutive supply shall mean a supply that purchases its water from another public water system. The population served by a community water system shall include its own population, as well as the population served by all of its consecutive supplies.]

[2] (2) [Community water system[systems] serving a population between 1,500 and 3,000 shall provide supplemental fluoridation only if adequate fluoride feed equipment is available from the cabinet[Human Resources], Department for Public Health[Services].]

(3) [Although not required to provide supplemental fluoridation, a community water system[systems] serving a population of less than 1,500 that chooses to provide supplemental fluoridation shall do so only if:]

(a) Adequate fluoride feed equipment is available from the cabinet[Human Resources], Department for Public Health[Services]; and

(b) There are competently trained or certified personnel at the community water system.

Section 3. [Approval. (1) [All community water system[systems] shall obtain the written approval of the cabinet[Human Resources] before adding fluoride[fluorides] to a public water system, pursuant to Section 5 of this administrative regulation. Approval by the cabinet shall be contingent upon the presentation of evidence satisfactory to the cabinet that the plant facilities and operation will provide for adequate control and supervision, safe operation and maintenance, the keeping of operational records, and compliance with this administrative regulation and 401 KAR Chapter 8:010 through 8:700 relating to public water systems.

Section 4. [Equipment, Facilities, and Services. The equipment, facilities, and services shall meet the requirements set forth in this section below.]

(1) Feeding [Reliable] Feeding equipment with an accuracy within five (5) percent shall be provided to feed the optimal [proper] dosage of fluoride.

(a) The rate of feed shall [be in a manner that will give a fluoride content operating tolerance range between six-tenths (0.6) eight-tenths (0.8) ppm and one and two-tenths (1.2) four-tenths (1.4) ppm in the treated water, with an optimal concentration of seven-tenths (0.7) ppm. Based on an evaluation of Kentucky climatological information, a fluoride concentration of no less than nine-tenths (0.9) ppm is recommended in the finished water.]

(b) The point of application shall be selected so that fluoride [will be] evenly mixed with the water leaving the treatment plant.

(2) Method of measurement.

(a) Saturator tanks. If solution feed equipment is to be used, the water plant shall have a corrosion-resistant solution tank and an accurate means for weighing the stock chemical (fluoride) available. A metering device for measuring the water for the solution shall also be used [provided].

(b) Dry feed hoppers. Dry feed hoppers shall be mounted on scales.

(3) Protection of operator. [Special] Precautions shall be taken to protect the operators. Precautions shall [may vary with the type of installation, but at a minimum should] include:

(a) An approved respirator;
(b) [Approved rubber gloves;]
(c) [An] eye shield;
(d) [An] apron and
(e) [as indicated by the type of fluoride being used] dry or liquid. An [adequate] exhaust or ventilation system shall be provided for all fluoride feeding equipment.

(4) Storage. Separate storage areas shall be used [provided] for all fluoride chemicals.

(5) Laboratory facilities. Laboratory facilities shall be used [provided] for the determination of the fluoride content of the water by [competent] personnel in accordance with the current standards [procedures outlined by the Standard Methods for the Examination of Water and Wastewater, 18th Edition (1992). The Standard Methods for the Examination of Water and Wastewater, 18th Edition (1992), is jointly prepared and published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation] and is incorporated by reference. This publication may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, or may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(6) Samples. Raw water and plant tap water samples shall be examined at least once per day and the results shall be included on the [standard] monthly operation report submitted to the Energy and Environment Cabinet in accordance with 401 KAR 8:020.

(a) Additional finished water samples shall be analyzed by a laboratory certified by the Energy and Environment Cabinet [Natural Resources and Environmental Protection] in accordance with 401 KAR 8:040 for fluoride determination, with the results being forwarded by the water system to the cabinet, Department for Public Health.

(b) This sampling shall be at a rate of two (2) samples per month.

(c) The first sample shall be collected from the plant tap during the first week of the month and the second sample collected from the distribution system, at point of maximum retention, during the third week of the month. [Evaluation of the results of these analyses shall be within the province of the cabinet.]

(7) Siphon breakers. Fluoride feeders shall be equipped with siphon breakers to prevent back siphonage of concentrated fluoride solution into the distribution system.

(8) Notification of cabinet when fluoride begins. The cabinet shall be notified of the date on which fluoridation is to commence in order that a representative of the cabinet may be present to calibrate and check the fluoridation equipment and instruct the
operating personnel concerning tests, records, operation, and safety precautions.

(9) Notice when fluoride is interrupted. The owner or operator of the water plant shall immediately notify the cabinet of any interruption to the addition of fluoride to the water supply.

Section 5[4] Procedure for Obtaining Approval. A system shall submit to the cabinet— in support of an application for approval—[the following]:
(1) Detailed plans showing the method and point of application of fluoride and storage facilities for stock chemicals;
(2) Information concerning technical supervision of the treatment process; and
(3) Information on the provisions for laboratory facilities; and
(4) Evidence that the plant facilities and operation will provide for:
(a) Control and supervision;
(b) Safe operation and maintenance;
(c) The keeping of operational records; and
(d) Compliance with this administrative regulation and 401 KAR 8:10 through 401 KAR 8:700 relating to public water systems.

STEPHANIE MAYFIELD GIBSON, MD, FCAP
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: June 11, 2015
FILED WITH LRC: June 11, 2015 at 4 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40622, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 11, 2015)

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
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 practicing in accordance with KRS 319.056;
(d) A licensed social worker practicing in accordance with KRS 319.056;
(e) A licensed marriage and family therapist practicing in accordance with KRS 335.300;
(f) A licensed marriage and family therapist practicing in accordance with KRS 335.300;
(g) A licensed social worker practicing in accordance with KRS 335.300;
(h) A licensed marriage and family therapist practicing in accordance with KRS 335.300;
(i) A licensed marriage and family therapist practicing in accordance with KRS 335.300.
(j) A licensed professional counselor practicing in accordance with Section 13 of this administrative regulation: [contingent and effective upon approval by the Centers for Medicare and Medicaid Services]; or
(k) A licensed marriage and family therapist;
(l) A licensed marriage and family therapist;
(m) A licensed marriage and family therapist;
(n) A licensed marriage and family therapist;
(o) A licensed marriage and family therapist;
(p) A licensed marriage and family therapist;
(q) A licensed marriage and family therapist;
(r) A licensed marriage and family therapist;
(s) A licensed marriage and family therapist;
(t) A licensed marriage and family therapist;
(u) A licensed marriage and family therapist.
(2) "Certified psychologist with autonomous functioning" means:
(a) A certified psychologist practicing in accordance with KRS 319.056;
(b) A licensed marriage and family therapist practicing in accordance with KRS 335.300;
(c) A licensed marriage and family therapist practicing in accordance with KRS 335.300;
(d) A licensed marriage and family therapist practicing in accordance with KRS 335.300.
(3) "Certified alcohol and drug counselor" means:
(a) A certified alcohol and drug counselor practicing in accordance with KRS 335.080;
(b) A certified alcohol and drug counselor practicing in accordance with KRS 335.080;
(c) A certified alcohol and drug counselor practicing in accordance with KRS 335.080.
(4) "Certified alcohol and drug counselor" means:
(a) A certified alcohol and drug counselor practicing in accordance with KRS 335.080;
(b) A certified alcohol and drug counselor practicing in accordance with KRS 335.080;
(c) A certified alcohol and drug counselor practicing in accordance with KRS 335.080.
(5) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(6) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(7) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(8) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(9) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(10) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(11) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(12) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(13) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(14) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(15) "Child" means an individual who is recognized as a certified psychologist pursuant to KRS 319.056.
(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.

(16)(14) "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;

4. If requested by the recipient, a parent, legal guardian, or caregiver of the recipient

(17)(15)(14) "Level I PRTF” means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).
(16)(15) "Level II PRTF” means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).
(19)(17) "Licensed clinical alcohol and drug counselor” is defined by KRS 309.080(4).
(20)(18) "Licensed clinical alcohol and drug counselor associate” is defined by KRS 309.080(5).
(21)(19) "Licensed clinical social worker” means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.
(22)(20) "Licensed marriage and family counselor” is defined by KRS 335.300(2).
(23)(21) "Licensed professional art therapist” is defined by KRS 309.130(2).
(24)(22) "Licensed professional art therapist associate” is defined by KRS 309.130(3).
(25)(23) "Licensed professional clinical counselor” is defined by KRS 335.500(3).
(26)(24) "Licensed professional counselor associate” is defined by KRS 335.500(4).
(27)(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.
(28)(26) "Licensed psychological practitioner” means an individual who meets the requirements established in KRS 319.080.
(29)(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.
(30)(28) "Marriage and family therapy associate” is defined by KRS 335.300(3).
(31)(29) "Mental health associate” means:
(a) Mental health associate;

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.

(32)(30)(14) "Medically necessary” or "medical necessity” means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(33)(31)(15) "Mental health associate” means:
(a) 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 of 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 of work experience in a psychiatric inpatient or residential treatment setting for children.

(34)(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.
(35)(33) "Physician” is defined by KRS 205.510(11)(111.550(123).
(35)(36) "Physician assistant” is defined by KRS 311.840(3).
(36)(37) "Private psychiatric hospital” is defined by KRS 205.5392.
(37)(38) "Provider” is defined by KRS 205.854(7).
(38)(39) "Provider abuse” is defined by KRS 205.854(8).
(39)(40) "Psychiatric residential treatment facility” or "PRTF” is defined by KRS 216B.450(5).
(40)(41) "Psychiatric services” means:
(a) An initial psychiatric evaluation of a recipient who 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; and
(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, or the 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 resulting from or related to any consultation referenced in paragraph (e) of this subsection.
(41)(42)(203) "Qualified mental health personnel” is defined by KRS 216B.450(6).
(42)(43) "Qualified mental health professional” is defined by KRS 216B.450(7).
(43)(44) "Recipient” is defined by KRS 205.845(7).
(44)(45) "Recipient abuse” is defined by KRS 205.845(10).
"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.

"State mental hospital" is defined by KRS 205.639(3).

"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.

"Treatment plan" means a plan created for the care and treatment of a recipient that:
(a) 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:
      a. A pre-admission certification review submitted via telephone or electronically to the review agency prior to admission of the recipient;
      b. Perform and place in each recipient's record:
         a. A medical evaluation;
         b. A social evaluation; and
         c. A psychiatric evaluation;
      c. Establish a plan of care for each recipient which shall be placed in the recipient's record;
      d. 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;
   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; and
   6. 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; and
   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;
   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 Eligible Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21), which satisfies the requirements of 42 C.F.R. 441.153 for patients age twenty-one (21) and under;
         c. A DSM-IV-TR (44) (45)
   (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; and

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. 44.152 and 42 C.F.R. 441.153 for recipients age twenty-one (21) and under;

(e) 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;

(f) 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 subsection/section/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) 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.

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.

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.

(c) Reimbursed pursuant to 907 KAR 9:010.

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. 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;
   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.

(c) 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;

(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;
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
   Section 5(2) of this administrative regulation.

(3) A Level II PRTF service listed in paragraph [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 agressive 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 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.

(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.

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) 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, which shall be covered in
 accordance with 907 KAR 9:015;

(c) Laboratory and radiology services, which shall be covered in
accordance with 907 KAR 1:019;

(d) Dental services, which shall be covered in accordance with
907 KAR 1:028;

(e) 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; or
   (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 each [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. Attach 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. Appeal Rights. (1)(a) An appeal of an adverse action by the department regarding a service and 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. 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-F, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 11, 2015)

907 KAR 9:010. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services.

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes Medicaid reimbursement policies for non-outpatient Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization and both required and optional reimbursement policies for Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is enrolled in a managed care organization.

Section 1. Definition (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(3) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(4) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(5) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(6) "Per diem rate" means a Level I or II PRTF's total daily reimbursement as calculated by the department.

(7) "Recipient" is defined by KRS 205.8451(9).

Section 2. Reimbursement for Level I PRTF Services and Costs. (1) To be reimbursable under the Medicaid Program, Level I PRTF services and associated costs, respectively, shall be provided to or associated with a recipient receiving Level I PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse for Level I PRTF services and costs referenced in subsection (4) of this section for a recipient not enrolled in a managed care organization:

(a) At the lesser of:
   1. A per diem rate of $274.01; or
   2. The usual and customary charge; and

(b) An amount not to exceed the prevailing charges, in the locality where the Level I PRTF is located, for comparable services provided under comparable circumstances.

(3) The per diem rate referenced in subsection (2) of this section shall be increased each biennium by 2.22 percent.

(4) The reimbursement per diem rate referenced in subsection (2) of this section, or the usual and customary charge if less than the per diem rate, shall represent the total Medicaid reimbursement for Level I PRTF services and costs:

(a) Including all care and treatment costs;
(b) Including costs for all ancillary services;
(c) Including capital costs;
(d) Including room and board costs; and
(e) Excluding the costs of drugs as drugs shall be:
   1. Covered in accordance with 907 KAR 1:019; and
   2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018.

Section 3. Reimbursement for Level II PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level II PRTF services and associated costs, respectively, shall be provided to or associated with a recipient receiving Level II PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse at the lesser of the usual and customary charge or a per diem rate as follows for Level II PRTF services and costs for a recipient not enrolled in a managed care organization:

(a) $345 for Level II PRTF services to a recipient who meets the rate group one (1) criteria established in subsection (3)(a) of this section;
(b) $365 for Level II PRTF services to a recipient who meets the rate group two (2) criteria established in subsection (3)(b) of this section;
(c) $385 for Level II PRTF services to a recipient who meets the rate group three (3) criteria established in subsection (3)(c) of this section;
(d) $405 for Level II PRTF services to a recipient who meets the rate group four (4) criteria established in subsection (3)(d) or (e) of this section;

(3) (a) Rate group one (1) criteria shall be for a recipient who:
   1. Is twelve (12) years of age or younger; and
   2. Is male or female; and
   3. a. Is sexually reactive; or
   b. (i) Has a severe and persistent aggressive behavior; and
   (ii) Does not have an intellectual or a developmental disability; and
   (iii) Has an intelligence quotient higher than seventy (70).
   (b) Rate group two (2) criteria shall be for a recipient who:
   1. Is twelve (12) years of age or younger; and
   2. Is male or female; and
   3. a. Is sexually reactive; or
   b. (i) Has a severe and persistent aggressive behavior; and
   (ii) Does not have an intellectual or a developmental disability; and
   (iii) Has an intelligence quotient higher than seventy (70).
   (c) Rate group three (3) criteria shall be for a recipient who:
   1. Is thirteen (13) years of age or older; and
   2. Is male or female; and
   3. a. Is sexually reactive; or
   b. (i) Has a severe and persistent aggressive behavior; and
   (ii) Does not have an intellectual or a developmental disability; and
   (iii) Has an intelligence quotient higher than seventy (70).
(d) Rate group four (4) criteria shall be for a recipient who:
1. Is thirteen (13) years of age or older; and
2. [male or female]; and
3. [a] Is sexually reactive; and
   b. [i] Has a severe and persistent aggressive behavior;
   (ii) Does not have an intellectual or a developmental disability; and
   (iii) Has an intelligence quotient higher than seventy (70).
(e) Rate group four (4) criteria shall be for a recipient who:
1. Is under twenty-two (22) years of age; and
2. [male or female]; and
3. [a] Is sexually reactive; or
   b. [i] Has a severe and persistent aggressive behavior;
   (ii) Has an intellectual or a developmental disability; and
   (iii) Has an intelligence quotient lower than seventy (70).
4. The per diem rates referenced in subsection (2) of this section, or the usual and customary charge if less than the per diem rate, shall represent the total Medicaid reimbursement for Level I or II PRTF services and costs:
   (a) Including all care and treatment costs;
   (b) Including costs for all ancillary services;
   (c) Including capital costs;
   (d) Including room and board costs; and
   (e) Excluding the costs of drugs as drugs shall be:
1. Covered in accordance with 907 KAR 1:019; and
2. Reimbursed via the department’s pharmacy program in accordance with 907 KAR 1:018.
(5) The department shall annually evaluate each per diem rate for Level I or II PRTF services and costs by reviewing the most recent, reliable claims data and cost report data to analyze treatment patterns, technology, and other factors that may alter the cost of efficiently providing Level I or II PRTF services.
(b) The department shall use the evaluation, review, and analysis referenced in paragraph (a) of this subsection to determine if an adjustment to the Level I or II PRTF reimbursement would be appropriate.

Section 4. Cost Reports and Audits. (1)(a) A Level I or II PRTF shall annually submit to the department, within ninety (90) days of the closing date of the facility’s fiscal year end, a legible and completed Form CMS 2552-96.
(b) The department shall grant a thirty (30) day extension for submitting a legible and completed Form CMS 2552-96 to the department if an extension is requested by a Level I or II PRTF.
(2)(a) A Form CMS 2552-96 shall be subject to review and audit by the department.
(b) The review and audit referenced in paragraph (a) of this subsection shall be to determine if the information provided is accurate.

Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II PRTF shall provide, upon request, all fiscal and service records relating to services provided to a Kentucky recipient, to the:
1. Department;
2. Cabinet for Health and Family Services, Office of Inspector General;
3. Commonwealth of Kentucky, Office of the Attorney General;
4. Commonwealth of Kentucky, Auditor of Public Accounts;
5. Secretary of the United States Department of Health and Human Services; or

Section 6. Bed Reserve and Therapeutic Pass Reimbursement. (1) The department’s reimbursement for a bed reserve day which qualifies as a bed reserve day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:
(a) Seventy-five (75) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF’s occupancy percent is less than eighty-five (85) percent; and
(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF’s occupancy percent is less than eighty-five (85) percent.
(2) The department’s reimbursement for a therapeutic pass day which qualifies as a therapeutic pass day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:
(a) 100 percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF’s occupancy percent is less than fifty (50) percent; or
(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF’s occupancy percent is below fifty (50) percent.
(3)(a) A Level I or II PRTF’s occupancy percent shall be based on a midnight census.
(b) An absence from a Level I or II PRTF that is due to a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital shall count as an absence for census purposes.
(c) An absence from a Level I or II PRTF that is due to a therapeutic pass day shall not count as an absence for census purposes.

Section 7. Outpatient Services Reimbursement Established in 907 KAR 9:020. The department’s reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II PRTF shall be as established in 907 KAR 9:020.

Section 8. Federal Financial Participation. The department’s reimbursement for services pursuant to this administrative regulation shall be contingent upon federal financial participation for the reimbursement established in this administrative regulation.
(1) Billings shall be required to reimburse in accordance with 907 KAR 1:671.
(2) Centers for Medicare and Medicaid Services’ approval for the reimbursement established in this administrative regulation shall not be required to reimburse in accordance with 907 KAR 9:005.

Section 9. [8] Appeals. A provider may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:871.

Section 10. [9] Not Applicable to Managed Care Organizations. (4) A managed care organization may elect to reimburse for Level I or II PRTF services in accordance with this administrative regulation.
(2) The reimbursement policies established in this administrative regulation shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:
1. This administrative regulation; or
2. [apply to a managed care organization, except the requirement that a Level I or II PRTF service shall be in accordance with 907 KAR 9:005 in order to be reimbursable under the Medicaid Program].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: April 9, 2015
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 11, 2015)

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 psychologist 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 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;
5. A licensed assistant behavior analyst;
6. A certified registered nurse;
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 pursuant to KRS 319.056.
(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 KRS 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 KRS 319.053.

729
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 support 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) "Recipient" is defined by KRS 205.8451(8).
(40) "Recipient abuse" is defined by KRS 205.8451(9).
(41) "Recipient use" 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) Shown to the recipient’s plan of care; and
(b) Provided in accordance with the recipient’s plan of care.
(5) 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 facility.

(b) A plan of care shall meet 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

(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.

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] except for a licensed assistant behavior analyst, and
  b. In accordance with Section 12 of this administrative regulation; or
  c. In accordance with Section 12 of this administrative regulation; and
  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,[f]
    a. In accordance with Section 12 of this administrative regulation; or
    b. In accordance with Section 12 of this administrative regulation; or
    c. In accordance with Section 12 of this administrative regulation; or
    d. In accordance with Section 12 of this administrative regulation; or
    e. In accordance with Section 12 of this administrative regulation;
    f. In accordance with Section 12 of this administrative regulation; or
    g. In accordance with Section 12 of this administrative regulation; or
    h. In accordance with Section 12 of this administrative regulation; or
  (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) Service planning provided by:
    1. A licensed psychologist;
    2. A licensed psychological practitioner;
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

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; or
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 SBI 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 certified clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
     14. A behavioral health practitioner under supervision except for:
        a. The recipient; or
        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 psychological 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; or
     14. A peer support specialist working under the supervision of an approved behavioral health services provider except for:
        a. Licensed clinical alcohol and drug counselor;
        b. Certified alcohol and drug counselor;
     15. A community support associate; or
     16. A community support associate; or
     17. A certified psychologist working under the supervision of a board-approved licensed psychologist;
     18. A licensed clinical alcohol and drug counselor; or
     19. A licensed professional clinical counselor;
     20. An advanced practice registered nurse;
     21. A licensed psychological associate working under the supervision of an appropriate treatment relationship;
     22. 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
   b. Substance use disorder relapse prevention; or
   c. 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:
      a. [ili] Reduce symptoms or harm; or
   b. [ili] 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 disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child 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;
      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 disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child 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; or
   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. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.

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; and
      (ii) Recipient’s recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders; 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). 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.
   c. Basic living skills shall be rehabilitative services focused on the teaching activities of daily living necessary to maintain independent functioning.
   d. Demonstrate experience in serving individuals with persistent and severe mental illness who have difficulty living independently in the community.
   e. A rehabilitative service for an individual who is not a billing individual who is not a billing agent or on behalf of an entity or individual who is not a billing agent.

3. The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing agent.

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 agent.

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

(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. 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)(i) 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 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;
2. If applicable, the referral source's name and address;
3. Primary care physician's name and address;
4. The reason the individual is seeking help including the presenting problem and diagnosis;
   i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:
      (i) Where the individual is receiving treatment for the physical health diagnosis; and
      (ii) The physical health provider's name; and
   j. The name of the informant and any other information deemed necessary by the Level I or Level II psychiatric residential treatment facility in order to comply with the requirements of:
      (i) This administrative regulation;
      (ii) The Level I or Level II psychiatric residential treatment facility's licensure board;
      (iii) State law; or
      (iv) Federal law;
2. Documentation of the:
   a. Screening;
   b. Assessment if an assessment was performed; and
   c. Disposition if a disposition was performed;
3. A complete history including mental status and previous treatment;
4. An identification sheet;
5. A consent for treatment sheet that is accurately signed and dated; and
6. The individual's stated purpose for seeking services; and
(b) Be:
1. Maintained in an organized central file;
2. Furnished upon request:
   a. To the Cabinet for Health and Family Services; or
   b. For an enrollee, to the managed care organization in which the recipient is enrolled or has been enrolled in the past;
3. Made available for inspection and copying by:
   a. Cabinet for Health and Family Services' personnel; or
   b. Personnel of the managed care organization in which the recipient is enrolled if applicable;
4. Readily accessible; and
5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:
(a) Information relative to the individual's stated request for services; and
(b) Other stated personal or health concerns if other concerns are stated.
(5)(a) A Level I or Level II psychiatric residential treatment facility's notes regarding a recipient shall:
1. Be made within forty-eight (48) hours of each service visit; and
2. Describe the:
   a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
   b. Behavioral health practitioner'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) 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

(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.

(c) Except as established in paragraph (b) 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:
   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 shall attest to 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. If 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 11, 2015)

907 KAR 9:020. Reimbursement provisions and requirements regarding outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities.

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program outpatient behavioral health services provided by Level I or Level II
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

psychiatric residential treatment facilities to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Behavioral health practitioner under supervision" means an individual who is:
   a. A licensed professional counselor associate;
   b. A certified social worker;
   c. A marriage and family therapy associate;
   d. A licensed professional art therapist associate;
   e. A licensed assistant behavior analyst;
   f. A physician assistant;
   g. A certified alcohol and drug counselor; or
   h. A licensed clinical alcohol and drug counselor associate in accordance with Section 5 of this administrative regulation; and
   (b) Employed by or under contract with the same billing provider as the billing supervisor.

(3) "Billing provider" means the individual who, group of individual providers that, or organization that;
   a) Is eligible to be reimbursed by the department or a managed care organization for a service; and
   b) Is eligible to be reimbursed by the department or a managed care organization for a service.

   (4) "Billing supervisor" means an individual who is:
   a. A physician;
   b. A psychiatrist;
   c. An advanced practice registered nurse;
   d. A licensed psychologist;
   e. A licensed clinical social worker;
   f. A licensed professional clinical counselor;
   g. A licensed psychological practitioner;
   h. A certified psychologist with autonomous functioning;
   i. A licensed marriage and family therapist;
   j. A certified alcohol and drug counselor; or
   k. A licensed behavior analyst; and
   l. Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.

   (5) "Certified alcohol and drug counselor" means an individual who meets the requirements established in KRS 309.083.

(7) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(8) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(9) "Department" means the Department for Medicaid Services or its designee.

(10) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(11) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(12) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(13) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(14) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(15) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(16) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(17) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(18) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(19) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(20) "Licensed professional art therapist" is defined by KRS 309.130(2).

(21) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(22) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(23) "Licensed professional counselor associate" is defined by KRS 335.500(4).

(24) "Licensed psychological associate" means an individual who:
   a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and
   b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26.

(25) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(26) "Licensed psychologist" means an individual who:
   a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and
   b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(27) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(28) "Marriage and family therapy associate" is defined by KRS 335.500(3).

(29) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:
   a) 908 KAR 2:220;
   b) 908 KAR 2:220 or 908 KAR 2:240.

(30) "Physician" is defined by KRS 205.510(11).

(31) "Physician assistant" is defined by KRS 311.840(3).

(32) "Provider" is defined by KRS 205.8451(7).

Section 2. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall:

(1) Meet the requirements established in 907 KAR 9:015; and
(2) Be covered in accordance with 907 KAR 9:015.

Section 3. Reimbursement. (1)(a) A unit of service for a service listed on the Level I and Level II PRTF Non-Medicare Services Fee Schedule shall be as established on the Level I and Level II PRTF Non-Medicare Services Fee Schedule.

(b) A unit of service for a service not listed on the Level I and Level II PRTF Non-Medicare Services Fee Schedule shall be:
   1. Fifteen (15) minutes in length unless a different amount is established for the service in the corresponding:
      a. Current procedural terminology code; or
      b. Healthcare common procedure coding system code.
      2. The unit amount established in the corresponding:
      a. Current procedural terminology code; or
      b. Healthcare common procedure coding system code.

(2) The rate per unit for a screening or for crisis intervention shall be:
   a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
      1. Physician; or
      2. Psychiatrist;
   b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
      1. An advanced practice registered nurse; or
      2. A licensed psychologist;
   c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
      1. Licensed professional clinical counselor; or
      2. Licensed professional art therapist associate; or
      3. Licensed clinical social worker; or
      4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
6. Licensed professional art therapist; or
7. Licensed clinical alcohol and drug counselor in accordance with Section 5 of this administrative regulation; or
(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological associate working under the supervision of a board-approved licensed psychologist;
4. Certified psychologist working under the supervision of a board-approved licensed psychologist;
5. Certified social worker working under the supervision of a billing supervisor;
6. Physician assistant working under the supervision of a billing supervisor;
7. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
8. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or
9. Licensed clinical alcohol and drug counselor associate:
a. In accordance with Section 5 of this administrative regulation; and
b. Working under the supervision of a billing supervisor.

(4) The rate per unit for psychological testing shall be:
(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;
(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. Licensed psychological practitioner; or
2. Certified psychologist with autonomous functioning;
(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. Licensed psychological associate working under the supervision of a board-approved licensed psychologist; or
2. Certified psychologist working under the supervision of a board-approved licensed psychologist.
(5) The rate per unit for individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy shall be:
(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. Physician; or
2. Psychiatrist;
(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. An advanced practice registered nurse; or
2. A licensed psychologist;
(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
6. Licensed professional art therapist;
7. Licensed behavior analyst; or
8. Licensed clinical alcohol and drug counsel in accordance with Section 5 of this administrative regulation; or
(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. Marriage and family therapy associate working under the supervision of a billing supervisor;
2. Licensed professional counselor associate working under the supervision of a billing supervisor;
3. Licensed psychological counselor associate working under the supervision of a board-approved licensed psychologist;
4. Certified psychologist working under the supervision of a board-approved licensed psychologist;
5. Certified social worker working under the supervision of a billing supervisor;
6. Physician assistant working under the supervision of a billing supervisor;
7. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
8. Licensed alcohol and drug counselor working under the supervision of a billing supervisor; or
9. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or
10. Licensed clinical alcohol and drug counselor associate:
a. In accordance with Section 5 of this administrative regulation; and
b. Working under the supervision of a billing supervisor.
Medicare Physician Fee Schedule for the service if provided by a:  
1. Licensed professional clinical counselor;  
2. Licensed clinical social worker;  
3. Licensed psychological practitioner;  
4. Certified psychologist with autonomous functioning;  
5. Licensed marriage and family therapist;  
6. Licensed professional art therapist; or  
7. Licensed clinical[and] alcohol and drug counselor in accordance with Section 5 of this administrative regulation; or  
(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:  
1. Marriage and family therapy associate working under the supervision of a billing supervisor;  
2. Licensed professional counselor associate working under the supervision of a billing supervisor;  
3. Licensed psychological associate working under the supervision of a board-approved licensed psychologist;  
4. Certified psychologist working under the supervision of a board-approved licensed psychologist;  
5. Certified social worker working under the supervision of a billing supervisor;  
6. Physician assistant working under the supervision of a billing supervisor;  
7. Licensed professional art therapist associate working under the supervision of a billing supervisor;  
8. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or  
9. Licensed clinical[and] alcohol and drug counselor associate in accordance with Section 5 of this administrative regulation.  
(7) Reimbursement for the following services shall be as established on the Level I and II PRTF Non-Medicare Services Fee Schedule:  
(a) Mobile crisis services;  
(b) Day treatment;  
(c) Peer support services;  
(d) Parent or family peer support services;  
(e) Intensive outpatient program services;  
(f) Service planning;  
(g) Screening, brief intervention, and referral to treatment;  
(h) Assertive community treatment;  
(i) Comprehensive community support services; or  
(j) Therapeutic rehabilitation services.  
(8)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.  
(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicaid Program is:  
1. An interim version, the department shall use the interim version until the final version has been published; or  
2. A final version, the department shall use the final version.  
(9) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:  
(1) 907 KAR 9:015; and  
(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. (1) The department’s reimbursement for services pursuant to this administrative regulation shall be contingent upon:  
(a) Receipt of federal financial participation for the reimbursement; and  
(b) Centers for Medicare and Medicaid Services’ approval for the reimbursement.  
(2) The reimbursement of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

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;  
(3) "Behavioral health practitioner under supervision” means an individual who is:  
(a1. 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 supervisor" 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) A physician;
(b) A psychiatriat;
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 psychologist with autonomous functioning;
8. A licensed psychiatrist 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 a certified psychologist pursuant to KRS 319.056 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. "Current procedural terminology code" or "CPT code" means a code used for reporting procedures and services performed by licensed medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.
12. "Department" means the Department for Medicaid Services or its designee.
13. "Electronic signature" is defined by KRS 369.102(8).
14. "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.
15. "Emergency medical condition" is defined by 42 U.S.C. 1395ddd(e)(1).
16. "Enrollee" means a recipient who is enrolled in 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. "Federal financial participation" is defined by 42 C.F.R. 400.203.
19. "Individualized education program" is defined by 34 C.F.R. 300.320.
20. "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).
21. "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. "Licensed social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.
25. "Licensed marriage and family therapist" is defined by KRS 335.300(2).
26. "Licensed professional art therapist" is defined by KRS 309.130(2).
27. "Licensed professional art therapist associate" is defined by KRS 309.130(3).
28. "Licensed professional clinical counselor" is defined by KRS 335.500(3).
29. "Licensed professional counselor associate" is defined by KRS 335.500(4).
30. "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 or is a certified psychologist.
31. "Licensed psychological practitioner" means an individual who:
(a) Meets the requirements established in KRS 319.053; or
(b) Is a certified psychologist.
32. "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.
33. "Marriage and family therapy associate" is defined by KRS 335.500(3).
34. "Medical necessity" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.
35. "Nonemergency" means that a condition or situation requires a covered benefit that is determined to be needed in accordance with 907 KAR 3:130.
36. "Nonemergency medical condition" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.
37. "Recipient" is defined by KRS 205.8451(1).
38. "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;
(b) A legal guardian.
39. "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.
40. "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.
41. "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) 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. 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 department.
(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
14. A behavioral health practitioner under supervision; or
   a. In accordance with Section 14 of this administrative regulation and
      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 certified psychologist working under the supervision of a board-approved licensed psychologist;


(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 certified psychologist working under the supervision of a board-approved licensed psychologist;


(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 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 certified psychologist working under the supervision of a board-approved licensed psychologist; or

14. A behavioral health practitioner under supervision except for a certified alcohol and drug counselor; or

b. In accordance with Section 14 of this administrative regulation.

(i) 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 licensed psychological associate working under the supervision of a board-approved licensed psychologist;

14. A certified psychologist working under the supervision of a board-approved licensed psychologist; or

15. A behavioral health practitioner under supervision.

(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; or

13. A certified psychologist working under the supervision of a board-approved licensed psychologist; or


(k) 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; or

13. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or


(l) 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; or

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or

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 clinical alcohol and drug counselor;
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;
(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 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;
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: 
   a.Reduce symptoms or harm; or 
   b. Safely transition an individual in an acute crisis to the appropriate least restrictive level of care; 
6. Involve all services and supports necessary to provide: 
   a. Integrated crisis prevention; 
   b. Assessment and disposition; 
   c. Intervention; 
   d. Continuity of care recommendations; and 
   e. Follow-up services; and 
7. Be provided face-to-face in a home or community setting. 
   a. Be an alternative to or transition from inpatient or inpatient hospitalization or partial hospitalization for 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. 
   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. 
   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; 
   b. Knowledge of substance use disorders; 
   1. Day treatment shall not include a therapeutic clinical service that is included in a child’s individualized education plan. 
   2. Day treatment shall: 
      a. Be provided by: 
         i. An individual who has been trained and certified in accordance with 908 KAR 2:240 and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder; 
         ii. A family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder; 
         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 disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child 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; 
   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. 
      [b1.[c2[a]]] Intensive outpatient program services shall be provided by a team. 
      a. Be an alternative to 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; 
         iii. Psycho-education. 
   2. During psychiatric observation 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.
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.

1. Individual outpatient therapy shall:
   a. Health and well-being of the recipient; 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;

4. Not exceed three (3) hours per day unless additional time is medically necessary.
   a. Group outpatient therapy shall:
      i. Be a behavioral health therapeutic intervention provided in accordance with a recipient’s identified plan of care;
      ii. Be provided to promote the:
         i. Health and well-being of the recipient;
         ii. Recipient’s recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;
      iii. Be provided to the:
         i. Health and well-being of the recipient;
         ii. Recipient’s recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;
      iv. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient’s identified plan of care;
      v. 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;
         iii. Focus on the psychological needs of the recipients as evidenced in each recipient’s plan of care;
         iv. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
         v. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
         vi. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.
   b. The group shall have:
      a. Deliberate focus; and
      b. Defined course of treatment.
   c. The subject of group outpatient therapy shall relate to each recipient participating in the group.
   d. The provider shall keep individual notes regarding each recipient of the group and within each recipient’s health record.

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; and
      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 recipient unless additional time is medically necessary.
      i. Consist of a face-to-face behavioral health consultation;
      ii. 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
   c. That is provided in accordance with the recipient’s plan of care; and

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.

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 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.

1. Assertive community treatment shall:
   a. 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
   b. Consist of:
      a. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice to the recipient; and
      b. 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.

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 health consultation;
      ix. Family support and basic living skills; or
(x) Peer support.

2. a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.

b. Family support shall involve the assertive community treatment team’s working with the recipient’s natural support systems to improve family relations in order to:
   (i) Reduce conflict; and
   (ii) Increase the recipient’s autonomy and independent functioning.

c. Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.

3. To provide assertive community treatment services, an outpatient hospital shall:

   a. Employ at least one (1) team of multidisciplinary professionals:
      (i) Led by an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor; and
      (ii) Composed 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;

   d. Demonstrate experience in serving individuals with persistent and severe mental illness who have difficulty living independently in the community.

41. 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.

41. 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.

r1. 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 therapist 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.

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;
      c. Psycho-education;

   d. 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.

   e. An intensive outpatient program service treatment plan shall:

      1. Be individualized; and

      2. Focus on stabilization and transition to a lesser level of care.

   e. To provide intensive outpatient program services, an outpatient hospital shall have:

      1. Access to a board-certified or board-eligible psychiatrist for consultation;

      2. Access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring;

      3. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

      4. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

      5. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to
coordinate the provision of services among team members;
6. The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;
7. Demonstrated experience in serving individuals with behavioral health disorders;
8. The administrative capacity to ensure quality of services;
9. A financial management system that provides documentation of services and costs; and
10. The capacity to document and maintain individual case records.
(c) Partial hospitalization shall be provided by:
1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed marriage and family therapist;
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 professional associate working under the supervision of a licensed psychologist;
10. A licensed professional counselor associate working under the supervision of a licensed professional 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
(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. (c) 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. (f) The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.
6. (g) 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.
7. (h) The department shall not reimburse for services identified in a Medicaid-eligible child's individualized education program.
8. (i) Partial hospitalization shall typically be:
   a. [4] 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).
9. (j) 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; and
      ii. [b] Employ required practitioners and coordinate service provision among rendering practitioners; and
   c. [3] 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 professional art therapist;
   10. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist; or
   11. A certified alcohol and drug counselor.
(b) A partial hospitalization program shall:
   1. Be provided to promote the:
      a. Health and wellbeing of the individual; or
      b. Recovery from a substance related disorder;
   2. Include:
      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, 
(a)1. Group outpatient therapy shall: 
(i) Be provided to promote the health and well-being 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) Consist of a group of 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) 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 apply to: 
1. Mobile crisis services; 
2. Crisis intervention; 
3. A screening; or 
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) A behavioral health service that does not meet the requirements stated in the definition of “face-to-face” established in Section 1(17) of this administrative regulation; 
(c) 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 
(d) 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. 
(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 [wa] the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) or (c) of this subsection, an outpatient hospital shall maintain a health record regarding a recipient for at least six (6) years after 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.

(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. 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;

2. If applicable, the referral source's name and address;

3. Primary care physician's name and address;

4. The reason the individual is seeking help including the presenting problem and diagnosis;

5. 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
   l. 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 intervention; and

   c. Changes in the plan of care if changes are made;

   d. Need for continued treatment if deemed necessary.

(b) Any edit to notes shall:

1. Clearly display the changes;

2. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c1) 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

(c1) 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:
   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 the service 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 C.F.R. Parts 160 and 164; or  
      c. 45 C.F.R. Parts 160 and 164; or  
   2. a. 42 U.S.C. 290ee-3; and  

(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  

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) 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) An outpatient hospital may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:  
1. Recipient requests the service; and  
2. Outpatient hospital makes the recipient aware in writing in advance of providing the service that:
   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 or managed care organization 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 a service if a recipient for any part of a service provided to the recipient.

(4)(a) An outpatient hospital shall attest 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.

(c1) If an outpatient hospital receives a request from the:  
1. 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  
2. 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. 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. An outpatient hospital[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 outpatient hospital[Level I or Level II psychiatric residential treatment facility] justifies the need for a longer timeframe.

(d1) 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.[41] Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:
(a) Develop and implement a written security policy that shall:
1. Be adhered to by each of the provider’s employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
(b) Develop a consent form that shall:
1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature’s authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
(c) Provide the department, immediately upon request, with:
1. A copy of the provider’s electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 13.[44] Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:
(1) Claim;
(2) Health[medical] record;[4] or
(3) Documentation associated with any claim or health[medical] record.

Section 14.[42] Federal Approval and Federal Financial Participation. (1) The department’s coverage of services pursuant to this administrative regulation shall be contingent upon:
[a][44] Receipt of federal financial participation for the coverage; and
[b][23] 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.[43] 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 11, 2015)

907 KAR 10:016. Coverage provisions and requirements regarding inpatient psychiatric hospital services.

RELATES TO: KRS 205.520

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 (defined as Medicaid 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 provisions of medical assistance to Kentucky’s indigent citizenry). This administrative regulation establishes [sets forth] the Medicaid Program coverage provisions and requirements regarding inpatient (nursing facility) services provided by 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) By professional staff employed or contracted by a psychiatric hospital.
(b) Except as established in subsection (2) of this section, be eligible to provide services covered under this administrative regulation:
1. Be currently enrolled in the Kentucky Medicaid Program in behalf of both the categorically needy and the medically needy;
2. Be licensed as a psychiatric hospital in accordance with 907 KAR 1:671;
3. Be adhered to by each of the provider’s employees, officers, agents, or contractors;
4. Develop and implement a written security policy that shall:
1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature’s authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
(c) Provide the department, immediately upon request, with:
1. A copy of the provider’s electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 13.[44] Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:
(1) Claim;
(2) Health[medical] record;[4] or
(3) Documentation associated with any claim or health[medical] record.

Section 14.[42] Federal Approval and Federal Financial Participation. (1) The department’s coverage of services pursuant to this administrative regulation shall be contingent upon:
[a][44] Receipt of federal financial participation for the coverage; and
[b][23] 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.[43] 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 11, 2015)

907 KAR 10:016. Coverage provisions and requirements regarding inpatient psychiatric hospital services.

RELATES TO: KRS 205.520
(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
(ii) 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 shall attest by the psychiatric hospital’s staff 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;
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;
3. All services provided shall be subject to review for recipient or provider abuse.
4. 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
   b.(i) Who is under twenty-one (21) years of age and requires inpatient psychiatric services; and
   b. Whose needs require inpatient psychiatric hospital services;
2. Under the direction of a physician; and
3. 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) 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 Medicaid 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.

Section 4. KRS Chapter 202A Related Admission.

(1)(a) Provision of Service. Inpatient services provided in an appropriately licensed psychiatric hospital participating in the Medicaid program shall be rendered as a part of the 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 23, 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.

(b) 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 2. Condition of Eligibility. An appropriately accredited psychiatric hospital desiring to participate in the Medicaid program shall be required as a condition of eligibility to participate in the Medicaid program when the hospital serves patients eligible for payments under the Medicaid 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 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 under any of the following:
(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 progression so that the services will no longer be needed, or, for an adult who is at least [physically 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 hospital under a KRS Chapter 202A commitment, the psychiatric hospital shall maintain the recipient at, or restore the recipient to, the greatest possible degree of health and independent functioning.

(3) For a recipient who was at least [individuals age] sixty-five (65) years of age and [residing] residing in a psychiatric hospital on December 28, 1994, the requirement for admission under a commitment pursuant to KRS Chapter 202A shall not apply.

(a) The recipient continues to reside in the same psychiatric hospital; and
(b) [Examine 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 hospital stay 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 shall be reevaluated at least once every thirty (30) days.
(b) Upon the expiration of the certified length of stay, the Medicaid Program shall not be responsible for the cost of care at a continuing stay unless the recipient or the recipient's authorized representative:
(1) Requests a continuing stay; and
2. [The department]
   a. The department approves the continuing stay; or
   b. For an enrollee, the managed care organization in which the enrollee is enrolled approves the continuing stay.

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 434.340 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 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
5.6. Contain a:
   a. Physician's certification statement documenting the medical necessity of the recipient's:
      (i) Admission to the psychiatric hospital;
      (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;
   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 record in a manner that complies with the records' use and disclosure requirements as established in or required by:
(a) The Health Insurance Portability and Accountability Act;
(b) 42 U.S.C. 1320d-2 to 1320d-6; and
(c) 42 U.S.C. 290ee-3; and
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 in 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 11, 2015)

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.

(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 services 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

756

(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 established in this subsection:
(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; or
(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; or
(c) Psychological testing provided by:
   1. A licensed psychologist;
   2. A licensed psychological practitioner;
   3. A certified psychologist with autonomous functioning;
   4. A licensed professional art therapist;
   5. A licensed marriage and family therapist; or
(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; or

(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:
   a. Reduce symptoms or harm; or
   b. Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;
6. Involve all services and supports necessary to provide:
   a. Integrated crisis prevention;
   b. Assessment and disposition;
   c. Intervention;
   d. Continuity of care recommendations; and
   e. Follow-up services; 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; and
      (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;
   d. (i) 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 abuse 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;
      (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;

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; 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 ongoing 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

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;

   (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;

b. 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

(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)(i)(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:

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 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.


(a) A health record shall:
   (i) 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;
         (i) A chemical dependency treatment center’s name; and
         (ii) The physical health provider’s name and address;
         (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;
      2. Crisis intervention;
      3. A complete history including mental status and previous treatment;
      4. An identification sheet;
      5. A consent for treatment sheet that is a
         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. The individual who
               (i) Where the individual is receiving treatment for the physical health diagnosis; and
               (ii) The physical health provider’s name; and
               (iii) 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.
         4. The department shall not reimburse for the same 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. 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. The individual who
         (i) Where the individual is receiving treatment for the physical health diagnosis; and
         (ii) The physical health provider’s name; and
         (iii) 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;
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.

(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:

(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:

(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 or the managed care organization, if applicable.

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 shall attest to by the chemical dependency treatment center's staff 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; and

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 KRS 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 KRS 907 KAR 17.010.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LAC: July 9, 2015 at 11 a.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, August 11, 2015)

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


NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.780(3) authorize the Hart[State] Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. KRS 210.795(3) requires the cabinet[Department] of Health and Family Services in concert with the Hart[State] Supported Living Council to promulgate administrative regulations to establish the methods of awarding Hart-Supported Living[Program] grants, monitoring the quality of service delivery, and providing for administrative appeals of decisions. This administrative regulation establishes[the] the Hart-Supported Living grant program application and award procedures, the standards to monitor the quality of service delivery, and the appellate procedure.

Section 1. Definitions. (1) “Adaptive and therapeutic equipment” means an item recommended by a physician, advanced practice registered nurse[practitioner], or therapist that is necessary for which promotes the recipient’s independent functioning and communication.

(2) “Applicant” means a person who may be[is] eligible for a Hart-Supported Living grant[grant program] and submits a completed DAIL-HSL-01 Application[application] to the regional Hart-Supported Living grant program coordinator[employed by the mental health and mental retardation board located in the region where the applicant resides to reside] by the deadline established by Section 3 of this administrative regulation[the application].

(3) “Application” means a DAIL-HSL-01 Application that[is] which shall a written request for supported living services which must[be] completed and submitted in accordance with Section 3 of this administrative regulation to the regional[department] Hart-Supported Living grant program coordinator[regional Hart-Supported living coordinator].

(4) “Budget narrative” means a justification and explanation of the amount requested in each budget category.

(5) “Community resource developer” means an employee of a recipient[person] who coordinates and assists a recipient to:

(a) Participate in the community with persons who are members of the general citizenry; and

(b) Learn and enhance skills and competencies in living in the community[by developing friendships, opportunities, and networks in the community on an individualized basis].

(6)(5) “Council” means the Hart[State] Supported Living [grant program] Council that oversees the Hart-Supported Living grant program as described by KRS 210.775 and 210.780.

(7)(6) “Department” or “DAIL” means the Department for Aging and Independent Living[Program] Mental Health and Mental Retardation Services.

(8)(7) “Duplication of service” means[are] a support or service received through the Hart-Supported Living grant program which an individual is eligible entitled to receive from another agency or program and is offered or available at the same time.

(9)(8) “Eligibility criteria” means the financial eligibility criteria established in:

(a) Section 2 of this administrative regulation; and

(b) (the eligibility criteria in) KRS 210.790.

(10) “Extraneous out of pocket expenses” means medical expenses of the recipient or applicant not covered by insurance including:

(a) Co-pay;

(b) Deductibles;

(c) Prescriptions;

(d) Premiums for medical insurance;

(e) Other medical, dental, or vision cost incurred as a result of medically necessary treatments or procedures; or

(f) Other services or supports related to the person[individual’s] disability.

(11) “Family” means the recipient’s parent, step[—]parent, adoptive parent, foster parent, grandparent, sibling, spouse, or legal guardian.

(12) “Family responsibility” means:

(a) Activities or provisions that a family performs naturally;

(b) Until the recipient reaches eighteen (18) years of age including:

1. Educational activities;

2. Housing;

3. Food;

4. Clothing;

5. Child care; and

6. Medical care [and/or];

(b) Personal care activities or provisions that a family performs naturally until the recipient reaches twelve (12) years of age [Until a recipient reaches twelve (12) years of age] personal care services shall not be paid or reimbursed by the Hart-Supported Living grant program.


(14) “Hart-Supported Living grant” means an award of funds for a fiscal year to a recipient and is defined by KRS 210.770(5) and (6).

(15) “Hart-Supported Living grant program” or “HSL” is defined by KRS 210.770(5) and (6).

(16)(14) “Hart-Supported Living plan” means the DAIL-HSL-02 Plan document developed with the recipient to account for the services to be provided and the costs.

(17)(16) “Hart-Supported Living plan amendment” means the DAIL-HSL-03 Plan Amendment document that is a written request for change in a Hart-supported living plan in the same fiscal year.

(18)(17) “Hart-Supported Living services” means services that are:

(a) Provided to a person[an individual] with a disability; and

(b) Directed to the recipient toward integrated community living and include:

1. A community resource developer:

(a) As authorized by KRS 210.770(8)(a); and

(b) Who coordinates and assists a recipient to meet requirements pursuant to KRS 210.770(5)(a)-(e); and

(c) Who ensures compliance with KRS 210.770(6);

2. Homemaker services:

(a) As authorized by KRS 210.770(8)(b); and

(b) That include:
(i) Cooking;
(ii) Cleaning;
(iii) Shopping;
(iv) Laundry; or
(v) Housekeeping;
3. Personal care services:
   a. As authorized by KRS 205.900(3); or
   b. For recipients twelve (12) years of age or older, as authorized by Pursuant to KRS 210.770(8)(c);
4. In-home training and home management assistance:
   a. As authorized by KRS 210.770(8)(d); and
   b. That include services to individuals over the age of twelve (12) to assist with one-on-one instruction in the home, including:
      (i) Property maintenance;
      (ii) Financial planning;
      (iii) Housekeeping such as laundering, meal preparation, vacuuming, storing purchased items, washing dishes, and changing bed linens; and
   (iv) Shopping;
   5. Start-up grants:
      a. As authorized by KRS 210.770(8)(e); and
      b. That include a grant for one (1) time expenses if the expenses support the recipient’s independent living and are not to exceed one (1) time expenses for supporting independent living limited to:
         (i) A security deposit;
         (ii) Utility deposits; or
         (iii) Purchases of furniture, appliances, and equipment up to $2,000;
6. Transportation:
   a. As authorized by KRS 210.770(8)(f); and
   b. That includes [or] mileage reimbursement [if it is][that may be requested] for a person or provider who transports the recipient to work or community activities that are not customarily a family responsibility; and
2. Does not [not to] exceed the state reimbursement rate;
7. Home modifications that:
   a. Are authorized by KRS 210.770(8)(g);
   b. Include:
      (i) An architectural change;
      (ii) A ramp; and
      (iii) Widening of doors;
   c. Do not exceed the $45,000 per recipient lifetime limit;
8. Adaptive and therapeutic equipment:
   a. As authorized by KRS 210.770(8)(h); and
   b. That includes an item which promotes the recipient’s independent functioning and is recommended by a:
      (i) Physician;
      (ii) Physician assistant;
      (iii) Advanced practice registered nurse/practitioner; or
      (iv) Therapist; and
(18) “Operating agency” means the department or its designee that administers Hart-Supported Living.
(20)(18) “Person with a disability” is defined by KRS 210.770(2).
(21)(19) “Primary residence” means a dwelling where the recipient permanently resides and is owned or leased by the recipient or recipient’s family as documented on the deed or lease agreement.
(22)(20)(11) “Home modifications” means an architectural change, ramp, widening of doors, or other adaptation which need to be made to the recipient’s place of residence to accommodate that person’s disability.
(12) “Homemaker services” means cooking, cleaning, shopping, laundry, housekeeping, and practical assistance in maintaining the recipient’s household.
(13) “Disability” means “mental impairment” as defined by KRS 210.770(1) and “physical impairment” as defined by KRS 210.770(3).
(14) “One-time support” means a nonrenewable grant for start-up costs, home modifications, assistive technology, or other support awarded for no longer than one fiscal year.
(15) “Ongoing supports” means a renewable grant for supports or services which will likely be required on a continuing basis.
(16) “Personal care services” means assistance with feeding, bathing, dressing, transferring, turning, positioning, activities of daily living, and if necessary, ambulation and emergency procedures.
(17) "Recipient" means a person who has applied and been approved for a Hart-Supported Living grant.
(23)(21) “Recoupment” means a return of funds for any payment that was made in an incorrect amount including overpayments and underpayments under statutory, contractual, administrative, or other legally applicable requirements.
(24)(22)(18) “Regional Hart-Supported Living grant program coordinator” means a person or entity designated by the DAIL who is responsible for fiscal and programmatic oversight of Hart-Supported Living grants [funds] and plans.
(25)(23)(19) “Request for informal dispute resolution [reconsideration]” means the process to be followed if a recipient disagrees with a decision made by the regional supported living coordinator, review team, or council by the regional supported living coordinator, review team, or council.
(26)(24)(20) “Review team” means a team designated by the department to perform the functions established and Council to review applications, make funding recommendations, and review requests for amendments from recipients as described in Section 5(8) of this administrative regulation. [21] “Start-up grants” means an award of funds to a recipient for one (1) time expenses limited to a security deposit, down payment not to exceed ten (10) percent of the purchase price, closing costs for a home, purchase of furniture, home furnishings, or equipment.
(22) “Substantial limitation of a major life activity” means as stated at KRS 210.770(5).
(23) “Supported living plan” means the document developed between the regional supported living coordinator and the recipient to account for the services to be provided and funds awarded as a Hart-supported living grant.
(24) “Supported living plan amendment” means a written, documented change in a supported living plan in the same fiscal year.
(25) “Transportation” means a service or mileage reimbursement for a person or provider who transports the recipient to work or community activities.

Section 2. Eligibility [State Supported Living Council Operating Procedures]: (1) Eligibility shall be determined in accordance with KRS 210.790(1).
(2) Upon the effective date of this administrative regulation, an applicant who is eligible for services through Medicaid or a Medicaid Waiver shall not be eligible for on-going services through a Hart-Supported Living grant unless the applicant is:
   a. Considered inappropriate for participant directed services due to:
      1. An inability to manage his own services; and
      2. A lack of availability of a person to act as his representative; or
   b. Unable to access the Medicaid program though a traditional provider.
(3) Medicaid eligible individuals requesting services that are not available or exceed program limits through Medicaid may apply for a Hart-Supported Living grant for those services not covered through Medicaid.
(4) Applicants shall submit a copy of the following for each member of the applicant’s household:
   a. The most recent year’s income tax return disclosing the adjusted gross income;
   b. The past three (3) months pay stubs; or
   c. Other verification of income for the past year.
(5) An individual receiving Social Security Insurance shall be considered a member of one (1).
(6) Applicants with an annual household adjusted gross
income at or below 300 percent of the federal poverty guidelines shall be considered an eligible applicant.

(7) Applicants with a household adjusted gross income above 300 percent of the federal poverty guidelines shall not be considered an eligible applicant unless the deduction of allowable extraordinary out of pocket expenses adjusts the household income to 300 percent of the federal poverty guidelines or lower.

(8) Recipients of a Hart-Supported Living grant prior to the effective date of this administrative regulation shall meet the requirements of this section by July 1, 2018.

(9) An individual shall be limited to one (1) startup grant. A State Supported Living Council member shall:

(a) Adhere to applicable laws and regulations concerning confidentiality;
(b) Disclose any relationship to any person receiving Hart supported living services, including themselves; and
(c) Adhere to the bylaws. If a member fails to act in accordance with the bylaws, the chair of the State Supported Living Council shall recommend the dismissal of that member to the governor.

(2) A State Supported Living Council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:
1. Personal;
2. Professional; or
3. Financial;
(b) Be physically present in a meeting or portion of a meeting in which the matter with respect to which a conflict of interest exists is discussed or voted on; and
(c) Assist another individual, regardless of where the person resides, to complete an application for supported living services, except as provided in subsection (3) of this section.

(3) A State Supported Living Council member may assist in the completion of an application for Hart-supported living services for himself, if eligible, or an eligible family member.

Section 3, Applicant Responsibilities. (1) To be considered for a Hart-Supported Living grant, the applicant shall submit a completed DAIL-HSL-01 or DAIL-HSL-04 Application on or before the annual deadline to the regional Hart-Supported Living grant program coordinator where the applicant resides. The application shall be submitted:

(a) On the current Hart supported living application with all required sections completed; and
(b) by the annual deadline of:
1. (a) February 1 for all on-going recipients submitting a DAIL-HSL-04 Request For Renewal
2. April 1 for new applicants on-going recipients requesting a new item or service submitting a DAIL-HSL-01 Application.

(2) The DAIL-HSL-01 or DAIL-HSL-04 Application shall be submitted:

(a) With all sections and attachments completed; and
(b) Via:
1. The US postal service;
2. Hand delivered to the HSL staff office; or
3. Electronically through email or website submission.

(3) An applicant shall disclose any relationship with:

(a) A person employed by the contract agency;
(b) The regional Hart Supported-Living coordinator;
(c) A council member; or
(d) A department staff member.

(4) A Hart-Supported Living grant application shall not be used or approved to pay for the following:

(a) Rent;
(b) Payment of a recipient’s or employee’s insurance premium regardless of insurance type;
(c) Supplementation of wages for staff in other publicly-funded programs;
(d) Modifications costing over $2,500 to rental property;
(e) Modifications of rental property without written permission from the property owner;

(f) A home improvement not related to a person’s disability;
(g) Rental of a vehicle for more than thirty (30) days in a fiscal year;
(h) Purchase of a vehicle;
(i) Supports or services for individuals in accordance with the Americans with Disabilities Act (ADA) of 1990;
(j) Tuition and associated costs to any educational institution;
(k) Transportation, costs, or fees for a program or activity in which the last two (2) thirty (30) days of that fiscal year a majority of participants are persons with a disability as defined by the Americans with Disabilities Act (ADA) of 1990;
(l) Furniture not related to a start-up grant;
(m) Utility bills including:
1. Mobile phones;
2. Land line phones;
3. Internet access;
4. Cable;
5. Satellite dish;
6. Gas;
7. Electric;
8. Water;
9. Sewer; or
10. Other home related costs that may be considered utility and ongoing;
(n) Vacations;
(o) Camps that are segregated;
(p) Payment of medical treatments including:
1. Medical costs;
2. Prescriptions;
3. Vitamins and supplements;
4. Nutritional supplements; or
5. Medical supplies;
(q) Groceries, meals, or dining out;
(r) Fees and expenses for anyone other than the recipient and one (1) attendant; or
(s) Studies or research projects.

(5) Community activity fees shall:

(a) Be limited to pay for the recipient and one (1) attendant to accompany the recipient to an activity that promotes participation in the community with members of the general citizenry;
(b) Not be provided for activities that are a family responsibility; and
(c) Not exceed $750 per grant year per recipient.

(6) Community activity fees, membership fees, and services funded through a Hart-Supported Living grant shall be provided and purchased in Kentucky unless they are not available in Kentucky.

(7) Support or service which is duplicative of a support or service which is obtainable from another program for which the individual qualifies;

(8) Furniture or home furnishings not related to a start-up grant or a person’s disability.

Section 4. Eligibility. An applicant must meet the eligibility requirements set forth in KRS 210.790.

Section 5. Application Evaluation and Funding Criteria. (1) The following criteria shall be used by the [review team shall] recommend funding for a Hart-Supported Living grant based on:

(a) Be received on or before the due date;
(b) Be filled out in its entirety;
(c) Be received on or before the due date;
(d) Be filled out in its entirety;
(c) Clearly identify the applicant's need for services requested;
(d) Clearly identify and justify the cost for requested services;
(e) Clearly identify how the services will be provided;
(f) Clearly identify who will provide the services;
(g) Include a budget sheet and budget narrative for the funding requested for each service and provider;
(h) Identify personal resources that will be utilized to provide identified services; and
(i) Adhere to the core principles and definitions of the Hart-Supported Living grant program in accordance with KRS 210.770(5) and (6) and 210.795.

(2) Funding for the application shall be dependent upon:
(a) Meeting the eligibility criteria established in Section 2 of this administrative regulation;
(b) Completeness;
(c) Submission on or before the deadline;
(d) Evaluation by the review team; and
(e) Availability of funding.

(3) Once the allocation of funds have been obligated to applications based on the review criteria, other applications shall not be approved for funding unless additional funding becomes available

(a) Adherence to principles of the Hart-Supported Living Program as shown by the following factors:
   (a) The ability of the applicant to exercise choice and autonomy in the supported living arrangement;
   (b) The involvement of people, in addition to the applicant and paid staff, who are committed to supporting the arrangement; and
   (c) The applicant's commitment to be present and participate in family and community activities.

(b) Potential for success as shown by the following factors:
   (a) The applicant has clearly indicated the reason for requesting funds and what he will do if granted the funds;
   (b) The applicant has identified a place to live; and
   (c) Additional resources available to the applicant have been identified that may include:
      1. Family;
      2. Friend; or
      3. Another service provider who can support the situation.

(c) The application indicates that the applicant is planning for his future.

(d) Need as shown by the following factors:
   (a) Services have been designed around the specific needs of the applicant;
   (b) The applicant or his family is experiencing a crisis situation; and
   (c) The applicant's multiple disabilities create barriers to developing and sustaining supports.

(e) Accountability as shown by the following factors:
   (a) The applicant has identified a prospective service provider;
   (b) The capability of the applicant, and the people supporting the applicant, to manage the resources and arrange for the requested services; and
   (c) The applicant has demonstrated a reasonable effort to secure funds from other sources, if appropriate.

(f) Overall purpose of the application as shown by whether the supported living resources will be used to promote and improve a positive quality of life for the applicant.

Section 5.[2] Review Teams. (1) A review team shall:
(a) Evaluate applications in accordance with the criteria in Section 4(5) of this administrative regulation;
(b) Make[funding] recommendations for applications to be funded in accordance with subsection (2) of this section[based on the review team recommendation] for each fiscal year, not to exceed regional allocations; and
(c) Review requests for plan amendments utilizing the DAIL-HSL-03(02) Plan Amendment;
(d) Not authorize a plan amendment to increase the grant award; and
(e) Reallocate grant awards that are underspent to fund individuals in the following priority order:
   1. Applicants approved through the informal dispute or appeals process for the current fiscal year or, if no funding is available, these individuals shall be the first funded in the next fiscal year; and
   2. Applicants in the current fiscal year based on priority order according to subsection (1)(a-d) and (2)(a-b) of this section that funding was not available prior to the reallocation of grant awards.

(2) Funding recommendations shall be made in the following order:
(a) Current recipients requesting the same amount or less for on-going supports;
(b) Current recipients requesting additional funding in order to ensure the continuation of their current plan. Additional funding may be granted for the following:
   1. An increase in the pay rate of a provider for services currently in the plan;
   2. An increase in employer taxes for services currently in the plan;
   3. An increase in worker's compensation rates; or
   4. Payment to a provider to compute required employer taxes and withholdings;
(c) Applicants denied funding from the previous fiscal year and approved for funding by the informal dispute resolution[reconsideration] or administrative hearing process as outlined in Section 14[Sections 11 and 12] of this administrative regulation; and
(d) New applicants and current recipients requesting additions to their plans.

(3) Multiple[A] review teams may be established based upon the number of applications received annually and[and] the agency providing the applicant to be present and participate in family and community activities.

Section 6.[7] Recipient Responsibilities. (1) A recipient of a Hart-Supported Living grant shall:
(a) Meet the eligibility requirements established in Section 2 of this administrative regulation; and
(b) Participate in the development of a DAIL-HSL-02 Plan[supported living plan] with the regional Hart-Supported Living grant program coordinator;

(c) Adhere to the Hart-Supported Living plan and request a plan amendment for a necessary(desired) change[and]
(d) Negotiate the grant funded services to be provided by:
   1. A service providing agency; or
   2. An individual who provides services, as an employee or independent contractor; and
   (e) Be responsible for the recoupment of funds when used for any purpose other than the approved plan or approved amended plan.

(2) A recipient of a Hart-Supported Living grant who is an employer shall:
(a) Be responsible for the computation, payment, and reporting of employee payroll, withholdings, workers' compensation, unemployment, and taxes;
(b) Establish terms of employment for an employee[and];
   1. Include time, duties, and responsibilities; and
   2. Be[This shall be] in the form of a signed agreement; and
(c) Establish terms for an independent contractor[contractor] to include:
   1. Proof of licensure or certification and insurance; and

766
3. [This shall be in the form of a] signed agreement.

(3) A recipient of a Hart-Supported Living grant shall not sell or donate equipment or another item purchased with Hart-Supported Living grant funds without the written consent of the council.

(4) A recipient of a Hart-Supported Living grant shall comply with standards as set forth in KRS 210.795.

(5) A recipient shall immediately notify the regional Hart-Supported Living coordinator upon the receipt of additional supports or services.

(6) A recipient shall submit:
   (a) Documentation with a request for payment that shows a support or service approved on a DAIL-HSL-02 Plan has been provided;
   (b) A timesheet that shall be signed by an employee and employer.

(7) A recipient of grant funds shall submit an application to request an increase of services or continued funding by April 1 to be considered with all applicants for a Hart-Supported Living grant for funding for the fiscal year beginning July 1.

(8) Recipients of grant funding prior to the effective date of this administrative regulation shall:
   (a) Receive priority funding for existing services listed on the individuals Hart-Supported Living plan, if the application is complete and submitted in compliance with Section 3 of this administrative regulation; and
   (b) Not receive priority funding for:
      1. New services;
      2. Expanded services; or
      3. Requesting additional funding for existing services.

Section 7. Recipient’s Employee Responsibilities. (1) An employee shall:
   (a) Be selected by the recipient;
   (b) Be eighteen (18) years of age or older;
   (c) Enter into and comply with the written agreement for terms of work required by the recipient’s DAIL-HSL-02 Plan or DAIL-HSL-03 Plan Amendment;
   (d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;
   (e) Be able to communicate effectively with the recipient, recipient’s representative, or family;
   (f) Be able to understand and carry out instructions;
   (g) Keep records as required by the recipient;
   (h) Report to work as scheduled;
   (i) Maintain the privacy and confidentiality of the recipient;
   (j) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 and on the needs of the recipient;
   (k) Maintain and submit timesheets documenting hours worked and services provided;
   (l) Provide proof of the following background checks, completed no more than sixty (60) days prior to hire and submitted prior to the first day of employment:
      1. A criminal background check from the Administrative Office of the Courts or Justice and Public Safety Cabinet that shows the employee has not and does not have a plea of guilty to or been convicted of:
         a. Committing a sex crime or violent crime as defined in KRS 17.165(1)-(3); and
      2. A check of the nurse aid abuse registry maintained in accordance with 906 KAR 1:100 that shows the employee was not and is not bound by the registry;
      3. A check of the central registry maintained in accordance with 922 KAR 1:470 that shows the employee was not for a check and not bound by the registry;
      4. A check of the central registry maintained in accordance with 922 KAR 5:120 that shows the employee was not and is not bound by the registry;

(m) Notify the regional Hart Supported-Living coordinator of conditions which seriously threaten the health or safety of the recipient or employee.

(2) An individual shall not be hired as an employee if the individual:
   (a) Has not submitted proof of the background check specified in subsection (1)(a), that shows the employee was not and does not have a plea of guilty to or been convicted of:
      1. A sex crime or violent crime as defined in KRS 17.165 (1)-(3); and
   (b) Has not been convicted of a felony offense related to theft, abuse of a person, or adult protective services caregiver misconduct.

(3) The department shall maintain in accordance with 922 KAR 1:470 that shows the employee was not and does not have a plea of guilty to or been convicted of:
   (a) A sexual offense or conviction; and
   (b) A check of the Central Registry, Nurse Aid Abuse Registry, or Adult Protective Services Caregiver Misconduct Registry.

Section 8. Operating Agency Responsibilities. The operating agency for Hart-Supported Living grant program shall:

(1) Implement the Hart-Supported Living grant program in accordance with KRS 210.770, 210.790, and 210.795;

(2) Assume fiscal accountability for the state funds designated for the program;

(3) Provide necessary personnel within the operating agency office that shall:
   (a) Meet qualifications for the position held that include at a minimum:
      1. A bachelor’s degree in human services or a related field;
      2. One (1) year of experience working in a social service field; and
   (b) Not have a conflict of interest; and
   (c) Disclose any relationship with any applicant or recipient of a Hart-Supported Living grant to the department;

(4) Establish a cost center and record staff costs for administering the Hart-Supported Living grant Program;

(5) Maintain files and records for ten (10) years after the last date funding is no longer received as required by the DAIL records retention schedule that include:
   (a) Applications funded;
   (b) Applications that were not funded;
   (c) Names of recipients whose funding was terminated;
   (d) Names of currently-funded recipients;
   (e) Recipient plans;
   (f) Amendments to plans;
   (g) Financial records;
   (h) Recipient monitoring reports;
   (i) Issue payment of recoupment to DAIL if:
      1. The operating agency’s documentation is not sufficient to determine that HSL funds were used according to this administrative regulation;
      2. The recipient used his or her plan inappropriately; and
      3. Request the recouped funds back from the recipient.

(6) The department provides written approval to recoup the funds from the recipient.

Section 9. Council Responsibilities. (1) A council member shall:
   (a) Adhere to the:
      1. Cabinet’s confidentiality of records and reports requirements in accordance with KRS 194A.060; and
      2. Confidentiality requirements for an applicant’s or recipient’s health information pursuant to 45 C.F.R. 164.502 - 164.514;
   (b) Adhere to the council’s bylaws, KRS 210.770 through 210.795 ; and
   (c) Adhere to the council’s bylaws, statutes, and regulations.
If a council member fails to act in accordance with this section, the chair or any council member may:

(a) Call for a vote of the council to recommend the dismissal of the council member; and

(b) Upon a majority vote for dismissal, recommend to the governor that the member be dismissed.

(3) A council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;
2. Professional; or
3. Financial;

(b) Be physically present in a meeting or portion of a meeting during which the subject matter of the conflict of interest is discussed or voted on; or

(c) Assist another individual, regardless of where the person resides, to complete an application for Hart-Supported Living grant funds or services except as provided in subsection (4)(6) of this section.

(4) A council member may assist in the completion of an application for himself, if eligible, or an eligible family member.

(5) A council member shall be responsible to assist in the review of applications in accordance with Section 5 of this administrative regulation.

Section 8. Reduction of a Hart-supported Living Grant. (1) The grant shall be reduced by any amount received for a service which duplicates a support or service on the supported living plan.

(2) The grant shall be reduced if:

(a) The support does not comply with the principles and definition of a supported living program in KRS 210.770(5) and (6) and 210.795; or

(b) The recipient no longer needs a support or service in whole or in part.

Section 9. Termination of a Hart-supported Living Grant. A supported living grant shall be terminated if the recipient:

(1) Does not use the funds in accordance with the principles and definition of supported living in KRS 210.770, 210.795, and this administrative regulation;

(2) Does not comply with employer responsibilities if applicable;

(3) Takes up residence outside of Kentucky;

(4) Requests termination of the supported living grant; or

(5) Dies.

Section 10. Nonfunded Supported Living Applications. (1) Applications that will exceed the regional allocation of supported living funds shall not be approved unless funding for that application becomes available within the fiscal year for which the application was made.

(2) The council may recommend funding for an application when it is determined through the reconsideration process that the review team did not comply with Sections 5 and 6 of this administrative regulation.

Section 11. Reconsideration Process. (1) A recipient or applicant who disagrees with a decision by the regional Hart-supported living coordinator or review team may request reconsideration, in writing, or alternative format within thirty (30) days following the notification by the regional supported living coordinator of the decision. Reconsideration may be requested regarding:

(a) A supported living plan;

(b) A plan amendment;

(c) The reduction of a grant;

(d) The termination of a grant; or

(e) A nonfunded application.

(2) A request for reconsideration shall:

(a) Be submitted to the regional Hart-supported living coordinator for review by the council; and

(b) Contain the following information:

1. Name;
2. Address;
3. Telephone number;
4. A decision to be reconsidered;
5. A reason for a decision to be reconsidered;
6. Documentation supporting request for reconsideration; and
7. Signature of person requesting reconsideration.

(3) A meeting for reconsideration shall be scheduled and include:

(a) Three (3) members of the council, one (1) of whom shall be the chairman or his designee;

(b) The recipient or his designee;

(c) One (1) member of the review team; and

(d) The regional Hart-supported living coordinator.

(4) The meeting for reconsideration shall be conducted at a time and place convenient to the parties and may be conducted in person, by videoconference, or by telephone conference.

(5) The council shall make the final decision and issue a written response to the recipient with an explanation for the decision within thirty (30) days.

(6) If a recipient or applicant disagrees with the determination made by the council, the recipient may request an administrative hearing.

(7) No currently funded recipient shall have his grant reduced or terminated to fund a plan or grant approved through the reconsideration process.

Section 12. Request for Administrative Hearing. (1) An applicant or recipient who disagrees with the decision may request an administrative hearing within thirty (30) days of receipt of notification.

(2) The applicant or recipient requesting an administrative hearing shall:

(a) Submit a written request for an administrative hearing to the Commissioner of the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621; and

(b) Include with the request the same information required in Section 11(2)(b) of this administrative regulation.

(3) The administrative hearing process shall be in accordance with KRS Chapter 138B.

Section 13. Regional Hart-supported Living Coordinator Responsibilities. The regional Hart-supported living coordinator shall:

(1) Participate as required in review team responsibilities as outlined in Section 6(1) of this administrative regulation;

(2) Disseminate applications for the Hart-supported Living Program which include the evaluation criteria;

(3) Provide assistance in the completion of supported living applications upon request by an eligible applicant or individual on the applicant’s behalf;

(4) Receive supported living applications, document date received, send notice of receipt of application;

(5) Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6);

(6) Maintain a database of expenditures and activities of unfunded applicants and funded recipients for each fiscal year. Criteria for the database information shall be established by the council and the department;

(7) Notify all applicants of the status of their applications within fifteen (15) days of the completion of the initial funding recommendations, but no later than June 15 of each fiscal year;

(8) Upon recommendation for funding, meet with the recipient to finalize a supported living plan within thirty (30) days of the recommendation. Initial plans shall follow the funding recommendations and be specific to approved supports and services;

(9) Educate the recipient on their responsibilities as outlined in Section 7 of this administrative regulation;

(10) Arrange for payments for currently funded supported living plans that includes:

(a) Receiving bills or other documentation that a service has
Section 11. Regional Hart-Supported Living Grant Program Coordinator Responsibilities. The regional Hart-Supported Living grant program coordinator shall:

1. Disseminate applications for the Hart-Supported Living grant program that include the evaluation criteria.

2. Provide assistance in the completion of the DAIL-HSL-01 Application upon request by an eligible applicant or individual on the applicant’s behalf.

3. Receive the DAIL-HSL-01 Application, document the date received, and send notice of receipt of application to the applicant.

4. Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6).

5. Maintain a database by fiscal year of applicants and recipients that shall include the individual’s:
   (a) Name;
   (b) Address;
   (c) Phone Number;
   (d) Birth date;
   (e) County of residence;
   (f) Services or supports requested;
   (g) Cost of each service or support;
   (h) Contact person phone number; and
   (i) Amount of allocated funding.

6. Notify all applicants of the status of their applications:
   (a) By June 15 for the fiscal year beginning July 1; or
   (b) Within fifteen (15) days of the state budget allocation being received:

7. Within thirty (30) days of the recommendation for funding of an applicant, conduct a face-to-face visit to finalize the Hart-Supported Living grant program plan and budget.

8. Conduct a home visit to verify the need for home modifications;

9. Educate a recipient on the recipient’s responsibilities as outlined in Section 6 of this administrative regulation;

10. Approve payments for funded Hart-Supported Living plans by:
    (a) Receiving bills or other documentation that a service has been provided;
    (b) Verifying the service as a part of the established plan; and
    (c) Keeping a record of each payment;

11. Arrange for the billing and payment directly to a vendor for one (1) time expenditures or to an agency as requested by a grant recipient.

12. Ensure compliance with this administrative regulation and the successful implementation of the Hart-Supported Living plans through monitoring which shall include:

13. Conduct a home visit or site visit at the location where the services are received;

14. Visiting the home when home modifications are requested and completed;

15. Completing a monitoring report that shall be completed for each recipient as follows:

1. Within three (3) months of completion of the service for one (1) time services received by a recipient; and

2. Within the first three (3) months of the initiation of the Hart-Supported Living plan and annually thereafter for on-going services received by a recipient.

(c) Reports of monitoring visits shall be documented in a manner and format approved by the council.

(d) Monitoring reports shall be a permanent part of the recipient’s record.

(e) Attend trainings and meetings as required by the council; and

(f) Submit database information as outlined in this section to the Division of Mental Retardation Services.

Section 14. Contract Agency Responsibilities. The contract agency for Hart-Supported Living funds shall:

1. Implement the Hart-Supported Living program in accordance with KRS 210.770, 210.790, and 210.795.

2. Assume fiscal accountability for the state funds designated for the program.

3. Provide necessary personnel within the contract agency office.

4. Establish a cost center and record staff costs for administering the Hart-Supported Living Program.

5. Maintain files and records that include:
   (a) Applications;
   (b) Requests for continued funding;
   (c) Applications that were not funded retained for the length of time required by the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. 164.530, for seven (7) years after the fiscal year in which application was not funded;
   (d) Records regarding recipients whose funding was terminated retained for the length of time required by the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. 164.530, for seven (7) years or for seven (7) years past majority;
   (e) Currently funded recipients;
   (f) Recipient plans;
   (g) Amendments to plans; and
   (h) Financial records; and
   (i) Recipient monitoring reports.

Section 10. [45] Department Responsibilities. The Department shall:

1. In cooperation with the council, establish deadlines, budgets, and priorities for Hart-Supported Living grant program funds;

2. Maintain aggregate financial and programmatic data;

3. Advocate for program expansion;

4. Provide staff support, technical assistance, and training for the Hart-Supported Living Program; and

5. Issue recoupment notices to the provider agency if Hart-Supported Living grant program funds were not used in accordance with this administrative regulation; and

6. Not allow the provider agency to request the recouped funds back from the recipient unless the agency can demonstrate by compelling evidence that the recipient purposely used plan funding inappropriately.

7. Within thirty (30) days of the recommendation for funding of an applicant, conduct a face-to-face visit to finalize the Hart-Supported Living grant program plan and budget.

8. Conduct a home visit to verify the need for home modifications;

9. Educate a recipient on the recipient’s responsibilities as outlined in Section 6 of this administrative regulation;

10. Approve payments for funded Hart-Supported Living plans by:
    (a) Receiving bills or other documentation that a service has been provided;
    (b) Verifying the service as a part of the established plan; and
    (c) Keeping a record of each payment;

11. Arrange for the billing and payment directly to a vendor for one (1) time expenditures or to an agency as requested by a grant recipient.

12. Ensure compliance with this administrative regulation and the successful implementation of the Hart-Supported Living plans through monitoring which shall include:

13. Conduct a home visit or site visit at the location where the services are received;

14. Visiting the home when home modifications are requested and completed;

15. Completing a monitoring report that shall be completed for each recipient as follows:

1. Within three (3) months of completion of the service for one (1) time services received by a recipient; and

2. Within the first three (3) months of the initiation of the Hart-Supported Living plan and annually thereafter for on-going services received by a recipient.

(c) Reports of monitoring visits shall be documented in a manner and format approved by the council.

(d) Monitoring reports shall be a permanent part of the recipient’s record.

(e) Attend trainings and meetings as required by the council; and

(f) Submit database information as outlined in this section to the Division of Mental Retardation Services.

Section 14. Contract Agency Responsibilities. The contract agency for Hart-Supported Living funds shall:

1. Implement the Hart-Supported Living program in accordance with KRS 210.770, 210.790, and 210.795.

2. Assume fiscal accountability for the state funds designated for the program.

3. Provide necessary personnel within the contract agency office.

4. Establish a cost center and record staff costs for administering the Hart-Supported Living Program.

5. Maintain files and records that include:
   (a) Applications;
   (b) Requests for continued funding;
   (c) Applications that were not funded retained for the length of time required by the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. 164.530, for seven (7) years after the fiscal year in which application was not funded;
   (d) Records regarding recipients whose funding was terminated retained for the length of time required by the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. 164.530, for seven (7) years or for seven (7) years past majority;
   (e) Currently funded recipients;
   (f) Recipient plans;
   (g) Amendments to plans; and
   (h) Financial records; and
   (i) Recipient monitoring reports.

Section 10. [45] Department Responsibilities. The Department shall:

1. In cooperation with the council, establish deadlines, budgets, and priorities for Hart-Supported Living grant program funds;

2. Maintain aggregate financial and programmatic data;

3. Advocate for program expansion;

4. Provide staff support, technical assistance, and training for the Hart-Supported Living Program; and

5. Issue recoupment notices to the provider agency if Hart-Supported Living grant program funds were not used in accordance with this administrative regulation; and

6. Not allow the provider agency to request the recouped funds back from the recipient unless the agency can demonstrate by compelling evidence that the recipient purposely used plan funding inappropriately.
The regional Hart-Supported Living grant program coordinator shall recommend a reduction in Hart-Supported Living grant funding by the amount that duplicates a support or service on the Hart-Supported Living plan to the Hart-Supported Living council.

(2) The Hart-Supported Living grant shall be reduced if:
(a) The support does not comply with the principles and definition of the Hart-Supported Living grant program in KRS 210.770 through 210.795;
(b) The recipient no longer needs a support or service in whole or in part; or
(c) The recipient does not utilize funds in accordance with the approved DAIL-HSL-02 Plan.

Section 13. Termination of a Hart-Supported Living Plan. (1) The regional Hart-Supported Living grant program coordinator shall recommend to the council that a recipient’s grant be terminated if the recipient:
(a) Does not use the funds in accordance with the principles and definition of Hart-Supported Living found in KRS 210.770, 210.795, and this administrative regulation;
(b) Does not comply with employer responsibilities, if applicable;
(c) Takes up residence outside of Kentucky;
(d) Requests termination of the Hart-Supported Living grant;
(e) Does not utilize funds in accordance with the approved DAIL-HSL-02 Plan;
(f) Does not notify the Hart-Supported Living grant program coordinator upon receipt of additional supports or services as required in Section 6(5) of this administrative regulation; or
(g) Passes away.

(2) The regional Hart-Supported Living grant program coordinator shall recommend termination of the program if a council member or program staff is threatened or intimidated by a recipient’s:
(a) Caregiver;
(b) Family member; or
(c) Employee.

(3) A termination shall be appealable in accordance with Section 14 of this administrative regulation.

Section 14. Request for Informal Dispute Resolution or Administrative Hearing. (1) A recipient may request an informal dispute resolution
(2) A dispute resolution shall be limited to:
(a) The denial, reduction, or termination of a:
   1. Hart-Supported Living plan; or
   2. Hart-Supported Living plan amendment;
   3. The reduction of Hart-Supported Living grant program funding as requested in the plan; or
(c) The reduction or termination of Hart-Supported Living grant program funding, unless due to state budget cuts.

(3) A request for an informal dispute resolution shall:
(a) Be submitted to the department’s HSL program coordinator within thirty (30) days following the notification by the Hart-Supported Living grant program coordinator of a decision in subsection (2) of this section; and
(b) Contain the following information:
   1. Name, address, and telephone number of the recipient;
   2. Decision being disputed;
   3. Justification for the dispute;
   4. Documentation supporting the dispute; and
   5. Signature of person requesting the dispute resolution.
(4) The dispute resolution shall be heard by:
(a) Three (3) members of the council, one (1) of whom shall be the chairman or the chairman’s designee;
(b) One (1) member of the review team; and
(c) The Hart-Supported Living grant program coordinator.

(5) The recipient shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction, or termination of the grant.

(6) The dispute resolution team shall inform a recipient, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.

(7) A recipient dissatisfied with the result of the dispute resolution may appeal to the Division of Administrative Hearings of the Office of Communications and Administrative Review.

(8) The appeal shall be submitted:
(a) Within fifteen (15) business days from the date on the letter providing the decision of the dispute resolution team;
(b) In writing; and
(c) To the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(9) The department shall request the Division of Administrative Hearings of the Office of Communications and Administrative Review to conduct a hearing pursuant to KRS Chapter 13B.
Section 1. Definition. "Batch renewal" means the simultaneous renewal of multiple licenses held by a licensee for more than two premises.

Section 2. All licenses in Ballard, Breckinridge, Bullitt, Caldwell, Calloway, Carlisle, Christian, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Larue, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Ohio, Owen, Spencer, Trigg, Trimble, Union, and Webster Counties shall renew in the month of January.


Section 4.[2] All licenses in Anderson, Bourbon, Boyd, Bracken, Carroll, Carter, Franklin, Gallatin, Grant, Greenup, Henry, Lewis, Mason, Nicholas, Oldham, Pendleton, Pike, Robertson, Rowan, Scott, Shelby, Wolfe, and Woodford Counties shall renew in the month of June.

Section 5.[4] All licenses in Jefferson County shall renew in the month of October.

Section 6.[5] All licenses in Boone, Campbell, Fayette, and Kenton Counties shall renew in the month of November.

Section 7.[6] The license of a statewide or out-of-state licensee shall renew in December.

Section 8.[7] All batch renewals shall renew in August.

Section 9.[8] Unless a licensee notifies the department of its intent to renew premises licenses by batch[separately] as provided in Section 10[Section 1 through 5] of this administrative regulation, a licensee that holds multiple licenses[a group license] that cover multiple premises shall renew its licenses using the license expiration date based on the county of each premises[at the same time].

Section 10. A licensee that holds multiple licenses for more than two premises shall be permitted to renew the licenses by batch at the same time. A licensee who wants to renew premises by batch shall notify the department in writing. Upon written notification, if a licensee that holds a group license that covers multiple premises wants to renew the premise licenses separately, the licensee shall notify the board, in writing, of its intent to renew each premises separately. The licenses shall then be renewed in August[using the license expiration date based on the county of each premises], as provided in Section 8[Sections 1 through 5] of this administrative regulation.

Section 11. A licensee that elects to do batch renewal may return to separate monthly renewal by sending a letter to the department requesting the change[holds multiple licenses for more than two premises][more than one license][shall not be required to send a letter requesting that its licenses be renewed separately][or in a batch][unless the licensee wishes to change its current renewal schedule from batch-to-separate or from separate-to-batch].

Section 12. All small farm winery, microbrewery, and Class B Craft distiller's licensees shall submit required production reports with their renewal application forms. Small farm wineries shall submit copies of their federal Report of Wine Premises Operation, TTB F 5120.17, for time periods identified on renewal application forms. Microbreweries shall submit copies of their federal Brewer's Report of Operations, TTB F 5130.8, for time periods identified on renewal application forms. Class B Craft Distilleries shall submit copies of their federal Monthly Report of Production Operations, TTB F 511.40, for time periods identified on renewal application forms.

Section 13. The department may elect to not renew a license if the licensee exceeds a production limit for its license type or fails to meet food sales percentages required for its license type, or if renewal of the license would otherwise be contrary to law.

Section 14. If a licensee fails to renew its license prior to the expiration date, the department shall grant not more than one (1) extension which shall not exceed thirty (30) days from the original expiration date. The licensee shall not conduct any activity related to alcoholic beverages during the extension. A license not renewed during the thirty (30) day extension period shall not be renewed thereafter for any reason and the licensee shall reapply for a new license.
without having to reapply.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes as well as to codify department policy.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment continues the system of year-round license renewals and it will also assist the department in determining which licenses may or may not be renewed.

(d) How the amendment will assist in the effective administration of the statutes: The amendment continues the department’s distribution of license renewal throughout the calendar year, as required by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 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 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? The only government agency expected to be impacted by this regulation is the Department of Alcoholic Beverage Control.

(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 243.090 requires the department to establish a year-round system of license renewal.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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.

(4) How 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.

(5) Determine whether a substantial change to a health service was necessary or whether the amendment, if new, or by the change, if it is an amendment: The necessity of the amendment to this administrative regulation amendment.

(6) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(7) 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 Health Policy
(Amended After Comments)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130
STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2015-2017[2013-2015] State Health Plan shall be used to:
(1) Review a certificate of need application pursuant to KRS 216B.040; and
(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy, 275 East Main Street, 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC FRIEDLANDER, Acting Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 3 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.orne@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Diona Mullins

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2015-2017 State Health Plan which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of 216B.010-216B.130 by incorporating by reference the 2015-2017 State Health Plan, revised May 2015. The 2015-2017 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.0440(2)(a)2.a. KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

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

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

The amendment incorporates by reference the 2015 -2017 State Health Plan.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the 2015 -2017 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the 2015 -2017 State Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 115 certificate of need applications are filed annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities which submit certificate of need applications will be subject to the criteria set forth in the 2015-2017 State Health Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities which submit certificate of need applications will be subject to the revised criteria set forth in the 2015-2017 State Health Plan.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

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

Tiering: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed health care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.

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

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

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

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Kentucky Office of Health Benefit and Health Information Exchange

(Amended After Comments)


RELATES TO: KRS 194A.050(1), 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156
STATUTORY AUTHORITY: KRS 194A.050(1)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services,[Office of the] Kentucky Office of Health Benefit and Health Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan or a qualified stand-alone dental plan to be offered on the Kentucky Health Benefit Exchange, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Definitions. (1) "Accreditation" means an accrediting entity recognized by HHS has reviewed the local performance of the health insurer's health insurance plans and assigned a level of accreditation.

(2) "Actuarial value" is defined by 45 C.F.R. 156.20 [means the percentage of the total allowed costs of benefits paid by a health
plan].

(31)[(22)] “Affordable Care Act” or “ACA” means the Patient Protection and Affordable Care Act, Public Law 111-148, enacted March 23, 2010, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152, enacted March 30, 2010.

(41)[(23)] “Agent” is defined by KRS 304.9-020(1).

(51)[(24)] “Annual open enrollment period” is defined by 45 C.F.R. 155.410(e).

(61)[(25)] “Benefit year” means a calendar year for which a health plan provides coverage for health benefits.

(71)[(26)] “Cancellation” is defined by 45 C.F.R. 155.430(e).

(81)[(27)] “Catastrophic plan” means a health plan that is described in and meets the requirements of 45 C.F.R. 156.200(c)(2) and provides coverage:

(a) To an individual under twenty-one (21) years of age; or
(b) That does not restrict the age of the primary subscriber to an individual over twenty-one (21) years of age; and meets the requirements of 45 C.F.R. 156.200(c)(3).

(91)[(28)] “Consumer Operated and Oriented Plan” or “CO-OP” is defined by 45 C.F.R. 156.505 means a private, non-profit health insurance issuer established in Section 1322 of the Affordable Care Act, 42 U.S.C. 18042, that has a certificate of authority.

(101)[(29)] “Cost-sharing reduction” or “CSR” means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in an individual exchange or for an individual who is an Indian enrolled in a qualified health plan in an Individual exchange.

(111)[(30)] “Dental insurer” means an insurer defined by KRS 304.17C-010(4), which offers a stand-alone dental limited health service benefit plan for dental services.

(121)[(31)] “Department of Health and Human Services” or “HHS” means the U.S. Department of Health and Human Services.

(131)[(32)] “Department of Insurance” or “DOI” is defined by KRS 304.1-050(2).

(141)[(33)] “Enrollee” means an eligible individual enrolled in a qualified health plan or qualified stand-alone dental plan.

(151)[(34)] “Essential community provider” means either a:

(a) Provider defined by 45 C.F.R. 156.235(c)(1) that is determined and approved by HHS as an essential community provider for the Commonwealth of Kentucky; or
(b) Regional community services program for mental health or individuals with an intellectual disability established pursuant to KRS 210.370 through KRS 210.480, operating in Kentucky, and licensed pursuant to 902 KAR 20:091.

(161)[(35)] “Essential community provider category” means a provider as described in 45 C.F.R. 156.235(a)(2)(iii) [Chapter 7: Instructions for the Essential Community Providers Application Section, as incorporated by reference in this administrative regulation].

(171)[(36)] “Essential health benefits” or “EHB” means the essential health benefits package referenced in 45 C.F.R. 156.20(benefits as identified by 42 U.S.C. 18022) and approved by the Secretary of HHS for the Commonwealth of Kentucky.

(181)[(37)] “Health plan” is defined by 42 U.S.C. 18021(b)(1).

(191)[(38)] “Health plan form” or “form” means an application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement filed in accordance with 806 KAR 14:007.

(201)[(39)] “Indian” is defined by 25 U.S.C. 450b(d).

(211)[(40)] “Individual exchange” means the Kentucky Health Benefit Exchange that serves the individual health insurance market.

(221)[(41)] “Individual market” is defined by KRS 304.17A-005(26).

(231)[(42)] “Initial open enrollment period” means the period beginning October 1, 2013, and extending through March 31, 2014, during which a qualified individual or qualified employee may enroll in health coverage through an exchange for the 2014 benefit year.

(241)[(43)] “Issuer” is defined by 45 C.F.R. 144.103.

(251)[(44)] “Kentucky Health Benefit Exchange” or “KBHE” means the Kentucky state-based exchange[conditionally] approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or SADF[beginning January 1, 2014], that includes an:

(a) Individual exchange; and
(b) SHOP Small Business Health Options Program.

(261)[(45)] “Kentucky Office of Health Benefit and Health Information Exchange”, “KOHBHIE”, or “office” means the office created to administer the Kentucky Health Benefit Exchange.

(271)[(46)] “Market segment” means either small group or individual market.

(281)[(47)] “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; and
(b) Silver level with an actuarial value of seventy (70) percent; and
(c) Gold level with an actuarial value of eighty (80); and
(d) Platinum level with an actuarial value of ninety (90) percent.

(291)[(48)] “MUTUAL dental plan” means a health plan that is offered under a contract with the U.S. Office of Personnel Management in accordance with Section 1334 of the Affordable Care Act, 42 U.S.C. 18054.

(301)[(49)] “Office of the Kentucky Health Benefit Exchange” or “Office” means the office created to administer the Kentucky Health Benefit Exchange.

(311)[(50)] “Participating agent” means an agent who has been certified by the office to participate on the KBHE.

(321)[(51)] “Participation agreement” means an agreement between the office and the issuer to offer a QHP or qualified stand-alone dental plan on the KBHE.

(331)[(52)] “Pediatric dental essential health benefit” means a dental service to prevent disease and promote oral health, restore an oral structure to health and function, and treat an emergency condition provided to an individual under the age of twenty-one (21) years that meets the requirements of 45 C.F.R. 156.110(a)(10) and includes the benefits specified in 907 KAR 1:026.

(341)[(53)] “Plan management data template” means the data collection templates used to facilitate data submission through SERFF for certification of qualified health plan issuers[and qualified health plans][qualified stand-alone dental plan issuers, and qualified stand-alone dental plans as established in CMS Form Number CMS-10433, as amended.

(351)[(54)] “Premium” is defined by KRS 304.14-030.

(361)[(55)] “Provider network” is defined by KRS 304.17A-005(25).

(371)[(56)] “Qualified dental plan” means a dental plan certified by the Office that provides a limited scope of dental benefits as defined in 26 U.S.C. 9831(c)(2)(A); limited to a dental pediatric essential health benefit that complies with the requirements of 45 C.F.R. 156.110(a)(10).[27] “Qualified employee” means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(381)[(57)] “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.

(391)[(58)] “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.
"Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP or SADP in the individual market.

"Service area" means a geographical area in which an issuer may offer a QHP.

"SHOP" means a Small Business Health Options Program operated by the KHBE through which an employer may purchase coverage for its employees.

"Small group" is defined by KRS 304.17A-005(42) until superseded by 45 C.F.R. 155.20.

"Spending account fact sheet" means a document that provides details about a spending account. Flexible spending account or a health reimbursement account arrangement offered by the issuer as part of the benefits in a QHP.

"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. 9632(c)(2)(A), including a pediatric dental essential health benefit.

"Statement of dental coverage" means a written statement for providing information to consumers about an SADP's coverage, benefits, and cost-sharing.

"Summary of Benefits and Coverage" or "SBC" means a standard format, which complies with the requirements of 45 C.F.R. 147.200, created in accordance with 42 U.S.C. 300gg-15, for providing information to consumers about a health plan's coverage and benefits.

"System for Electronic Rate and Form Filing" or "SERFF" means an online system established and maintained by the National Association of Insurance Commissioners (NAIC) that enables an issuer to send and receive a SADP, and submit electronically to the National Association of Insurance Commissioners (NAIC) a nonbinding notice of intent to participate in the Exchange.

"Temporary" is defined by KRS 304.17A-005 as more than eight (8) fewer QHPs within a specified metal level of coverage within a market segment. For the purposes of the exchange, a QHP shall include the number of QHPs offered in a metal level, the office shall consider the same plan:

(a) Offered with dental benefits and offered without dental benefits as one (1) QHP; or

(b) Limited to the essential health benefits and offering benefits in excess of the essential health benefits as one (1) QHP.

No more than eight (8) fewer QHPs shall comply with the requirements established in subsection (1) of this section.

Section 2. QHP Issuer General Requirements. In order for an issuer to participate in the KHBE, the issuer shall:

(1) Hold a certificate of authority and be in good standing with the Kentucky Department of Insurance;

(2) Be authorized by the office to participate on the KHBE;

(3) For the first year of participation in a new market segment, by April 1 of each year, submit Form KHEB-1, Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year;

(4) Enter into a participation agreement with the office;

(5) Offer KHBE certified QHPs in the individual exchange or the SHOP exchange;

(6) Comply with benefit design standards as established in 45 C.F.R. 156.20;

(7) Provide coverage of:

(a) Essential health benefits; or

(b) If the stand-alone pediatric dental essential health benefit is offered in the KHBE in each county within Kentucky in accordance with 45 C.F.R. 155.1065, essential health benefits excluding pediatric dental essential health benefits;

(b) Submit to the office [implement and report on] a quality improvement strategy plan in compliance with 45 C.F.R. 156.200(b)(5) and 45 C.F.R. 156.1130[or strategies consistent with the standards of 42 U.S.C. 1831(i)];

(b) In the initial QHP certification process, submit an attestation to the office that the issuer shall comply with the quality requirements identified in 45 C.F.R. 156.200(b)(5) including:

1. Collection, disclosure, and report of information related to health care quality and outcomes in year two (2) of offering QHPs on the KHBE and annually thereafter; and

2. Implementation of an enrollee satisfaction survey in year two (2) of offering QHPs on the KHBE and annually thereafter;

(9) Comply with applicable standards described in 45 C.F.R. Part 153;

(10) For the individual exchange, offer at least a:

(a) QHP with a silver metal level of coverage;

(b) QHP with a gold metal level of coverage;

(c) Child-only plan; and

(d) Catastrophic plan;

(11) For the SHOP exchange, offer at least a:

(a) QHP with a silver metal level of coverage; and

(b) QHP with a gold metal level of coverage;

(12) For the individual and SHOP exchange, offer no more than eight (8) fewer QHPs within a specified metal level of coverage within a market segment. For the purposes of establishing the number of QHPs offered in a metal level, the office shall consider the same plan:

(a) Offered with dental benefits and offered without dental benefits as one (1) QHP; or

(b) Limited to the essential health benefits and offering benefits in excess of the essential health benefits as one (1) QHP.

(13) Not discriminate, with respect to a QHP, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation;

(14) Assure that the non-discrimination requirements in 42 U.S.C. 300gg-5 are met;

(15) If participating in the small group market, comply with KHBE processes, procedures, and requirements established in accordance with 42 C.F.R. 155.705 for the small group market and in accordance with 900 KAR 10:020;

(16) Allow a registered participating agent to enroll qualified individuals, qualified employers, and qualified employees on the Exchange, in accordance with the requirements of 900 KAR 10:050(a); Enroll individuals, employers, and employees in QHPs offered on the exchange;

(17) Enroll qualified individuals in a QHP in a manner that constitutes enrollment through the KHBE;

(18) Assist individuals in applying for advance payments of premium tax credit and cost sharing reductions;

(19) Submit a Statement of Dental Coverage, or "SBC";

(20) Have the option, beginning in plan year 2017, to offer QHPs to include benefits in excess of the essential health benefits provided the issuer also offers a corresponding QHP on the exchange at the same metal level that is limited to the essential health benefits.

Section 3. QHP Rate and Benefit Information. (1) A QHP issuer shall:

(a) Comply with the provisions of 45 C.F.R. 156.210 and KRS 304.17A-095(4); and

(b) Submit to DOI through the SERFF system:

1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;

2. Rate filings in compliance with KRS 304.17A-095 and applicable administrative regulations promulgated thereunder; and

3. Plan management data templates;

(c) Receive approval from DOI for a rate filing prior to implementation of the approved rate; and

(d) For a rate increase, post the justification prominently on the QHP issuer's Web site.

(2) A CO-OP, multi-state plan, and qualified stand-alone dental plan shall comply with the requirements established in subsection (1) of this section.
Section 4. QHP Certification and Recertification Timeframes.

(1) The office shall take final action on the request for certification no later than twenty-five (25) calendar days prior to the start of the annual open enrollment period September 30 for the following plan year; or (b) Recertification of QHPs no later than September 15 for the following plan year.

(2) A QHP not certified by twenty-five (25) calendar days prior to the start of the annual open enrollment period September 30 or recertified by September 15 shall not be offered on the exchange at any time during the following calendar year.

Section 5. Transparency in Coverage. (1) A QHP issuer shall provide the following information to the office in accordance with the standards established by subsection (2) of this section: (a) Data as identified in 45 C.F.R. 155.1050(a) and 156.220 claims payment policies and practices; (b) Periodic financial disclosure; (c) Data on enrollment; (d) Data on disenrollment; (e) Data on the number of denied claims; (f) Data on rating practices; (g) SBC written in English for each cost sharing reduction level in a QHP with the exception of zero cost sharing level for an Indian; (c) SBC written in Spanish for each cost sharing reduction level in a QHP with the exception of zero cost sharing level for an Indian; with verification that the Spanish language version is a certified translation of the English version; (d) If the plan includes a health reimbursement account, flexible spending account, or health savings account, a spending account fact sheet written in English for each cost sharing reduction level in a QHP consistent with the requirements in KRS 304.12-020 and 806 KAR 12:010; (e) If the plan includes a health reimbursement account, flexible spending account, or health savings account, a spending account fact sheet written in Spanish for each cost sharing reduction level in a QHP with verification that the Spanish language version is a certified translation of the English version; (f) [ ] Information on cost-sharing and payments for out-of-network coverage; and (g) [ ] Information on enrollee rights under Title I of the Affordable Care Act.

(2) A QHP issuer shall: (a) Submit, in an accurate and timely manner, to be determined by HHS, the information described in subsection (1)(a), (f), and (g) of this section to the KHBE, HHS, and DOI; [and] (b) Provide public access to the information described in subsection (1)(c) of this section; (c) Provide the items described in subsection (1)(b) and (d) of this section to KHBE within five (5) calendar days of the date DOI has approved rate and form filings in SERFF; and (d) Provide the items described in subsection (1)(c) and (e) of this section to KHBE within fourteen (14) calendar days of the date KHBE has approved the items described in paragraph (c) of this subsection.

(3) A QHP issuer shall ensure that the information submitted under subsection (1) of this section is provided in plain language as the term is defined by 45 C.F.R. 155.20.

(4)(a) A QHP issuer shall make available, in a timely manner, information about the amount of enrollee cost-sharing under the enrollee’s plan or coverage relating to provision of a specific item or service by a participating provider upon the request of the enrollee through: 1. An Internet Web site; and 2. Other means if the enrollee does not have access to the Internet. (b) The information shall be made available to an enrollee through: 1. An Internet Web site; and 2. Other means if the enrollee does not have access to the Internet.

(5) A QHP issuer may provide the following information to KHBE in accordance with the standards established by subsection 2 of this section: (a) SBC written in English for each zero cost sharing level for an Indian in a QHP; and (b) SBC written in Spanish for each zero cost sharing level for an Indian in a QHP, with verification that the Spanish language version is a certified translation of the English version.

Section 6. Marketing and Benefit Design of QHPs. A QHP issuer and its officials, employees, agents, and representatives shall: (1) Comply with issuer marketing practices provided under KRS Chapter 304.17A and 806 KAR 12.010; and (2) Not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with complex health care needs in QHPs.

Section 7. Network Adequacy Standards. (1) A QHP issuer shall ensure that the provider network of a QHP: (a) Is available to all enrollees within the QHP service area; and (b) Includes essential community providers in the QHP provider network in accordance with 45 C.F.R. 156.235 and meets the network adequacy standards for essential community providers as established in Section 8 of this administrative regulation; (c) Maintains a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be provided in a timely manner; [and] (d) Meets the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515; and (e) If not a managed care plan, meets the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515.

(2) A QHP issuer shall make its provider directory for a QHP available: (a) To the KHBE for online publication; (b) To potential enrollees in hard copy upon request; and (c) In accordance with KRS 304.17A-590.

(3) A QHP issuer shall identify in the QHP provider directory a provider that is not accepting new patients.

Section 8. Network Adequacy Standards for Essential Community Providers. A QHP issuer shall: (1) (a) Demonstrate a provider network, which includes at least the minimum twenty (20%) percent of available essential community providers in the QHP service area participate in the issuer’s [sic] provider network as required by 45 C.F.R. 156.235(a)(2)(i); and (b) Offer a contract to: 1. At least one (1) essential community provider in each essential community provider category in each county in the service area where an essential community provider in that category is available; and 2. Available Indian providers in the service area [using the Model Indian Addendum as developed by The Centers for Medicare and Medicaid Services and identified in Supplementary Response: Inclusion of Essential Community Providers, incorporated by reference in this administrative regulation]; or (2) If unable to comply with the requirements in subsection (1) of this section, (a) Demonstrate a provider network which includes at least ten (10) percent of available essential community providers in the QHP service area; and (b) Submit a supplementary response as identified in Supplementary Response: Inclusion of Essential Community Providers as incorporated by reference in this administrative regulation.

Section 9. Health Plan Applications and Notices. A QHP issuer shall provide an application, including the streamlined application designated by the office, and notices to enrollees pursuant to standards described in 45 C.F.R. 155.230.

Section 10. Consistency of Premium Rates Inside and Outside the KHBE for the Same QHP. A QHP issuer shall charge the same premium rate without regard to whether the plan is offered: (1) Through the KHBE; (2) By an issuer outside the KHBE; or (3) Through a participating agent.
Section 11. Enrollment Periods for Qualified Individuals. (1) A QHP issuer participating in the individual market shall accept an enrollment during the open enrollment period or special enrollment period for a qualified individual participating in the individual market with effective dates of coverage established by the office in accordance with 45 C.F.R. 155.410(c)(1) and (f) and 45 C.F.R 155.420(b).
   (a) Enroll a qualified individual during the initial and annual open enrollment periods described in 45 C.F.R. 155.410(b) and (e) and comply with the effective dates of coverage established by the office in accordance with 45 C.F.R. 155.410(c)(1) and (f) and (b).
   (b) Make available, at a minimum, special enrollment periods described in 45 C.F.R. 155.420(d) for QHPs and comply with the effective dates of coverage established by the KHBE in accordance with 45 C.F.R. 155.420(b).

(2) A QHP issuer shall notify a qualified individual of the effective date of coverage.

(3) Premium invoices shall be generated to a qualified individual within five (5) business days from receipt of KHBE enrollment transactions.

(4) A QHP issuer shall allow a qualified individual a minimum of thirty (30) days from the date of the initial invoice to submit premium payment before coverage can be cancelled.

(5) A QHP issuer shall allow a qualified individual a minimum of thirty (30) days from the date of a corrected invoice to submit premium payment before coverage can be terminated.

(6) Notwithstanding the requirements of this section, coverage shall not be effective until premium payment is submitted by the individual.

(7) The issuer shall mail proof of coverage, including insurance identification cards, to enrollees within ten (10) calendar days of receipt of initial premium payment for ninety-nine (99) percent of enrollments.

Section 12. Enrollment Process for Qualified Individuals. (1) A QHP issuer shall process enrollment of an individual in accordance with this section.

(2) A QHP issuer participating in the individual market shall enroll a qualified individual if the KHBE:
   (a) Notifies the QHP issuer that the individual is a qualified individual; and
   (b) Transmits information to the QHP issuer in accordance with 45 C.F.R. 155.400(a).

(3) If an applicant initiates enrollment directly with the QHP issuer for enrollment in a plan offered through the KHBE, the QHP issuer shall either:
   (a) Direct the individual to file an application with the KHBE in accordance with 45 C.F.R. 155.310; or
   (b) Process the application in accordance with the requirements established pursuant to 45 C.F.R. 155.430(c).

(4) A QHP issuer shall accept enrollment information in accordance with the privacy and security requirements established by the office pursuant to 45 C.F.R. 155.260 and (f).

(5) A QHP issuer shall acknowledge receipt of enrollment information transmitted from the KHBE in accordance with KHBE requirements established by 45 C.F.R. 155.400(b)(2).

Section 13. Termination or Cancellation of Coverage for Qualified Individuals. (1) A QHP issuer may terminate coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2).

(2) If an enrollee’s coverage in a QHP is terminated by the issuer for any reason, the QHP issuer shall:
   (a) Provide the enrollee with a notice of termination of coverage that includes the reason for termination at least thirty (30) days prior to the final day of coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);
   (b) Notify the KHBE of the termination effective date and reason for termination; and
   (c) Comply with the requirements of KRS 304.17A-240 to 304.17A-245.

(3) Termination of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(ii) shall:
   (a) Include the grace period for enrollees receiving advance payments of the premium tax credits as described in 45 C.F.R. 155.270(d); and
   (b) Be applied uniformly to enrollees in similar circumstances.

(4) Prior to termination of coverage, a QHP issuer shall provide a grace period of three (3) consecutive months if an enrollee receiving advance payments of the premium tax credit has previously paid at least one (1) full month’s premium during the benefit year. During the grace period, the QHP issuer:
   (a) 1. Shall pay claims for services provided to the enrollee in the first month of the grace period;
   2. May suspend payment of claims for services provided to the enrollee in the second and third months of the grace period;
   (b) Shall notify the KHBE of the non-payment of the premium due; and
   (c) Shall notify providers of the possibility for denied claims for services provided to an enrollee in the second and third months of the grace period.

(5) For the three (3) months grace period described in subsection (4) of this section, a QHP issuer shall:
   (a) Continue to collect advance payments of the premium tax credit on behalf of the enrollee from the U.S. Department of the Treasury; and
   (b) Return advance payments of the premium tax credit paid on behalf of the enrollee for the second and third months of the grace period if the enrollee exhausts the grace period as described in subsection (7) of this section.

(6) If an enrollee is delinquent on premium payment, the QHP issuer shall provide the enrollee with a notice of the payment delinquency.

(7) If an enrollee receiving advance payments of the premium tax credit exhausts the three (3) months grace period in subsection (4) of this section, without paying the outstanding premiums, the QHP issuer shall terminate the enrollee’s coverage on the effective date of termination described in 45 C.F.R. 155.430(d)(4) if the QHP issuer meets the notice requirement specified in subsection (2) of this section.

(8) A QHP issuer shall maintain records in accordance with KHBE requirements established pursuant to 45 C.F.R. 155.430(c).

(9) A QHP issuer shall comply with the termination of coverage effective dates as described in 45 C.F.R. 155.430(d).

(10) A QHP issuer may cancel coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2) and (e).

(11) If an enrollee’s coverage in a QHP is cancelled by the issuer for any reason, the QHP issuer shall:
   (a) Provide the enrollee with a notice of cancellation of coverage that includes the reason for cancellation within at least thirty (30) days of the action to cancel coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);
   (b) Notify the KHBE of the cancellation effective date and reason for cancellation; and
   (c) Comply with the requirements of KRS 304.17A-240 to 304.17A-245.

(12) Cancellation of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(ii) shall be applied uniformly to enrollees in similar circumstances.

(13) A QHP issuer shall comply with the cancellation of coverage effective dates as described in 45 C.F.R. 155.430(d).

(14) If coverage of an enrollee is terminated or cancelled by the KHBE for any reason, the QHP issuer shall provide the enrollee a notice of the termination or cancellation within fifteen (15) days of receipt of a termination or cancellation notification.
transaction from the KHBE.

Section 14. Accreditation of QHP Issuers. (1) A QHP issuer shall:
(a) Be accredited on the basis of local performance of a QHP by an accrediting entity recognized by HHS in categories identified by 45 C.F.R. 156.275(a)(1); and
(b) Pursuant to 45 C.F.R. 156.275(a)(2) authorize the accrediting entity that accredits the QHP issuer to release to the KHBE and HHS:
1. A copy of the most recent accreditation survey; and
2. Accreditation survey-related information that HHS may require, including corrective action plans and summaries of findings.

(2)(a) A QHP issuer shall be accredited prior to the fourth year of QHP certification and in every subsequent year of certification thereafter in accordance with requirements and timeline identified under 45 C.F.R. 155.1045.
(b) A QHP issuer seeking certification of a QHP that has not received accreditation for the QHP shall submit an attestation to the office that the issuer shall obtain evidence to support that the issuer has a plan for obtaining accreditation in accordance with the QHP within the timeline identified in paragraph (a) of this subsection.

(3) The QHP issuer shall maintain accreditation so long as the QHP issuer offers QHPs.

Section 15. [Recertification, Non-renewal, and] Decertification of QHPs. (1) A QHP shall be recertified in accordance with the requirements of this administrative regulation every two (2) years no later than September 15 for the following two (2) plan years.

(2) An issuer shall submit to the exchange a request for recertification of a QHP at least 120 days prior to expiration of a certification.

(3) If a QHP issuer elects not to seek recertification with the office, the QHP issuer, at a minimum shall:
(a) Notify the office of its decision prior to the beginning of the recertification process and follow the procedures adopted by the KHBE in accordance with 45 C.F.R. 155.1075;
(b) Provide benefits for enrollees through the final day of the plan or benefit year;
(c) Submit reports required by the office for the final plan or benefit year of the certification;
(d) Provide notice to enrollees in accordance with Section 13 of this administrative regulation;
(e) Terminate coverage of enrollees in the QHP in accordance with 45 C.F.R. 154.1095 as applicable; and
(f) Comply with requirements of KRS 304.17A.240 and 304.17A.245 as applicable.

(4) If a QHP is decertified by the office pursuant to 45 C.F.R. 155.1080 or withdrawn by the issuer after certification, the QHP issuer shall terminate coverage of enrollees only after:
(a) The KHBE has provided notification as required by 45 C.F.R. 155.1080(e);
(b) Enrollees have an opportunity to enroll in other coverage; and
(c) The QHP issuer has complied with the requirements of KRS 304.17A.240 and 304.17A.245, as applicable.

(2) If a QHP issuer fails to meet ongoing compliance requirements of Section 20 of this administrative regulation, the office may require the issuer to:
(a) Submit a corrective action plan to address deficiencies to ongoing compliance requirements within thirty (30) days of notification of the deficiency; and
(b) Submit evidence of compliance with the corrective action plan within the timeframes established in the office approved corrective plan.

(3) If the office finds that the QHP issuer failed to meet the requirements of subsection (2) of this section, the office may implement a prohibition against new enrollments on KHBE for the QHP issuer and market segment out of compliance or may decertify all plans offered by the QHP issuer within the market segment.

Section 16. General Requirements for a Stand-alone Dental Plan. (1) In order for a dental insurer to participate in the KHBE[beginning January 1, 2014] and offer a stand-alone dental plan, the dental insurer shall:
(a) Hold a certificate of authority that would permit the issuer to offer dental plans and be in good standing with the Kentucky Department of Insurance;
(b) Be authorized by the office to participate on the KHBE;
(c) For the first year of participation in a new market segment, by April 1[or each year], submit Form KHBE-C1, Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year;
(d) Enter into a participation agreement with the office;
(e) Offer a dental plan certified by the office in accordance with this administrative regulation in the individual exchange or SHOP exchange that shall:
1. Comply with the requirements of KRS Chapter 304 Subtitle 17C;
2. Submit to DOI through the SERFF system:
   a. Form filings in compliance with KRS Chapter 304;
   b. Rate filings in compliance with KRS 304.17-380; and
   c. Dental plan management data templates;
(f) Offer a stand-alone dental plan that shall:
1. Provide the dental essential health benefits required by 42 U.S.C. 18022(b)(1)(J) for individuals up to twenty-one (21) years of age;
2. Pursuant to 45 C.F.R. 156.150, provide within a variation of plus or minus two (2) percentage points:
   a. A low level of coverage with an actuarial value of seventy (70) percent; and
   b. A high level of coverage with an actuarial value of eighty-five (85) percent; and
3. Have an annual limitation on cost-sharing for a stand-alone dental plan covering the pediatric dental KBH under 45 C.F.R. 155.1085 at or below:
   a. $350[($1,000)] for a plan with one (1) child enrollee; or
   b. $700[($2,000)] for a plan with two (2) or more child enrollees;
   (g) Comply with:
   1. Provider network adequacy requirements identified by KRS 304.17C-040 and maintain a network that is sufficient in number and types of dental providers to assure that all dental services will be accessible without unreasonable delay in accordance with 45 C.F.R. 156.230;
   2. Requirements for stand-alone dental plans referenced in 45 C.F.R. 156 Subpart E; and
3. Essential community provider requirement in 45 C.F.R. 156.235; and
   (h) Not discriminate, with respect to a pediatric dental plan, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation; and
   (i) Make its provider directory for a QHP available:
   1. To the KHBE for online publication;
   2. To potential enrollees in hard copy upon request; and
   3. In accordance with KRS 304.17A-590.

(2) A dental insurer offering a stand-alone dental plan participating in the KHBE shall provide the following information to the office[beginning January 1, 2014]:
(a) Statement of dental coverage written in English consistent with the requirements in KRS 304.12-020 and 806 KAR 12:010;
(b) Statement of dental coverage written in Spanish with verification that the Spanish language version is a certified translation of the English version;
(c) The item described in paragraph (a) of this subsection within five (5) calendar days of the date DOI has approved rate and form filings in SERFF; and
(d) The item described in paragraph (b) of this subsection within fourteen (14) calendar days of the date KHBE has approved the items described in paragraph (a) of this subsection: May offer a stand-alone dental plan which includes coverage for individuals according to age which includes at a minimum a pediatric dental essential health benefit required by 42 U.S.C. 18022(b)(1)(J) coverage for individuals up to twenty-one (21) years of age; and(b)
Section 17. Essential health benefits for individuals three (3) years of age and up to twenty-one (21) years of age. The KHBE shall ensure that an individual three (3) years of age and up to age twenty-one (21) years of age eligible to enroll in a QHP shall obtain coverage for pediatric dental coverage.

Section 18. Enforcement. The DOI shall be responsible for enforcing the requirements of KRS Chapter 304 and any administrative regulations promulgated thereunder against any issuer.

Section 19. Timeframes for Transactions. (1) QHP issuers shall generate a required acknowledgement and process all KHBE initiated transactions within forty-eight (48) hours of receipt of a complete electronic transaction from the KHBE for ninety-five (95) percent of enrollments.

(2) QHP issuers shall provide effectuation transactions to the KHBE within seventy-two (72) forty-eight (48) hours of receipt of the initial premium payment and issuer initiated cancellation and termination transactions within forty-eight (48) hours of the cancellation or termination of coverage for ninety-five (95) percent of cancellations and terminations.

Section 20. On-going Compliance. The office shall be responsible for enforcing the requirements referenced in 45 C.F.R. 155.1010(a)(2).

Section 21. Issuer Appeals. (1) An issuer may appeal the office’s decision to:

(a) Deny certification of a QHP;
(b) Implement a prohibition against new enrollments by a QHP issuer in a market segment; or
(c) Decertify a QHP.

(2) An issuer appeal identified in subsection (1) of this section shall be made to the office in accordance with KRS Chapter 13B.

Section 22 [20] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Chapter 79: Instructions for the Essential Community Providers Application Section", April 2013 version;
(b) "Form KHBE-C1, Issuer Participation Intent Form", May, 2015;
(c) "Form KHBE-C2, Kentucky Health Benefit Exchange Attestations", May, 2015 revised October, 2013; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Office of Health Benefit and Health Information Exchange, 12 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.healthbenefitexchange.ky.gov.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 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 address tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for certification as a qualified health plan or a qualified dental plan to be offered on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform issuers of the requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that issuers are aware of the requirements for certification of a health plan as a qualified health plan or dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange to comply with the statute.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation clarify policy regarding submission of Summary of Benefits and Coverage, Spending Account Fact Sheets, Statement of Dental Coverage, and program attestations by issuers as well as timeframes for processing electronic transactions to or from KHBE.

(b) In complying with this administrative regulation or amendments, how much will it cost each of the entities identified in question (3): This administrative regulation will affect approximately fifteen (15) issuers that may request certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each issuer that may request certification of a health plan as a qualified health plan or certification of a dental plan as a
qualified dental plan to be offered on the Kentucky Health Benefit by providing detailed instructions regarding certification of Qualified Health Plans.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: No additional costs will be incurred to implement this administrative regulation.
   (b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit and Health Information Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of the Kentucky Health Benefit Exchange within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 194A.050(1), 42 U.S.C. § 18031, and 45 C.F.R. Parts 155 and 156.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year or on an ongoing basis: No additional costs will be incurred. This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan to be offered on the Kentucky Health Benefit Exchange, pursuant to, and in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky beginning January 1, 2014. An Exchange must make qualified health plans available to qualified individuals and qualified employers. At a minimum, an Exchange must implement procedures for the certification, recertification, and decertification of health plans as qualified health plans. The Affordable Care Act allows for Exchanges to certify health plans as qualified health plans. This certification may be done if: the health plan meets the rules for certification by the U. S. Department of Health and Human Services; and the Exchange determines that making such health plan available through the Exchange is in the interests of qualified individuals and qualified employers in the state or states in which the Exchange operates. The Exchange must require health plans seeking certification as qualified health plans to submit a justification for any premium increase prior to implementation of the increase. These plans must prominently post such information on their websites.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 45:120. Inspection and permit fees: [§ 45:120 permits, fees] hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 211.180(2), and 219.041(1); and 2000 Ky. Acts ch. 549, part I.A. 41

Note: Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Fees for Inspections. An annual fee shall be assessed for an inspection conducted by the cabinet or its representative of a hotel, manufactured or mobile home community, recreational vehicle community, or youth camp, or for sampling of a private water supply according to the following schedule:

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to quality for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan to be offered on the Kentucky Health Benefit Exchange, pursuant to, and in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.
Section 2. Permit Fees for Hotels and Manufactured or Mobile Home Communities and Recreational Vehicle Communities. (1) An application for an annual permit to operate a hotel shall be accompanied by a fee of sixty (60) dollars.

(2) The fee for an annual[a] permit to operate a manufactured or mobile home park, or recreational vehicle park shall depend on the number of spaces in the park as set forth in the following schedule:

<table>
<thead>
<tr>
<th>Number of Spaces</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>One (1) to ten (10) spaces</td>
<td>$100</td>
</tr>
<tr>
<td>Eleven (11) to fifty (50) spaces</td>
<td>$150</td>
</tr>
<tr>
<td>Fifty-one (51) to 100 spaces</td>
<td>$200</td>
</tr>
<tr>
<td>101 to 200 spaces</td>
<td>$275</td>
</tr>
<tr>
<td>201 or more spaces</td>
<td>$400</td>
</tr>
</tbody>
</table>

Section 3. Payment of Fees. Fees shall be paid to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate.

Section 4. Exemptions. (1) A facility operated by the Cabinet for Health and Family Services or the Justice Cabinet shall be exempt from the payment of inspection fees.

(2) If a local health department samples a private water supply as part of an investigation of illness, the sample shall be taken without charging a fee.

Contact Person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation contains the permit and inspection fees for mobile and manufactured home communities, recreational vehicle communities, hotels, youth camps, and private water supplies.

(b) The necessity of this administrative regulation: This regulation is necessary to outline the fees required for permits and inspections for hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies to cover the cost of inspection and sampling activities carried out by the Cabinet for Health and Family Services, pursuant to KRS 194A.050(1), 211.180(2), and 219.041(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require these facilities (hotels, mobile home communities, RV communities, and youth camps) to be permitted before they can operate. The statutes also require the cabinet to provide these permits and inspections and a schedule of reasonable fees to cover the cost of these services. This administrative regulation outlines what those fees are and how they are to be collected.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the permit and inspection fees for hotels, mobile and manufactured home parks, recreational vehicle parks, youth camps, and private water supplies. This assists in the effective and fair enforcement of the statutes, and ensures that such permits and inspections, and an established schedule of fees, is in effect.

(2) If 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 in response to comment received during the public comment period. Almost all of the fees raised in the original amendment are being lowered from the proposed amounts. Although the Cabinet believes the proposed amounts were not burdensome or unreasonable to any affected entity, it does acknowledge that the percentage of increase was high as noted by the received comment. The Cabinet believes the new proposed rates in this amendment are a good compromise between the Cabinet and affected entities. Hotel and residential youth camp inspection fees are being decreased from the original amendment and mobile home permit fees are being put back to their original amounts.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is being amended in response to comment received during the public comment period. These fees have not been raised since 2001 and even then, the program was operating at a deficit. The Cabinet believes the presented amounts were burdensome or unreasonable to affected entities. However, the comment received pointed out that the percentages of increase were high. In response, the Cabinet is lowering the proposed fee amounts to compromise with affected entities.

(c) How the amendment conforms to the content of the authorizing statutes: The original amendment increased the reasonable set of fees to cover part of the cost of inspection, permitting, and sampling activities carried out as required by the authorizing statutes. In response to comment received, some fees are being lowered from the proposed increases and some are being put back to their original amounts.

(d) How the amendment will assist in the effective administration of the statutes: The proposed fee increases will go towards operating the permit and inspection program for hotels, mobile and manufactured home parks, recreational vehicle parks, youth camps, and private water supplies, which are required by statute. The fees will still not cover the inspection and permitting programs in their entirety, but the increase will help offset the costs to local health departments and local communities, allowing the use of local tax dollars for other necessary health operations. In response to comment received, some of the proposed fees are being lowered to ease the effect on regulated entities.

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

- Hotels – 1,865
- Mobile Home and Recreational Vehicle Communities – 2,142
- Youth Camps – 230
- Water Samples – Varies with requested service
- County Health Departments – 120
- Kentucky Department for Public Health

VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 3 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) A hotel with:
- (a) One (1) to twenty-five (25) rooms – $100$150 ninety-three (93) dollars;
- (b) Twenty-six (26) to fifty (50) rooms – $125$190ninety-five (95) dollars;
- (c) Fifty-one (51) to 100 rooms – $150$225ninety-five (95) dollars;
- (d) One (1) room to 200 rooms – $175$270$100 dollars;
- (e) 201 (201) to 300 rooms – $200$300$110 dollars;
- (f) 301 to 400 rooms – $225$350$120 dollars; or
- (g) 401 or more rooms – $250$400$130 dollars.

(2) Youth camps:
- (a) Day youth camp - seventy-five (75) dollars;
- (b) Primitive youth camp - fifty (50) dollars;
- (c) Residential youth camp:
  - 1. One (1) to twenty (20) beds – seventy-five (75) dollars;
  - 2. Twenty-one (21) to fifty (50) beds – $100$190 ninety-five (95) dollars;
  - 3. Fifty-one (51) or more beds – $125$225 dollars;
- (3) A manufactured or mobile home community or recreational vehicle community – seventy-five (75) dollars or (4) [sixty (60) dollars or (3)] Sampling of private water supply – fifty (50) dollars.

(3) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require these facilities (hotels, mobile home communities, RV communities, and youth camps) to be permitted before they can operate. The statutes also require the cabinet to provide these permits and inspections and a schedule of reasonable fees to cover the cost of these services. This administrative regulation outlines what those fees are and how they are to be collected.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The permitted entities would pay a nominal fee increase for their permit to operate and for the inspectional oversight of their businesses. People who request water samples to be tested by the local health departments currently have to pay only a fraction of the cost of utilizing a private company. Raising the fees slightly will allow those who need water tested to continue to get the service at a very low rate. These fees have not been raised since 2001 and some are being raised to slightly offset the operational cost deficits that are currently being offset by local tax dollars. These programs are operated by and fees are collected by local health departments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Hotels will pay an inspection fee increase of forty-seven ($47) dollars.

The annual permit fee is not increased by this amendment. The annual permit fees for operating a manufactured or mobile home park or R/V park were proposed to be increased but then were put back to original rates because of the comment received. The permit fee to construct or alter such park will increase by thirteen ($13) dollars. This amendment includes a new fee for the inspection of a mobile home park or R/V park, which will be paid by the permitted entity. This fee is intended to offset the cost of this program. Youth camps will pay an inspection fee increase of ten ($10) - sixty-five ($65) dollars, depending on the type of camp and size.

The fee for the sampling and testing of a private water supply will increase thirty-five ($35) dollars.

The proposed fees are consistent with or lower than those of the same programs in surrounding states. In response to comment, some of these fees were lowered from the originally proposed amounts.

Local health departments will incur no additional costs, but will generate revenue to offset the costs of this program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky entities in (3) currently have to pay only a fraction of the cost of utilizing a private company. Raising the fees slightly will allow those who need water tested to continue to get the service at a very low rate. These fees have not been raised since 2001 and some are being raised to slightly offset the operational cost deficits that are currently being offset by local tax dollars. These programs are operated by and fees are collected by local health departments.

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

(a) Initially: No additional costs will be incurred as an administrative regulation is already in place which sets permit and inspection fees for these entities. The increased fees will require nothing new of the administrative body.

(b) On a continuing basis: There will be no new continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees collected will continue to be used to implement and enforce this administrative regulation and offset the cost of program operations. Local tax dollars and some general fund dollars also help to offset the costs of these programs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: The purpose of this administrative regulation is to increase established permit and inspection fees to cover part of the cost of these programs, currently operating at a deficit. There will be no additional costs to administer this administrative regulation given that there is already a mechanism in place to collect fees and issue permits.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. Yes, the purpose of this amended administrative regulation is to nominally increase the permit and inspection fees for regulated entities in order to better support the cost of the inspection and permitting program. These fees have not been raised since 2001.

(9) TIERING: Is tiering applied? Yes. Smaller entities required to comply with this administrative regulation pay a smaller fee. The fees for hotel and youth camp inspections increase with the entity size and corresponding inspection time.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The agencies impacted by this regulation will be the 120 County Health Departments and the Department for Public Health Environmental Management Branch, as they perform these inspections and operate the permitting program.

2. Identify each state or federal statute or federal regulation that authorizes or allows the action taken by the administrative regulation. KRS 194A.050, 211.180, 219.021, 219.041, 219.340, 219.350, and 219.390.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. As a result of compliance, what benefits will accrue to the agencies impacted by this administrative regulation? The agencies impacted by this regulation will be the 120 County Health Departments and the Department for Public Health Environmental Management Branch, as they perform these inspections and operate the permitting program.

(a) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated by this amendment, will be dependent on the number of mobile home/RV communities, hotels, youth camps, and requested water samples. If numbers remain consistent for these entities, an increase of $221,914 annually would continue to be realized.

(b) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue generated by this amendment, will be dependent on the number of mobile home/RV communities, hotels, youth camps, and requested water samples. If numbers remain consistent for these entities, an increase of $221,914 annually would continue to be realized.

(c) How would the administrative regulation affect the fiscal impact of the administrative regulation? The agencies impacted by this regulation will be the 120 County Health Departments and the Department for Public Health Environmental Management Branch, as they perform these inspections and operate the permitting program.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 1:055. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7). (2) "Alternative payment methodology" or "APM" means a reimbursement that is an alternative to the standard reimbursement established in Section 3 of this administrative regulation in accordance with 42 U.S.C. 1396a(b)(16). (3) "Audit" means an examination that is full or limited in scope[,] of a federally-qualified health center’s, federally-qualified health center look-alike’s, rural health clinic’s, or primary care center’s: (a) Financial transactions, accounts, and reports; and (b) Compliance with applicable Medicare and Medicaid regulations, manual instructions, and directives. (4) "Base year" means the first full fiscal year following the effective date of an FQHC’s, FQHC look-alike’s, or RHC’s enrollment in the Medicaid program: (a) In which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation as designated by the FQHC, FQHC look-alike, or RHC; and (b) Not to exceed twenty-four (24) months past the effective date that the FQHC, FQHC look-alike, or RHC was enrolled with the department. (5) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056. (6) "Certified social worker" means an individual who meets the requirements established in KRS 335.380. (7) "Change in scope of service" means a change in the type, intensity, duration, or amount of service. (8)(5) "Clinical psychologist" is defined by 42 C.F.R. 410.71(d). (9) "Department" means the Department for Medicaid Services or its designated agent. (10)[(2)] "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services. (11)[(4)] "Federal financial participation" is defined in 42 C.F.R. 400.203. (12)[(10)] "Federally-qualified health center" or "FQHC" is defined in 42 C.F.R. 405.2401. (13)[(12)] "Federally-qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services to be a federally-qualified health center look-alike. (14) "Final PPS rate" means an all-inclusive reimbursement amount per visit for an FQHC, FQHC look-alike, or RHC that: (a) Is unique to the FQHC, FQHC look-alike, or RHC; (b) Encompasses reimbursement for all services rendered during the visit; (c) Is based on: Twelve (12) full months of Medicaid cost report data in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation; and (d) Is established by the department.

1. A licensed physician; 2. A licensed osteopathic physician; 3. A licensed podiatrist; 4. A licensed optometrist; 5. An [A licensed or certified] advanced practice registered nurse; 6. A licensed dentist or oral surgeon; 7. A physician assistant; 8. A licensed clinical social worker; 9. A licensed[medical] psychologist; 10. A licensed marriage and family therapist; 11. A licensed professional clinical counselor; 12. A licensed psychological practitioner; 13. A certified psychologist with autonomous functioning; or 14. A practitioner authorized pursuant to 107 KAR 105 to provide services in a PCC, an FQHC, an FQHC look-alike, or an RHC who is not listed in subparagraphs 1 through 13 of this paragraph; or (b) An FQHC, FQHC look-alike, or RHC: 1. A provider or practitioner listed in paragraph (a) of this subsection; or (ii) Contingent upon approval of a state plan amendment by the Centers for Medicare and Medicaid Services: (a) Licensed professional clinical counselor; or (b) Licensed marriage and family therapist; or (ii) An FQHC or FQHC look-alike, in addition to the professionals established in paragraph (a) of this subsection: 1. A resident in the presence of a teaching physician; or 2. A resident without the presence of a teaching physician if: (a) The services are furnished in an FQHC or FQHC look-alike in which the time spent by the resident in performing patient care is included in determining any intermediary payment to a hospital in accordance with 42 C.F.R. 413.75 through 413.83; (b) The resident furnishing the service without the presence of a teaching physician has completed more than six (6) months of an approved residency program; (c) The teaching physician: (i) Does not direct the care of more than four (4) residents at any given time; and (ii) Directs care from a proximity that constitutes immediate availability; and (d) The teaching physician: (i) Has no other responsibilities at the time; (ii) Has management responsibility for any recipient seen by the resident; (iii) Ensures that the services furnished are appropriate; (iv) Reviews with the resident, during or immediately after each visit by a recipient, the recipient’s medical history, physical examination, diagnosis, and record of tests or therapies; and (v) Documents the extent of the teaching physician’s participation in the review and direction of the services furnished to each recipient. (15)[(12)] "Interim PPS rate" means an all-inclusive per visit reimbursement amount established by the department to pay an FQHC, FQHC look-alike, or an RHC[—or a PCC] for covered services prior to the establishment of a final PPS rate. (16)[(13)] "Licensed clinical social worker" means an individual who is currently licensed in accordance with KRS 335.100.

17)[(14)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).
The Department for Medicaid Services has contracted to provide services under a managed care organization, which is 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.

Medical Group Management Association Medical Directorship and On-Call Compensation Survey means a report developed and owned by the Medical Group Management Association that:

(a) Highlights the critical relationship between medical director compensation and time spent in the medical director function;

(b) Aligns medical director compensation with time spent as medical director; and

(c) Contains tables illustrating the relationship of medical director salary to time spent in the medical director function.

"Medical Group Management Association Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association that:

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many specialties.

"Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 1:670.

"Medical Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).

"Paid claims listing" means a report of claims paid by the department for a given FQHC, FQHC look-alike, or RHC.

"Parent facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:

1. Is enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

2. Except as established in paragraph (c) of this subsection, participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Aligns medical director compensation with time spent as medical director; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many specialties.

"Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

"Medical Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).

"Paid claims listing" means a report of claims paid by the department for a given FQHC, FQHC look-alike, or RHC.

"Parent facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:

1. Is enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

2. Except as established in paragraph (c) of this subsection, participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

"PPS" means prospective payment system.

"Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).

"Physician assistant" is defined by KRS 311.840(3).

"PPS" means prospective payment system.

"Rate year" means, for the purposes of the MEI, the twelve (12) month period beginning July 1 of each year for which a rate is established for an FQHC, FQHC look-alike, or RHC under the prospective payment system.

"Reasonable cost" means:

(a) A cost as determined by the:

1. Applicable Medicare cost reimbursement principles established in 42 C.F.R. Part 413, 45 C.F.R. 74.27, and 48 C.F.R. Part 31; and

2. Medical Group Management Association Physician Compensation and Production Survey Report for the applicable year and region; and

(b) Costs determined to be reasonable in accordance with a comprehensive desk review or audit.

"Recipient" is defined by KRS 205.8451(9).

"RHC" or "rural health clinic" is defined in 42 C.F.R. 405.2301(b).

"Satellite facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:

(a) Is at a different location than the parent facility; and

(b) Operates under the same management as the parent facility.

"Telehealth" means two (2)-way, real time interactive communication between a patient and a physician or practitioner located at a distant site for the purpose of improving a patient's health through the use of interactive telecommunication equipment that includes, at a minimum, audio and video equipment.

"Visit" means an in-person or face-to-face encounter;

(a) or encounter which occurs via Telehealth

(b) Which occurs:

1. In person; or

2. Via telehealth if authorized by 907 KAR 3:170.

Section 2. Provider Participation Requirements. (1)(a) A participating FQHC, FQHC look-alike, RHC, or PCC shall be currently

1. Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

2. Except as established in paragraph (c) of this subsection, participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(b) A satellite facility of an FQHC, an FQHC look-alike, or a PCC shall:

1. Be currently listed on the parent facility's license in accordance with 902 KAR 20:058; and

2. Comply with the requirements regarding extensions established in 902 KAR 20:058; and

3. Comply with 907 KAR 1:671.

(c) In accordance with 907 KAR 17:015, Section 3(3), an FQHC, FQHC look-alike, RHC, or PCC that provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

1. To be initially enrolled with the department, an:

(a) FQHC or FQHC look-alike, RHC, or PCC shall:

1. Enroll in accordance with 907 KAR 1:672; and

2. Submit to the department proof of its FQHC or FQHC look-alike designation issued by the Centers for Medicare and Medicaid Services; or

(b) A satellite facility of an FQHC, an FQHC look-alike, or a PCC shall:

1. Enroll in accordance with 907 KAR 1:672; and

2. Submit to the department proof of its RHC license issued by the Cabinet for Health and Family Services Office of Inspector General of Certification by the United States Department of Health and Human Services, Health Resources and Services Administration, as an FQHC, FQHC look-alike, or RHC;

(b) To remain enrolled and participating in the Kentucky Medicaid program, an:

1. FQHC or FQHC look-alike, RHC, or PCC shall:

(a) Comply with the enrollment requirements established in 907 KAR 1:672;

(b) Comply with the participation requirements established in 907 KAR 1:671; and

(c) Annually submit to the department proof of its FQHC or FQHC look-alike designation issued by the Centers for Medicare and Medicaid Services; or

2. RHC shall:

a. Comply with the enrollment requirements established in 907 KAR 1:672;

b. Comply with the participation requirements established in 907 KAR 1:671; and

c. Annually submit to the department proof of its RHC license issued by the Cabinet for Health and Family Services Office of Inspector General of Certification by the United States Department of Health and Human Services, Health Resources and Services Administration, as an FQHC, FQHC look-alike, or RHC to the department.

The requirements established in paragraphs (a) and (b) of this subsection shall apply to a satellite facility of an FQHC or FQHC look-alike.
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(3)(a) An FQHC, FQHC look-alike, or PCC that operates multiple satellite facilities shall:
1.(a) List each satellite facility on the parent facility's license in accordance with 902 KAR 20:058; and
2.(b) Consolidate claims and cost report data of its satellite facilities with the parent facility.
(b) A PCC that operates multiple satellite facilities shall list each satellite facility on the parent facility's license in accordance with 902 KAR 20:058.
(c) An FQHC, FQHC look-alike, RHC, or PCC that has been terminated from federal participation shall be terminated from Kentucky Medicaid program participation.
(d) A participating
(a) FQHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC;
(b) FQHC look-alike and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC;
(c) RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an RHC; or
(d) PCC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a PCC(PCC).
(e) An FQHC, FQHC look-alike, RHC, or PCC performing laboratory services shall meet the requirements established in 907 KAR 1:028 and 907 KAR 1:575.

Section 3. Standard Reimbursement for an FQHC, FQHC look-alike, or RHC for a Recipient Who is not an Enrollee. In Section 4 of this administrative regulation shall be Covered by the Department. (1) Except as established in Section 5 or Section 9 of this administrative regulation, for a visit by a recipient who is not an enrollee and that is covered by the department, the department shall reimburse:
(a) An FQHC, FQHC look-alike, or RHC a final PPS rate an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(bb)[1396a(aa)]; or
(b) A satellite facility of an FQHC or FQHC look-alike a final PPS rate an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 U.S.C. 1396a(bb)[1396a(aa)].
(2) Costs related to outpatient drugs or pharmacy services shall be excluded from the PPS rate an all-inclusive encounter rate per patient visit referenced in subsection (1) of this section.
(3) The department shall calculate a final PPS rate for a new FQHC, FQHC look-alike, or RHC in accordance with Section 4 of this administrative regulation.
(4) The department shall adjust a final PPS rate per visit:
(a) By the percentage increase in the MEI applicable to FQHC, FQHC look-alike, or RHC services on July 1 of each year;
(b) In accordance with Section 10 of this administrative regulation:
1. Upon request and determination by the department that there has been a change in the scope of services; or
2. Upon review and determination by the department that there has been a change in scope of services; and
(c) If necessary as a result of a desk review or audit.

(5) A final PPS rate established in accordance with this administrative regulation shall not be subject to an end of the year cost settlement.

Section 4. Establishment of a Final PPS Rate for a New FQHC, FQHC look-alike, or RHC. (1)(a) The department shall establish a final PPS rate to reimburse a new FQHC, FQHC look-alike, or RHC within ninety (90) business days of receiving the Universal Cost Report; and
(b) Except for a time frame in which the department reimburses an FQHC, FQHC look-alike, or RHC an interim PPS rate, the [initial and subsequent] final PPS rate established for an FQHC, FQHC look-alike, or RHC shall:
1. Be prospective; and
2. Not settled to cost.(2) The department shall determine the reasonable costs of an FQHC, FQHC look-alike, or RHC based on the:
(a) Universal Cost Report;
1. Submitted by the FQHC, FQHC look-alike, or RHC to the department and prepared by the FQHC, FQHC look-alike, or RHC in accordance with the Universal Cost Report Instructions; and
2. That which contains twelve (12) full months of operating data for the designated base [first full fiscal] year of operations that the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation;
(b) Department's review of the Universal Cost Report referenced in paragraph (a) of this subsection and
(c) Costs and visits as adjusted by the department for full-time operation for a facility that is not in operation at least forty (40) hours per week (most recently submitted to the department by the FQHC, FQHC look-alike, or RHC.
(b) The base rate referenced in subsection (1)(a) of this section shall be based on the reasonable cost determination made by the department pursuant to paragraph (a) of this subsection.
(3)(a) Until an FQHC, FQHC look-alike, or RHC submits a Medicaid cost report containing twelve (12) full months of operating data for the facility's base year, the department shall reimburse the FQHC, FQHC look-alike, or RHC an interim rate equal to the all-inclusive per visit rate established for the FQHC, FQHC look-alike, or RHC by Medicare.
(b) An FQHC, FQHC look-alike, or RHC shall provide the department with a copy of the Medicare rate letter for the rates in effect during the FQHC's, FQHC look-alike's, or RHC's interim period.
(c) The department shall adjust an interim rate for an FQHC, FQHC look-alike, or RHC based on the establishment of the final rate.
1. All claims submitted to the department and paid by the department based on the interim rate shall be adjusted to comport with the final rate.
(4)(a) An FQHC, FQHC look-alike, or RHC shall submit a Universal Cost Report to the department by the end of the fifth month following the end of the FQHC's, FQHC look-alike's, or RHC's designated base [first full fiscal] year [that the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation].
(b) The department shall:
1. Review the Universal Cost Report referenced in paragraph (a) of this subsection submitted by an FQHC, FQHC look-alike, or RHC within ninety (90) business days of receiving the Universal Cost Report; and
2. Notify the FQHC, FQHC look-alike, or RHC of the:
(a) Necessity of the FQHC, FQHC look-alike, or RHC to submit additional documentation if necessary;
b. Final rate established;
c. Appeal rights regarding the final rate; and
d. Estimated time for determination of a final rate if a final rate is not established within ninety (90) days.
(5) If additional documentation is necessary to establish a final PPS rate, the FQHC, FQHC look-alike, or RHC shall:
a. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or
b. Request an extension beyond thirty (30) days to provide the additional documentation.
(6) The department shall:
2. The department shall grant no more than one (1) extension. An extension shall not exceed thirty (30) days.
(d) If the department requests additional documentation from
an FQHC, FQHC look-alike, or RHC but does not receive additional documentation or an extension request within thirty (30) days, the department shall reimburse the FQHC, FQHC look-alike, or RHC as it reimburses primary care centers that are not an FQHC, FQHC look-alike, or RHC pursuant to Section 7 of this administrative regulation[1:054 based on the Medicaid physician fee schedule applied to physician services pursuant to 907 KAR 3:010] until:

a.(1) The additional documentation has been received by the department; and
b.(2) The department has established a final PPS rate.

2. If an FQHC, FQHC look-alike, or RHC does not submit a Universal Cost Report to the department, the department shall reimburse the FQHC, FQHC look-alike, or RHC as it reimburses primary care centers that are not an FQHC, FQHC look-alike, or RHC pursuant to Section 7 of this administrative regulation[based on the Medicaid physician fee schedule applied to physician services pursuant to 907 KAR 3:010] until the FQHC, FQHC look-alike, or RHC submits a Universal Cost Report to the department.

3. The department shall review an FQHC’s, FQHC look-alike’s, or RHC’s paid claims listing for the period of time corresponding to the FQHC’s, FQHC look-alike’s, or RHC’s cost report period of time referenced in paragraph (a) of this subsection.

(1) If an FQHC, FQHC look-alike, or RHC has submitted all necessary information to the department, within forty-five (45) days of reviewing the FQHC’s, FQHC look-alike’s, or RHC’s paid claims listing, the department shall:
   a. Establish a final PPS rate for the FQHC, FQHC look-alike, or RHC; and
   b. Notify the FQHC, FQHC look-alike, or RHC in writing of the
      FQHC’s, FQHC look-alike’s, or RHC’s:
      (i) Final PPS rate; and
      (ii) Appeal rights regarding the PPS final rate.
   2. To allow adequate time for claim adjudication, a paid claims listing shall not be requested until at least fourteen (14) months after an FQHC’s, FQHC look-alike’s, or RHC’s fiscal year end.
   3. If an FQHC, FQHC look-alike, or RHC has not submitted all necessary information to the department to establish a final PPS rate, the department shall continue to pay the FQHC, FQHC look-alike, or RHC as it pays primary care centers that are not an FQHC, FQHC look-alike, or RHC pursuant to Section 7 of this administrative regulation[based on the Medicaid physician fee schedule applied to physician services pursuant to 907 KAR 3:010].

4. Along with a Universal Cost Report, an FQHC, FQHC look-alike, or RHC shall submit to the department a written statement of the FQHC’s, FQHC look-alike’s, or RHC’s maximum hours per day, days per week, and weeks per year of operation.

5. Interim Reimbursement for a New FQHC, FQHC Look-alike, or RHC

(1) (a) Until a final PPS rate is established for an FQHC, FQHC look-alike, or RHC, the department shall reimburse the FQHC, FQHC look-alike, or RHC an interim PPS rate based on the average final PPS rates of entities with similar caseloads.
   b. To identify an entity with a similar caseload, the department shall consider:
      1. Entity type (FQHC, FQHC look-alike, or RHC);
      2. Managed care organization region;
      3. Operating hours per day, days per week, and weeks per year; and
      4. Specialty services, obstetrical services, or hospital-based entities applicable.
   (2) If no entity with a similar caseload exists, the department shall establish an interim PPS rate using cost reporting methods.
   (3) After the department establishes a final PPS rate for an FQHC, FQHC look-alike, or RHC, the department shall retroactively adjust reimbursement to the FQHC, FQHC look-alike, or RHC that was made on an interim basis to comport with the final PPS rate.
   (4) An FQHC, FQHC look-alike, or RHC, upon enrolling with the Medicaid Program, shall submit in writing to the department a statement stating the FQHC’s, FQHC look-alike’s, or RHC’s maximum hours per day, days per week, and weeks per year of operation.

Section 6. Reimbursement for Services or Drugs Provided to an Enrollee by a PCC That Is Not an FQHC, FQHC Look-Alike, or RHC and that are Covered by the Department. (1) For a service or drug provided to an enrollee by a PCC that is not an FQHC, FQHC look-alike, or RHC, the department shall reimburse the PCC’s reimbursement be the reimbursement established pursuant to an agreement between the PCC and the managed care organization with whom the enrollee is enrolled.

(2) The department shall not supplement the reimbursement referenced in subsection (1) of this section.

Section 7.[6] Reimbursement for Services or Drugs Provided to a Recipient by a PCC That Is Not an FQHC, FQHC Look-Alike, or RHC and that are Covered by the Department. (1)(a) For a service or drug provided to a recipient that is not an enrollee by a PCC that is not an FQHC, FQHC look-alike, or RHC, the department shall reimburse for the service or drug the same amount that the PCC’s, FQHC, or RHC would receive pursuant to Section 6.

(2) For example, if no reimbursement exists on the current Kentucky-specific Medicare Physician Fee Schedule for a:
   a. Dental service, the department shall reimburse for the dental service pursuant to 907 KAR 1:626;
   b. Given physician’s service, the department shall reimburse for the service pursuant to 907 KAR 3:010.

3. The department shall reimburse a rate equal to seventy-five (75) percent of the rate it pays a physician pursuant to 907 KAR 3:010 for a physician’s service that:
   a. Does not exist on the current Kentucky-specific Medicare Physician Fee Schedule; and
   b. Is provided by an APRN or physician assistant.

4. (2) The reimbursement referenced in subsection (1) of this section shall not exceed the federal upper payment limit determined in accordance with 42 C.F.R. 447.321. (3)(a) The coverage provisions and requirements established in 907 KAR 3:005[4:054] shall apply to a service or drug provided by a PCC.

(b) If a Medicare coverage provision or requirement exists regarding a given service or drug that contradicts a provision or requirement established in 907 KAR 3:005[4:054], the provision or requirement established in 907 KAR 3:005[4:054] shall supersede the Medicare provision or requirement.

Section 8.[7] Supplemental Reimbursement for FQHC Visits, FQHC Look-Alike Visits, and RHC Visits. If a managed care organization’s reimbursement to an FQHC, FQHC look-alike, or RHC for a visit by an enrollee to the FQHC, FQHC look-alike, or RHC is less than what the FQHC, FQHC look-alike, or RHC would receive pursuant to Sections 3[4:044] 4, 5, or 9 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

1. Equals the department’s payment to a non-FQHC, FQHC look-alike, or RHC for a visit by an enrollee to a non-FQHC, FQHC look-alike, or RHC, to the extent the enrollee is enrolled.

2. Is in accordance with 42 U.S.C. 1396a(bb)(5)(A); and

3. Ensures that total reimbursement does not exceed the federal upper payment limit in accordance with[-
   (a) 42 C.F.R. 447.304; and (b) 42 C.F.R. 447.321].

Section 9. Alternative Payment Methodology for an FQHC, FQHC Look-alike, or RHC. (1)(a) The department shall pay to an FQHC, FQHC look-alike, or RHC...
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

or RHC, for which a final PPS rate exists, an alternative payment methodology if the FQHC, FQHC look-alike, or RHC notifies the department in writing that it requests to receive the alternate reimbursement.

(b)(1) The APM shall equal 125 percent of the Medicare upper payment limit for rural health clinics in effect on September 30, 2014.

2. The APM referenced in subparagraph 1 of this paragraph shall not be adjusted for inflation.

(c) An FQHC, FQHC look-alike, or RHC that had an interim PPS rate prior to November 1, 2015 may request the APM as an interim PPS rate until the FQHC’s, FQHC look-alike’s, or RHC’s final PPS rate is established.

(2)(a) An APM established in this section shall be effective for dates of service beginning with the date requested in writing by an FQHC, FQHC look-alike, or RHC except as established in paragraph (b) of this subsection.

(b) An APM effective date shall not precede the date in which the department received the written request for the APM.

Section 10.[8] Change in Scope and Final PPS Rate Adjustment. (1)(a) If an FQHC, FQHC look-alike, or RHC changes its scope of services after the base year, the department shall adjust the FQHC’s, FQHC look-alike’s, or RHC’s final PPS rate if the change in scope qualifies for an adjustment in accordance with this section upon departmental review and approval of the change in scope.

(b) An adjustment to a final PPS rate resulting from a change in scope that occurred after an FQHC’s, FQHC look-alike’s, or RHC’s base year shall be retroactively effective to the date that the FQHC, FQHC look-alike, or RHC applied for the change in scope occurred.

(1) A revised PPS rate shall be calculated in accordance with the MAP 100501. 2. There shall be no rebasing regarding a revised PPS rate.

(2) A change in scope of service shall be restricted to:

(a) Adding or deleting a covered service;

(b) Increasing or decreasing the intensity of a covered service pursuant to subsection (5) of this section; or

(c) A statutory or regulatory change that materially impacts the costs or visits of an FQHC, FQHC look-alike, or RHC.

(3) The following items individually shall not constitute a change in scope:

(a) A general increase or decrease in the costs of existing services;

(b) A reduction or an expansion of office hours per day, days per week, or weeks per year;

(c) An addition of a new site that provides the same Medicaid covered services;

(d) A wage increase;

(e) A renovation or other capital expenditure;

(f) A change in ownership; or

(g) An addition or deletion of a service provided by a non-licensed professional or specialist.

(4)(a) An addition of a covered service shall be restricted to the addition of a licensed professional staff member who can perform a Medicaid covered service that is not currently being performed within the FQHC, FQHC look-alike, or RHC by a licensed professional employed or contracted by the facility.

(b) The deletion of a covered service shall be restricted to the deletion of a licensed professional staff member who can perform a Medicaid covered service that was being performed within the FQHC, FQHC look-alike, or RHC by the licensed professional staff member.

(5) A change in intensity shall:

(a) Include a material change;

(b) Increase or decrease the existing final PPS rate by at least five (5) percent; and

(c) Last at least twelve (12) months.

(6) The department shall consider a change in scope request due to a statutory or regulatory change that materially impacts the costs of visits at an FQHC, FQHC look-alike, or RHC if:

(a) A government entity imposes a mandatory minimum wage increase and the increase was:

1. Not included in the calculation of the final PPS rate; or

2. Subsequently included in the MEI applied annually; or

(b) A new licensure requirement or modification of an existing requirement by the state results in a change that affects all facilities within the class.

2. A provider shall document that an increase or decrease in the cost of a visit occurred as a result of a licensure requirement or policy modification.

(7) A requested change in scope shall:

(a) Increase or decrease the existing final PPS rate by at least five (5) percent; and

(b) Last at least twelve (12) months; and

(c) Be submitted to the department in writing.

(8)(a) An FQHC, FQHC look-alike, or RHC that requests a change in scope shall submit For a change in scope that is effective during a base year for determining an FQHC’s, FQHC look-alike’s, or RHC’s final PPS rate, the base year costs associated with the change in scope shall not be duplicated when determining the revised PPS rate due to the change in scope.

(b) The following documents shall be submitted to the department within six (6) months of the requested effective date of a change in scope:

1. A narrative describing the change in scope;

2. A projected Universal Cost Report containing twelve (12) months of projected cost report data for the interim PPS rate change;

3. A completed MAP 100501, Prospective Payment System Rate Adjustment, completed according to the Instructions for Completing the MAP 100501 Form; and

4. A signed letter requesting the change in scope.

(b) If the department does not receive the documentation required regarding a change in scope within six (6) months after the requested effective date of a change in scope, the change in scope shall be denied.

(9) If the department approves the request for a change in scope, the department shall:

1. Notify the FQHC, FQHC look-alike, or RHC in writing of:

   (i) Approval or denial of the request for change in scope within ninety (90) business days from the date the department received the request; or

   (ii) Need for additional documentation from the FQHC, FQHC look-alike, or RHC to establish an interim PPS rate associated with the change in scope.

2. If the department requests additional documentation to calculate the interim PPS rate for a change in scope, the FQHC, FQHC look-alike, or RHC shall:

   1. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation;

   2. Request an extension beyond thirty (30) days to provide the additional documentation.

3. The department shall grant no more than one (1) extension.

4. If the department approves the request for a change in scope and receives all of the necessary documentation from an FQHC, FQHC look-alike, or RHC within the timelines established in this section, the department shall establish an interim PPS rate for the FQHC, FQHC look-alike, or RHC based on the projected costs contained in the completed MAP 100501, Prospective Payment System Rate Adjustment (Universal Cost Report) referenced in paragraph (a) of this subsection.

9. To establish a PPS final rate resulting from a change in scope, the department shall use a completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report submitted by the FQHC, FQHC look-alike, or RHC to the department that contains twelve (12) months of cost data for the first full fiscal year after beginning with the effective date of the change in scope.

(b) Within six (6) months of the end of the twelve (12) month
cost data period referenced in paragraph (a) of this subsection, the FQHC, FQHC look-alike, or RHC shall submit to the department the completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report containing cost data corresponding to the twelve (12) month cost data for the first full fiscal year end after the effective date of (period associated with) the change in scope.

(c) The department shall:
1. Review the completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report referenced in paragraph (a) of this subsection submitted by an FQHC, FQHC look-alike, or RHC within ninety (90) business days of receiving the completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report; and
2. Notify the FQHC, FQHC look-alike, or RHC of the necessity of the FQHC, FQHC look-alike, or RHC to submit additional documentation if necessary.

(d)1. If additional documentation is necessary to establish a PPS final rate, the FQHC, FQHC look-alike, or RHC shall:
   a. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or
   b. Request an extension beyond thirty (30) days to provide the additional documentation.

   2. The department shall grant no more than one (1) extension.

3. An extension shall not exceed thirty (30) days.

   (e)1. If the department requests additional documentation from an FQHC, FQHC look-alike, or RHC but does not receive any additional documentation or an extension request within thirty (30) days, the department shall reimburse the FQHC, FQHC look-alike, or RHC the FQHC’s, FQHC look-alike’s, or RHC’s PPS final rate that was in effect prior to the FQHC’s, FQHC look-alike’s, or RHC’s request for a change in scope until:
   a. The additional documentation has been received by the department; and
   b. The department establishes a new final PPS rate associated with the change in scope.

2. If an FQHC, FQHC look-alike, or RHC does not submit a completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report to the department in accordance with paragraph (b) of this subsection, the department shall:
   a. Not issue a new PPS final rate associated with the change in scope; and
   b. Revert to paying the FQHC(FHQC), FQHC look-alike, or RHC the FQHC’s, FQHC look-alike’s, or RHC’s PPS final rate that was in effect prior to the FQHC’s, FQHC look-alike’s, or RHC’s request for a change in scope.

   (f)1. If any service included in a change in scope is a service that can be identified on a paid claims listing, the department shall review the FQHC’s, FQHC look-alike’s, or RHC’s paid claims listing for the period of time corresponding to the FQHC’s, FQHC look-alike’s, or RHC’s cost report period of time referenced in paragraphs (a) and (b) of this subsection.

2. If an FQHC, FQHC look-alike, or RHC has submitted all necessary information to the department within forty-five (45) days of reviewing the FQHC’s, FQHC look-alike’s, or RHC’s paid claims listing, the department shall:
   a. Establish a final PPS rate, resulting from the change in scope, for the FQHC, FQHC look-alike, or RHC; and
   b. Notify the FQHC, FQHC look-alike, or RHC in writing of the FQHC’s, FQHC look-alike’s, or RHC’s:
      (i) Final PPS rate; and
      (ii) Appeal rights regarding the PPS final rate.

3. To allow adequate time for claim adjudication, a paid claims listing shall not be requested until at least fourteen (14) months after the end of the FQHC’s, FQHC look-alike’s, or RHC’s cost report period associated with the change in scope.

   (g)1. If no service included in a change in scope can be identified on a paid claims listing, the department has received a completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report referenced in paragraphs (a) and (b) of this subsection, and no additional documentation is needed from the FQHC, FQHC look-alike, or RHC, the department shall:
   a. Not review a paid claims listing in establishing a new PPS final rate for an FQHC, FQHC look-alike, or RHC resulting from the change in scope; and
   b. Establish a new PPS final rate for an FQHC, FQHC look-alike, or RHC resulting from the change in scope within ninety (90) days of receiving the completed MAP 100501, Prospective Payment System Rate Adjustment and Universal Cost Report.

Section 11. [9] Limitations and Exclusions. (1) [a] Except for a case in which a recipient or enrollee, subsequent to the first encounter at an FQHC, FQHC look-alike, or RHC, suffers an illness or injury requiring additional diagnosis or treatment, an encounter with more than one (1) health care provider or multiple encounters with the same health care provider which take place on the same day and at a single location shall constitute a single visit.

   (b) The limit established in paragraph (a) of this subsection shall:
   1. Apply to an FQHC, FQHC look-alike, or RHC; and
   2. Not apply to a PCC that is not an FQHC, FQHC look-alike, or RHC.

   [2](a) Except as established in paragraph (b) of this subsection, a vaccine available without charge to an FQHC, FQHC look-alike, RHC, or PCC through the department’s Vaccines for Children Program and the administration of the vaccine shall not be reported as a cost to the Medicaid Program.

   (b) A payment shall be allowed as Medicaid costs reported on a Universal Cost Report.

   (3) The department shall not reimburse for services provided by an FQHC, FQHC look-alike, PCC, or RHC to a recipient in a hospital unless the FQHC, FQHC look-alike, PCC, or RHC has previously, any time prior to the hospital admission, provided a service to the recipient at the FQHC’s, FQHC look-alike’s, PCC’s, or RHC’s location.

Section 12. [40] Out-of-State Providers. (1) Except as established in subsection (2) of this section, reimbursement to an out-of-state FQHC, FQHC look-alike, or RHC shall be based on the rate on file with the FQHC’s, FQHC look-alike’s, or RHC’s state Medicaid agency.

   (2) If an out-of-state FQHC’s, FQHC look-alike’s, or RHC’s reimbursement is an APM, the department’s reimbursement to the out-of-state FQHC, FQHC look-alike, or RHC shall:
   a. Not be the APM the FQHC, FQHC look-alike, or RHC receives in its state; and
   b. Be the final PPS rate that the FQHC, FQHC look-alike, or RHC would receive in its state if it were not receiving an APM.

Section 13. [44] Federal Approval and Federal Financial Participation. The department’s reimbursement for services pursuant to this administrative regulation shall be contingent upon:

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

   (2) A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services’ approval for the reimbursement.

   (1) Denies federal financial participation for the policy; or
   (2) Disapproves the policy.

Section 14. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

   (1) a 907 KAR 1:054; or
   b 907 KAR 1:082; and
   (2) This administrative regulation.

Section 15.[42] Appeal Rights. [44] An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance
Section 16[44] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “MAP 100501, Prospective Payment System Rate Adjustment”, February 2013 edition.[and]
(b) "Instructions for Completing the MAP 100501 Form", February 2013 edition.
(c) "Universal Cost Report", May 2015; and
(d) "Universal Cost Report Instructions", May 2015.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street, 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

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) reimbursement policies for Medicaid covered services provided by a federally-qualified health center (FQHC), rural health clinic (RHC), or primary care center (PCC) that is not an FQHC, FQHC look-alike, or RHC. An FQHC or FQHC look-alike is a federally-recognized entity that serves a population that is medically underserved. An RHC is a federally-recognized entity that is designated or certified by the secretary of the Department of Health and Human Services as being located in an area that is a health professional shortage area or medically underserved area. A PCC is an entity whose licensure requirements are established by the Cabinet for Health and Family Services Office of Inspector General pursuant to 902 KAR 20:058 and are not federally-recognized as being equivalent to an FQHC.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the Department for Medicaid Services (DMS) reimbursement policies for Medicaid covered services provided by a federally-qualified health center (FQHC), rural health clinic (RHC), or primary care center (PCC) that is not an FQHC, FQHC look-alike, or RHC. An FQHC or FQHC look-alike is a federally-recognized entity that serves a population that is medically underserved. An RHC is a federally-recognized entity that is designated or certified by the secretary of the Department of Health and Human Services as being located in an area that is a health professional shortage area or medically underserved area. A PCC is an entity whose licensure requirements are established by the Cabinet for Health and Family Services Office of Inspector General pursuant to 902 KAR 20:058 and are not federally-recognized as being equivalent to an FQHC.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment establishes an alternative reimbursement option (an alternative payment methodology or APM) for FQHCs, FQHC look-alikes, or RHCs. The amendment provides for a new FQHC, FQHC look-alike, or RHC and elaborates on the process for establishing reimbursement for such a facility; incorporates by reference specific documents – Universal Cost Report and Universal Cost Report Instructions – used in establishing reimbursement for a new FQHC, FQHC look-alike, or RHC; elaborates on the process and requirements related to requesting and establishing a new reimbursement due to a change in scope (of services); establishes that DMS will not pay an APM for an out-of-state FQHC, FQHC look-alike, or RHC; clarifies that managed care organizations are not required to reimburse in the same way for FQHC, FQHC look-alike, or RHC services as DMS reimburses; inserts definitions for clarity; and clarifies miscellaneous provisions. Amendments in the amended after comments administrative regulation include redefining "base year" to establish that it ends within twenty-four (24) months from when the FQHC, FQHC look-alike, or RHC enrolled in the Medicaid Program; clarifying that an FQHC's, FQHC look-alike’s, or RHC’s reasonable costs are determined based on cost report data from the FQHC’s, FQHC look-alike’s, or RHC’s base year; clarifying that the Universal Cost Report corresponds to the FQHC’s, FQHC look-alike’s, or RHC’s base year; clarifying that the default reimbursement (when an FQHC, FQHC look-alike, or RHC is delinquent in submitting their Universal Cost Report, documentation, or reimbursement data) is a reimbursement for primary care services pursuant to Section 7 of this administrative regulation; clarifying that DMS’s reimbursement for physician services for which no code/rate exists on the Kentucky-specific Medicare Physician Fee Schedule and which is provided by an advanced practice registered nurse or physician assistant is seventy-five (75) percent of what DMS pays a physician for the service; allowing a new FQHC, FQHC look-alike, or RHC to receive the alternative payment methodology (APM) for an interim PPS rate if the FQHC, FQHC look-alike, or RHC is receiving an interim PPS rate prior to November 1, 2015; eliminating the requirement that a projected Universal Cost Report be submitted DMS when requesting a change in scope as the MAP 100501 Prospective Payment System Rate Adjustment and Universal Cost Report is used for a change in scope; and clarifying that DMS will reimburse a new FQHC, FQHC look-alike, or RHC for Medicaid covered services provided in a hospital if the FQHC, FQHC look-alike, or RHC provided services to the recipient at the FQHC, FQHC look-alike, or RHC location prior to the recipient being admitted to a hospital (prior relationship has been established).
(b) The necessity of the amendment to this administrative regulation: The alternative reimbursement option (an APM) is necessary to maintain the viability of a handful of FQHCs/RHCs whose current reimbursement is well below the average of others in Kentucky. Reimbursement for these entities is federally mandated. The federally-mandated model (which is customized for each entity) was introduced in 2001, but over time the reimbursement for a few such facilities participating in Kentucky’s Medicaid program has proved to be significantly lower than the other entities and is at risk of not being able to cover all costs of the entities. Consequently, DMS proposed to the Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides federal funding to Medicaid programs – an APM to help sustain the entities and which would be available to all entities. The APM is a rate equal to 125 percent of the Medicare PPS rate for rural health clinics in effect as of September 30, 2014. Any FQHC, FQHC look-alike, or RHC can choose this option; however, DMS only anticipates that the few RHCs whose current prospective payment system (PPS) encounter rate is lower than the alternative will actually choose the alternative. CMS has approved the alternative reimbursement. The amendments regarding interim reimbursement for new FQHCs, FQHC look-alikes, and RHCs are necessary to comply with a mandate by CMS. The establishment of an alternative reimbursement option for a new FQHC, FQHC look-alike, or RHC as well as elaboration on changing reimbursement due to a change in scope are necessary for clarity. Not offering the APM option to out-of-state FQHCs, FQHC look-alikes, or RHCs is necessary to ensure that only in-state facilities are eligible for the enhanced reimbursement. Incorporating by reference the Universal Cost Report and Universal Cost Report Instructions is necessary to ensure that entities use the correct documents to report costs. Other amendments are necessary for clarity. Most of the
amendments after comments are necessary for clarity. Defining the "base year" as occurring within twenty-four (24) months of an FQHC’s, FQHC look-alike’s, or RHC’s enrollment in the Medicaid Program is necessary to address a problem of some entities enrolling in the Medicaid Program but never submitting a cost report and for a long time or indefinitely being reimbursed an interim PPS rate. An interim PPS rate is intended to be interim as it does not based on the entity’s documented costs. Reimburse an interim PPS rate for a long time creates problems because if the FQHC’s, FQHC look-alike’s, or RHC’s final PPS rate proves to be lower than the interim PPS rate then the FQHC, FQHC look-alike, or RHC may owe DMS a very large amount of money due to overpayments. DMS has been unsuccessful in some cases in recouping such money. (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by helping sustain FQHCs/FQHC look-alikes/RHCS whose current reimbursement is inadequate to survive and in order to ensure Medicaid recipient access to services. The amendment after comments conforms to the content of the authorizing statutes by safeguarding taxpayer monies by not allowing entities to receive an interim PPS rate for a long time or indefinitely.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by helping sustain FQHCs/FQHC look-alikes/RHCS whose current reimbursement is inadequate to survive and in order to ensure Medicaid recipient access to services. The amendment after comments conforms to the content of the authorizing statutes by safeguarding taxpayer monies by not allowing entities to receive an interim PPS rate for a long time or indefinitely.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There were thirty-five (35) FQHCs/FQHC look-alikes, 152 RHCS, and sixty-four (64) PACs enrolled in Kentucky’s Medicaid Services as of March 2015.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Any FQHC, FQHC look-alike, or RHC that wishes to receive the alternative reimbursement must submit a written request to DMS expressing the request to receive the alternative reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3), No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Any FQHC, FQHC look-alike, or RHC that chooses to receive the alternative reimbursement will receive increased Medicaid reimbursement if the entity’s current reimbursement is less than the alternative reimbursement.

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

(a) Initially: The costs of the amendment is indeterminable as it depends on how many, if any, FQHCs/FQHC look-alikes/RHCS elect to receive the APM, and how soon, and upon the difference in current reimbursement for such an entity compared to the APM.

(b) On a continuing basis: The response stated in (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky’s indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Expanding the base of authorized behavioral health practitioners will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard and assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(30)(A).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS projects no revenue will initially be generated by the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The costs of the amendment is indeterminable as it depends on how many, if any, FQHCs/FQHC look-alikes/RHCS elect to receive the alternative reimbursement, and how soon, and upon the difference in current reimbursement for such an entity compared to the alternative reimbursement.

(d) How much will it cost to administer this program for subsequent years? The response stated in (c) also applies here.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amended After Comments)

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

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

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:
(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and
(b) Include the issuance of a recommended order; 2. Procedures for written exceptions; and 3. The issuance of a final order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.

(2) The cabinet shall retain:
(a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and
(b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:070, the cabinet shall:
(a) Initiate an administrative disqualification hearing; or
(b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.
(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.
(3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:
(a) Cabinet’s suspicion that an IPV has been committed;
(b) Amount and period of the overpayment for the suspected IPV; and
(c) Household’s right to an administrative disqualification hearing.
(2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.
(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).
(4) The cabinet shall:
(a) The FS-80, 4/15, and the FS-80, Supplement A, 9/14; or
(b) On or after December 28, 2015, the FS-80, 12/15, and the FS-80, Supplement A, 12/15.

In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:
(a) By certified mail, return receipt requested, to the individual; or
(b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050[To the addressee only, and]
(c) With a return receipt requested.
(6) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(i). (7) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or other individual to whom the notice has been sent that the hearing shall:
(a) Conduct an administrative disqualification hearing; and
(b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14(12).
(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:
(a) One (1) time; and
(b) For no more than thirty (30) days.
(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).
(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing, the hearing officer shall:
(a) Conduct the hearing without the household member or representative;
(b) Consider the evidence; and
(c) Determine whether an intentional program violation was committed based on clear and convincing evidence if a household representative does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:
(a) Proceed without household representation, because the return receipt from the hearing notice verified the notice was received by the individual; or
(b) Not be conducted, because the hearing notice or return receipt is annotated as unclaimed or undeliverable.
(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall rescind a determination of an intentional program violation and conduct a new hearing upon an order of finding if the:
(a) Household was not represented at the hearing;
(b) Individual was determined to have committed an IPV; and
(c) Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with
Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the: (a) IPV being substantiated by the final order or a court of appropriate jurisdiction; (b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; or (c) Individual completing, signing, and returning the form FS-111, Deferred Adjudication Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation. (2) If the cabinet’s determination of an IPV is later reversed, the cabinet shall: (a) Reintroduce the individual, if eligible; and (b) In accordance with 7 C.F.R. 273.17, restore benefits: 1. That were lost as a result of the disqualification; and 2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, Deferred Adjudication Disqualification Consent Agreement, in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h). (2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the: (a) Consequences of consenting to disqualification; (b) Disqualification; and (c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has: (a) Committed an IPV, as determined by: 1. An administrative disqualification hearing; or 2. A court; or (b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement. (2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b). (3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household. (4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual. (5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii): (1) Further administrative appeal procedures shall not exist after an: (a) Administrative disqualification hearing determines that an IPV was committed; or (b) Individual waives the right to an administrative disqualification hearing; (2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and (3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference: (a) The “Correspondence from the Office of Attorney General dated April 5, 2012”, April 5, 2012; (b) "FS-80, Notice of SNAP Suspected Intentional Program Violation", 4/15; (c) "FS-80, Notice of SNAP Suspected Intentional Program Violation", 12/15; (d) "FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 9/14; (e) "FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 12/15; and (f) "FS-111, Deferred Adjudication Disqualification Consent Agreement", 9/14. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 921 KAR 3:060

TERESA C. JAMES, LCSW, Commissioner AUDREY TAYSE HAYNES, Secretary APPROVED BY AGENCY: August 13, 2015 FILED WITH LRC: August 13, 2015 at 3 p.m. CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood (1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation establishes the criteria used by the Cabinet for Health and Family Services, Department for Community Based Services in determining if an intentional program violation (IPV) has occurred in the Supplemental Nutrition Assistance Program (SNAP) and the penalties that shall be applied for said violation. (b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with 7 C.F.R. 273.16 and KRS Chapter 13B by establishing a hearing process for individuals suspected of intentionally violating a SNAP regulation. (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing a hearing process and penalties associated with intentional program violations of SNAP. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by developing a hearing process and establishing penalties for SNAP intentional program violations. (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation incorporates an exemption to KRS Chapter 13B, administrative hearing requirements, as approved by the Office of the Attorney General to assure the state’s compliance with federally prescribed timeframes for SNAP administrative hearings. The amendment permits the individual subject to the administrative disqualification hearing to select a means for notification other than certified mail. The amendment also revises material incorporated by reference, form FS-80, Notice of SNAP Suspected Intentional Program Violation, by adding language to inform individuals of their rights during a disqualification hearing as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS) and to conform to the new forthcoming eligibility and enrollment system. Lastly, the amendment makes technical corrections in accordance with federal regulations and KRS Chapter in 13A. (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is...
necessary to address findings from a recent federal review of the program and to avoid federal financial penalty. In addition, 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 to this administrative regulation conforms to the content of the authorizing statutes by assuring conformity with federal requirements 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 informing individuals of their rights during a disqualification hearing as required by the federal administrating agency, process and policy alignment, resource maximization, and programmatic accountability.

(1) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require any additional action on the part of SNAP applicants or recipients.

(e) Whether or not the amendment involves any cost to SNAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All SNAP applicants and recipients will benefit from timely administrative hearings and their right to a disqualification hearing more clearly stated on the program form. SNAP applicants and recipients may also indirectly benefit from the state maintaining federal resources to support the provisions of SNAP benefits. Lastly, regulated entities will benefit from the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

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

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

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

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

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

(i) 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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate:
2. State compliance standards. KRS Chapter 13B, KRS 194A.010(2), KRS 194A.050(1)
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will impose no stricter requirements, or additional or different 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. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.16
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue and will not generate any revenue for the state or local government in the first year.
4. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.
5. (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue and will not generate any revenue for the state or local government in subsequent years.
6. (c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program for the first year.
7. (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.
8. 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

EDUCATION PROFESSIONAL STANDARDS BOARD

(Amendment)

16 KAR 2:100. Junior Reserve Officers Training Corps certification.

RELATES TO: KRS 161.010, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.1266 to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the Kentucky certification for instructor of the Junior Reserve Officers Training Corps.

Section 1. (1) The certificate for senior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant upon completion of the following:
(a) A bachelor's degree from a standard college or university as defined in KRS 161.010;
(b) Official recommendation by the appropriate branch of military service;
(c) Contract for this employment by a local school district: and
(d) Recommendation for certification by the local school superintendent;
(e) Submission of a national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application; and
(f) Submission of a DD214 documenting honorable service.

(2) The certificate for senior instructor, Junior Reserve Officers Training Corps, may be renewed for a five (5) year period upon recommendation by the local school superintendent and upon completion of nine (9) semester hours to include the following:
(a) Human growth and development and learning theory;
(b) Foundations of education; and
(c) Career development and vocational planning.

(3) Each five (5) year renewal thereafter shall require the completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

Section 2. (1) The certificate for junior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant upon completion of the following:
(a) High school graduation, or its equivalence as determined by an acceptable score on the General Education Development Test;
(b) Official recommendation by the appropriate branch of military service;
(c) Contract for this employment by a local school district: and
(d) Recommendation for certification by the local school superintendent;
(e) Submission of a national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application; and
(f) Submission of a DD214 documenting honorable service.

(2) Initial Renewal. The certificate for junior instructor, Junior Reserve Officers Training Corps, may be initially renewed for a two (2) year period upon application to the board, using the Form CA-2, incorporated by reference in 16 KAR 4:080 (“Form CA-2, Application for Certificate Renewal”), approved by reference in 16 KAR 2:090 and submission of the following:
(a) Verification by the local school superintendent of two (2) years’ successful experience as a Junior Reserve Officer Training Corps Instructor at a local school district;
(b) Successful completion of the “New-to-Kentucky Teacher” Module and the “ Substitute Teacher Orientation” Module found on www.kyeducators.org. The junior ROTC instructor shall make reasonable efforts to complete the modules within the first ninety (90) days of employment with the local school district; and
(c) Successful completion of a minimum of twenty-four (24) clock hours of district-approved professional development, annually; or
(d) Successful completion of six (6) semester hours from a standard college or university as defined in KRS 161.010 to include the following:
1. Human growth and development and learning theory;
2. Foundations of education; and
3. Career development and vocational planning.

(3) Each subsequent two (2) year renewal thereafter shall require completion by September 1 of the year of expiration of the following:
(a) Six (6) semester hours selected from an associate degree program from a standard college or university as defined in KRS 161.010; or
(b) Twenty-four (24) clock hours of district-approved professional development, annually.

(4) Upon completion of the associate degree with a 2.5 grade point standing, the certificate for junior instructor, Junior Reserve Officers Training Corps, shall be renewed for a five (5) year period. Each five (5) year renewal thereafter shall require completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

(5) A junior instructor who renews the certificate for junior instructor, Junior Reserve Officers Training Corps by completing the twenty-four (24) hours of professional development annually shall not be eligible to receive the five (5) year certificate as noted in subsection (4) of this section, but shall be granted a certificate of two (2) years in duration.

Section 3. (1) The certificate for a Senior Instructor of the Junior Guard shall be issued initially for a two (2) year period upon completion of the following:
(a) A current member of the United States Military or has retired from the United States Military within a two (2) year period;
(b) A bachelor's degree from an accredited college or university as defined in KRS 161.010;
(c) Submission of a national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application;
(d) Submission of a DD214 documenting honorable service;
(e) Official letter of recommendation from the National Guard; and
(f) Contract for employment with a local school district: and
(g) Recommendation for certification by the local school superintendent or designee.

(2) The certificate for the Senior Instructor of the Junior Guard may be renewed for a five (5) year period upon recommendation by the local school superintendent and upon completion of six (6) semester hours to include the following:
(a) Human growth and development; and
(b) Foundations of education.

(3) Each five (5) year renewal thereafter shall require the completion of two (2) years of experience teaching in the Junior Guard.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 14, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an
opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jimmy Adams

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the qualifications for teachers of Junior Reserve Officers Training Corp (JROTC) certification.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for Junior Reserve Officers Training Corp (JROTC) certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for Junior Reserve Officers Training Corp (JROTC) instructors and establishes the procedures by which an applicant may apply for teaching certification in Junior Reserve Officers Training Corp (JROTC) certification.
(e) If 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 an additional certification path for instructors of Junior Reserve Officers Training Corp (JROTC) certification. The certification requires applicants for Junior Reserve Officers Training Corp (JROTC) certification to use Form CA 2 as incorporated by reference in 16 KAR 4:060. The CA-2 character and fitness questions adopted by the Education Professional Standards Board in 2013. The amendment also requires initial certification applicants to submit a national and state background check with their applications.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add a new certification path and to modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant’s qualifications and fitness to work with students.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant’s qualifications and fitness to work with students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to submit to the Education Professional Standards Board the appropriate application form as well as the required national and state criminal background checks when applying for certification. School districts and students will not have to take any actions to comply with 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 may be an additional cost to applicants to obtain the required background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have modernized forms that increase clarity. School districts and students will benefit from increased scrutiny by the Education Professional Standards Board of each applicant’s qualifications and fitness to work with students.

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

(a) Initially: None
(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? No, tiering will not apply since all applicants for certification are required to meet 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 Education Professional Standards Board and the 173 public school districts.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by this administrative regulation: KRS 161.020, 161.028 and KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional new revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional new revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

Expenditures (+/-):
Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)


RELATES TO: KRS 161.020, 161.028, 161.030, 161.052
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation approved by the Education Professional Standards Board. KRS 161.052 requires that all persons employed as a teacher for gifted education hold an appropriate certificate endorsement for gifted education. This administrative regulation establishes a preparation-certification program for teachers for gifted education.

Section 1. Definitions. (1) "Qualified teacher" means a teacher who holds the appropriate certification as a teacher for gifted education unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

(2) "Teacher for gifted education" means a teacher who works:
(a) Directly with identified gifted pupils, in addition to the regularly assigned classroom teacher;
(b) For at least one-half (1/2) of the regular school day in a classroom made up only of properly identified gifted students.

Section 2. (1) A certificate endorsement as teacher for gifted education shall be issued in accordance with the pertinent Kentucky statutes and the Education Professional Standards Board administrative regulations to an applicant who:
(a) Holds a certificate valid for classroom teaching at the elementary school level, the middle grade level, or the high school level;
(b) Successfully completed the Kentucky Teacher Internship Program established in 16 KAR 7:010. Teachers who have successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who are not required to complete the internship program under the provisions for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.
(c) Has completed at least one (1) year of successful teaching experience;
(d) Is currently enrolled in graduate studies related to the education profession.

(2) The request for the probationary endorsement shall be submitted on Form CA-GP to the Education Professional Standards Board for each teacher for gifted education requiring the probationary endorsement.

(b) A teacher receiving this probationary endorsement shall complete the required curriculum for recommendation for the endorsement for teacher for gifted education issued under Section 2 of this administrative regulation within the two (2) year validity of the probationary endorsement.
(c) The probationary endorsement shall not be renewed.

Section 4. Incorporation by Reference. (1) Form CA-GP, 09/15, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 14, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Jimmy Adams

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the qualifications for endorsement for teachers for gifted education and implements the testing and internship requirements of KRS 161.030.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for the endorsement for teachers for gifted education.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be
issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for the endorsement for teachers for gifted education and establishes the procedures by which an applicant may apply for teaching endorsement in gifted education.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires applicants for gifted education endorsement to use Form CA-GP. The CA-GP contains character and fitness questions adopted by the Education Professional Standards Board in 2013. The amendment also requires initial certification applicants to submit a national and state background check with their applications.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the applicant has successfully completed the Kentucky Teacher Internship Program (KTIP) established by 16 KAR 7:010 and modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant’s qualifications and fitness to work with students.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant’s qualifications and fitness to work with students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants must have successfully completed the Kentucky Teacher Internship Program (KTIP) established by 16 KAR 7:010 and will have to submit to the Education Professional Standards Board the appropriate application form as well as the required national and state criminal background checks when applying for emergency certification. School districts and students will not have to take any actions to comply with 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 may be an additional cost to applicants to obtain the required background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have modernized forms that increase clarity. School districts and students will benefit from increased scrutiny by the Education Professional Standards Board of each applicant’s qualifications and fitness to work with students.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? No, tiering will not apply since all applicants for certification are required to meet 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 Education Professional Standards Board and the 173 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028 and KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues generated by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues generated by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

EDUCATION PROFESSIONAL STANDARDS BOARD

(Amendment)

16 KAR 2:140. Probationary certificate for teachers of children, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.028(1)(d) requires the Education Professional Standards Board to issue and renew any certificate. This administrative regulation establishes a plan for recruiting qualified individuals into positions for teachers of children.
ages birth to primary age.

Section 1. Definition. "Qualified teacher" means a teacher who holds an interdisciplinary early childhood education certificate or who has received an approval identified in 16 KAR 2:040, Section 5, unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. If a qualified teacher is not available for the position as teacher of children birth to primary age, as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary interdisciplinary early childhood education certificate be issued as provided in this administrative regulation.

(1) A prerequisite for a one (1) year probationary interdisciplinary early childhood education certificate for teaching children, birth to primary age, shall be:

(a) A certificate or statement of eligibility in kindergarten or elementary special education; or
(b) A bachelor's degree or an advanced degree in early childhood education, early childhood special education, or child development with:

1. A cumulative minimum grade point average of 2.50 on a 4.00 scale; or
2. A minimum grade point average of 3.00 on a 4.00 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework, or
(3) A certificate in another area, if the applicant has had one (1) year of teaching children birth through age five (5) years.

(2) The applicant shall have:

(a) Enrolled in an approved preparation program for certification in interdisciplinary early childhood education established in 16 KAR 2:040; and
(b) Completed a minimum of nine (9) semester hours of credit in the development of children below primary age or in special education.

(3) The requirements established in subsection (2) of this section shall be verified by submission of a curriculum contract completed by the teacher education institution with an approved interdisciplinary early childhood education preparation program.

(4) The applicant shall complete twelve (12) clock hours of training established by the Kentucky Department of Education prior to employment.

(5) The applicant shall complete an additional six (6) clock hours of training established by the Kentucky Department of Education within the first three (3) months of employment.

(6) To apply for the probationary interdisciplinary early childhood education certificate, the applicant shall submit a completed Form CA-BP to the Education Professional Standards Board.

Section 3. Requirements for Renewal of a Probationary Interdisciplinary Early Childhood Education Certificate. (1) The first renewal of the probationary interdisciplinary early childhood education certificate shall be for one (1) year based upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school as a teacher of children ages birth to primary;
(b) Completion of at least six (6) semester hours or its equivalent from the approved interdisciplinary early childhood education preparation program as indicated on the teacher's curriculum contract; and
(c) Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010. A teacher who has successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who is not required to complete the internship program may again while serving on the probationary certificate:

(2a) Subsequent one (1) year renewals of the probationary interdisciplinary early childhood education certificate shall require at least six (6) semester hours or its equivalent of additional credit from the approved interdisciplinary early childhood education preparation program as indicated on the teacher's curriculum contract.

(b) The total validity period of the probationary certificate for interdisciplinary early education shall not exceed three (3) years in compliance with the No Child Left Behind Act of 2001, 20 U.S.C. 7801(23) and 34 C.F.R. 200.56.

(3) Upon successful completion of all program requirements for the approved interdisciplinary early childhood education preparation program established in 16 KAR 2:040, including successful completion of all required assessments established in 16 KAR 6:010, a professional certificate for interdisciplinary early childhood education, birth to primary, valid for five (5) years shall be issued.

(4) Program requirements for completion of the interdisciplinary early childhood education preparation program while serving on the probationary certificate established in this administrative regulation shall not include student teaching.

Section 4. Incorporation by Reference. (1) Form CA-BP, 08/15/10BP, rev. 10/02, Education Professional Standards Board, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 14, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Jimmy Adams
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the qualifications for Probationary certificate for teachers of children, birth to primary.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for teachers of children, birth to primary probationary certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for the probationary certificate for teachers of children, birth to primary and establishes the procedures by which an applicant may apply for teaching certification in career and technical education areas.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment requires applicants for career and technical education certification to use Form CA-BP. The CA-BP contains character and fitness questions adopted by the Education Professional Standards Board in 2013.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant’s qualifications and fitness to work with students.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that this administrative regulation delineates the qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant’s qualifications and fitness to work with students.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to submit to the Education Professional Standards Board the appropriate application form. School districts and students will not have to take any additional steps to comply with 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 should be no additional costs.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have modernized forms that increase clarity. School districts and students will benefit from increased scrutiny by the Education Professional Standards Board of each applicant’s qualifications and fitness to work with students.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, or directly or indirectly increase fees.
(9) TIERING: Is tiering applied? No, tiering will not apply since all applicants for certification are required to meet 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 Education Professional Standards Board and the 173 public school districts.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the 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 in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.
(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.
(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: This is not a fee generating or a cost incurred program but, rather, establishes the qualifications and procedures for obtaining certification.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 2:150. Probationary certificate for teachers of engineering and technology education.

RELATES TO: KRS 161.020, 161.028(1)(a), (c), 161.030
STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (c), 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require a teacher and other professional school personnel to hold a certificate of legal qualification for the respective positions to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Pursuant to KRS 161.028, a teacher education institution is required to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of engineering and technology.

Section 1. Definition. “Qualified teacher” means a teacher who holds certification as an engineering and technology teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for a Probationary Certificate for Teachers of Engineering and Technology. (1) If a qualified teacher is not available for the position of engineering and technology teacher as attested to by the local superintendent, the superintendent may request, by filing a Form CA-ETTC-EJ with the Education Professional Standards Board, that a one (1) year probationary certificate be issued as approved by the
Section 3. Requirements for Renewal of a Probationary Certificate for Teachers of Engineering and Technology. (1) The first renewal of the probationary certificate for teachers of engineering and technology shall be for one (1) year, based upon the successful completion of the following requirements:

(a) Evidence of employment by a participating district;
(b) Completion of eighteen (18) clock hours of orientation and management training provided through the technology education new teacher institute, within the first six (6) weeks of employment;
(c) Completion of at least six (6) semester hours toward the completion of the educator preparation program in which the applicant is enrolled from the continuous curriculum plan; and
(d) Successful completion of the internship program required by KRS 161.030 and 16 KAR 7:010.

(2) The probationary certificate may be renewed a maximum of two (2) times and shall require at the time of application proof of the completion of at least six (6) hours of additional credit from the preapproved continuous curriculum plan.

(3) Upon successful completion of all requirements for an approved teacher preparation program, including successful completion of all required assessments identified in 16 KAR 6:010, a professional certificate for engineering and technology shall be issued valid for five (5) years.

Section 4. Upon recommendation by the teacher education institution, teaching experience performed in a full-time position requiring certification for engineering and technology teachers shall be substituted for the student teaching requirement.

Section 5. Incorporation by Reference. (1) Form CA-ET, 08/15 [TC-ET, 09/2010], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015

FILED WITH LRC: August 14, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jimmy Adams

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the qualifications for teachers of engineering and technology teacher and implements the testing and internship requirements of KRS 161.030.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for engineering and technology teacher certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for engineering and technology certification and establishes the procedures by which an applicant may apply for teaching engineering and technology certification.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment requires applicants for engineering and technology certification to use Form CA-ET. The CA-ET contains character and fitness questions adopted by the Education Professional Standards Board in 2013. The amendment also requires initial certification applicants to submit a national and state background check with their applications. Additionally, amendment updates references to the Office of Career and Technical Education and corrects out dated or incorrect language in the regulation.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant’s qualifications and fitness to work with students.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant’s qualifications and fitness to work with students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this
Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the standards Board and the 173 Kentucky school districts, all applicants seeking certification, and students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be an additional cost to applicants to obtain the required background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants have modernized forms that increase clarity. School districts and students will benefit from increased scrutiny by the Education Professional Standards Board of each applicant’s qualifications and fitness to work with students.

(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
(c) 1. A valid classroom teaching certificate or an internship statement of eligibility for grades K-4, 1-8, P-5, 5-9, or 5-8 shall be a prerequisite for a one (1) year probationary certificate for learning and behavior disorders, grades P-12; for hearing impaired, grades P-12; and for visually impaired, grades P-12.

2. The applicant shall have enrolled in an educator preparation program in the certification area for which application is being made, and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

3. The candidate shall have completed three (3) semester hours in the teaching of reading and a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

4. A certificate for teaching exceptional children, including interdisciplinary early childhood education, shall be a prerequisite for a one (1) year probationary certificate for teaching learning and

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

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

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)


RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of exceptional children.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification as a teacher of exceptional children unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. If a qualified teacher is not available for the position of teacher of exceptional children as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary certificate be issued as provided in this administrative regulation. (1)(a)1. A valid classroom certificate or an internship statement of eligibility for grades K-4, 1-8, P-5, 5-9, or 5-8 shall be a prerequisite for a one (1) year probationary certificate for learning and behavior disorders, grades P-12; for hearing impaired, grades P-12; and for visually impaired, grades P-12.

The applicant shall have enrolled in an educator preparation program in the certification area for which application is being made, and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

A candidate shall have completed a minimum of three (3) semester hours in the teaching of reading and a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

A candidate shall have completed a minimum of three (3) semester hours in the teaching of reading and a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

A candidate shall have completed a minimum of three (3) semester hours in the teaching of reading and a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

A candidate shall have completed a minimum of three (3) semester hours in the teaching of reading and a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.
behavior disorders, grades P-12; the endorsement for learning and behavior disorders, grades 8-12; hearing impaired, grades P-12; visually impaired, grades P-12; or moderately and severely disabled, grades P-12.

2. The applicant shall have enrolled in an educator preparation program in the certification area for which application is being made, and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(2) The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services.

(3)(a) The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Kentucky Department of Education, Division of Learning Exceptional Children Services. Teachers employed after the fall conference shall complete these six (6) hours of training during the spring conference of the Council for Exceptional Children; or

(b) If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training conducted or approved by the Kentucky Department of Education, Division of Learning Exceptional Children Services. The applicant shall contact the Division of Learning Exceptional Children Services to schedule the training. The training shall be similar to the topics covered at the conferences.

(4) The Kentucky Department of Education shall report to the Education Professional Standards Board on the number of professional certified teachers of exceptional children who have not completed the training requirements established in subsections (2) and (3) of this section by June 30 of each year for the preceding school year.

(5) Application for a probationary certificate for a teacher of exceptional children shall be made on Form CA 19 (TC 19).

Section 3. The probationary certificate for teachers of exceptional children may be renewed a maximum of two (2) times and shall require at the time of application, proof of the completion of a minimum of six (6) semester hours of additional credit from the special education component to be completed by September 1 of the year of expiration.

Section 4. Requirements for Renewal of a Probationary Certificate for Teachers of Exceptional Children. (1) The first renewal of the probationary certificate for teachers of exceptional children shall be for one (1) year based upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school as a teacher of exceptional children in the area indicated on the initial probationary certificate;

(b) Completion of at least six (6) semester hours or its equivalent toward the completion of the approved exceptional children educator preparation program; and

(c) Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010. Teachers who have successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who are not required to complete the internship program, the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.

(2)(a) Subsequent one (1) year renewal of the probationary certificate for teachers of exceptional children shall require at least six (6) semester hours or its equivalent of additional credit toward completion of the approved exceptional children educator preparation program.

(b) The probationary certificate for teachers of exceptional children may be renewed for a maximum of two (2) times after the initial issuance.

(3) Upon successful completion of all program requirements for the approved exceptional children educator preparation program, including successful completion of all required assessments established in 16 KAR 6:010, a professional certificate for teaching exceptional children established in 16 KAR 2:010 and valid for five (5) years shall be issued.

(4) Program requirements for completion of the exceptional children educator preparation program while serving on the probationary certificate for teachers of exceptional children shall not include student teaching. Upon recommendation by the teacher education institution, teaching experience performed in a full-time continuous position requiring certification for teachers of exceptional children shall be substituted for the special education portion of the student teaching requirement.

Section 5. An applicant holding a classroom teaching certificate who is recruited into a position for teachers of exceptional children under this administrative regulation shall complete the assessment requirements identified in 16 KAR 2:010 and 16 KAR 6:010 for teaching exceptional children, grades primary through twelve (12).


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 14, 2015 at noon
PUBLIC HEARING NOTICED
ANNOUNCEMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jimmy Adams
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications for the probationary certificate for teachers of exceptional children and implements the testing and internship requirements of KRS 161.030.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for the probationary certificate for teachers of exceptional children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for the
probationary certificate for teachers of exceptional children and establishes the procedures by which an applicant may apply for teaching certification of exceptional children.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires applicants for exceptional children certification to use Form CA-19. The CA-19 contains character and fitness questions adopted by the Education Professional Standards Board in 2013. Additionally, amendment updates references to the Kentucky Department of Education Division of Exceptional Children Services to the Division of Learning Services and corrects outdated or incorrect language in the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant’s qualifications and fitness to work with students.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant’s qualifications and fitness to work with students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation, if new, or by the change, if it is an amendment, including:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There may be an additional cost to applicants to obtain the required background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Applicants will have modernized forms that increase clarity. School districts and students will benefit from increased scrutiny by the Education Professional Standards Board of each applicant’s qualifications and fitness to work with students.

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

(a) Initially: None

(b) On a continuing basis: None

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

9. TIERING: Is tiering applied? No, tiering will not apply since all applicants for certification are required to meet 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 Education Professional Standards Board and the 173 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028 and KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

EDUCATION PROFESSIONAL STANDARDS BOARD


RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028 requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes the probationary certificate for middle school teachers and the requirements for issuance and renewal of this certificate.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification as a middle school teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for Issuance of the Probationary Certificate for Middle School Teachers, Grades Five (5) Through Ten (10). (1) If a qualified teacher is not available for the position of middle school teacher at the grade level and content area necessary as attested by the local superintendent, the
superintendent may request a one (1) year probationary certificate for a teacher who:

(a) Holds at least a valid Kentucky teaching statement of eligibility or Kentucky teaching certificate issued by the Education Professional Standards Board;

(b)1. Has a cumulative grade point average of 2.5 on a 4.0 scale; or
   2. Has a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(c) Has an offer of employment from a Kentucky school district or accredited nonpublic school in grades five (5) through nine (9) in a content area or areas;

(d) Has enrolled in an approved middle school preparation program for the content area or areas for which certification is sought; and

(e) Has successfully completed at least twelve (12) semester credit hours of content coursework in each content area for which certification is sought.

(2) Application shall be made on Form CA-MG[TC-MG].

(a) Evidence of employment in a Kentucky school district or nonpublic school in grades five (5) through nine (9) in the content area or areas indicated on the face of the certificate.

(b) The probationary certificate shall be valid for teaching grades five (5) through nine (9) in the content area or areas indicated on the face of the certificate.

Section 3. Requirements for Renewal of a Probationary Certificate for Middle School Teachers, Grades Five (5) Through Nine (9).

(1) The first renewal of the probationary certificate for middle school teachers shall be for one (1) year based upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in grades five (5) through nine (9) in the content area or areas indicated on the initial probationary certificate;

(b) Completion of at least six (6) semester hours or its equivalent from the approved middle school preparation program as indicated on the teacher’s curriculum contract; and

(c) Successful completion of the Kentucky Teacher Internship Program established in 16 KAR 7:010. Teachers who have successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who are not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.

(2) Subsequent one (1) year renewals of the probationary certificate for middle school teachers shall require at least six (6) semester hours or its equivalent of additional credit from the approved middle school preparation program as indicated on the teacher’s curriculum contract.

(b) The probationary certificate for middle school teachers may be renewed for a maximum of two (2) times after the initial issuance. The total validity period of the probationary certificate for middle school teachers shall not exceed three (3) years in compliance with the No Child Left Behind Act of 2001, 20 U.S.C. 2001(29) and 34 C.F.R. 300.56.

(3) Upon successful completion of all program requirements for the approved middle school preparation program, including successful completion of all required assessments established in 16 KAR 6:010, a professional certificate for teaching middle school established in 16 KAR 2:010 and valid for five (5) years shall be issued.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 14, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes, administrative 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jimmy Adams

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications for the probationary certificate for middle school teachers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for the probationary certificate for middle school teachers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for the probationary certificate for middle school teachers and establishes the procedures by which an applicant may apply for probationary teaching certification in middle school education.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires applicants for career and technical education certification to use Form CA-MG. The CA-MG contains character and fitness questions adopted by the Education Professional Standards Board in 2013.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant’s qualifications and fitness to work with students.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require
that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant's qualifications and fitness to work with students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to submit to the Education Professional Standards Board the appropriate application form. School districts and students will not have to take any actions to comply with 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 should be no additional cost to applicants.

(c) Directly with identified English as a second language pupils; or

(d) Has been admitted to the preparation program for the first year? There are no costs associated with the administration of this program.

(e) Is currently enrolled in graduate studies related to the preparation program but, rather, establishes the qualifications and procedures for obtaining certification.

EDUCATION PROFESSIONAL STANDARDS BOARD

(Amendment)

RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030

EDUCATION PROFESSIONAL STANDARDS BOARD


Section 1. Definitions. (1) "Qualified teacher" means a teacher who holds the appropriate certification as a teacher for English as a second language unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

(2) "Teacher for English as a second language" means a teacher who works:

(a) Directly with identified English as a second language pupils, in addition to the regularly assigned classroom teacher; or

(b) In a classroom made up only of properly identified English as a second language students.

Section 2. (1) If a qualified teacher is not available for the position of teacher for English as a second language as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request by filing a Form CA-EL[TC-EL] with the Education Professional Standards Board a probationary endorsement for teaching English as a second language for a teacher who:

(a) Has a bachelor's degree;

(b) Has a valid Kentucky teaching certificate;

(c) Has completed at least one (1) year of successful teaching experience;

(d) Has been admitted to the preparation program for the endorsement for teachers for English as a second language; and

(e) Is currently enrolled in graduate studies related to the education profession.

The request for the probationary endorsement shall be submitted on Form CA-EL[TC-EL] to the Education Professional Standards Board for each teacher for English as a second language requiring the probationary endorsement.

3(a) The probationary endorsement for teachers for English as a second language shall be valid for a period of two (2) years from the initial request.

(b) A teacher receiving this probationary endorsement shall complete the required curriculum for recommendation for the endorsement for teacher for English as a second language within
the two (2) year validity of the probationary endorsement.
(c) The probationary endorsement shall not be renewed.

Section 3. Incorporation by Reference. (1) Form CA-EL, 08/15 [TC-EL 10/2009], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 14, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no written 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Jimmy Adams
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the qualifications for the probationary endorsement of teachers for English as a second language.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for probationary endorsement of teachers for English as a second language.
(c) The probationary endorsement, if new, or by the change if it is an amendment: No
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the qualifications for the probationary endorsement of teachers for English as a second language and establishes the procedures by which an applicant may apply for teaching certification in English as a second language.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment requires applicants for English as a second language probationary endorsement to use Form CA-EL. The CA-EL contains character and fitness questions adopted by the Education Professional Standards Board in 2013.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant's qualifications and fitness to work with students.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant's qualifications and fitness to work with students.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.
(4) Provide an analysis of how the entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to submit to the Education Professional Standards Board the appropriate application form as well as the required national and state criminal background checks when applying for emergency certification. School districts and students will not have to take any actions to comply with this administrative regulation or amendment.
(b) In complying with this administrative regulation or amended regulation, how much will it cost each of the entities identified in question (3): There may be an additional cost to applicants to obtain the required background check.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have modernized forms that increase clarity. School districts and students will benefit from increased scrutiny by the Education Professional Standards Board. 
(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
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, or directly or indirectly increase fees.
(9) TIERING: Is tiering applied? No, tiering will not apply since this administrative regulation does not establish any fees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT
(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and the 173 public school districts.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 161.020, 161.028 and KRS 161.030.
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities,
COUNTIES, FIRE DEPARTMENTS, OR SCHOOL DISTRICTS) FOR THE FIRST YEAR? THERE SHOULD BE NO ADDITIONAL REVENUES CREATED BY THIS AMENDMENT.

(b) HOW MUCH REVENUE WILL THIS ADMINISTRATIVE REGULATION GENERATE FOR THE STATE OR LOCAL GOVERNMENT (INCLUDING CITIES, COUNTIES, FIRE DEPARTMENTS, OR SCHOOL DISTRICTS) FOR SUBSEQUENT YEARS? THERE SHOULD BE NO ADDITIONAL REVENUES CREATED BY THIS AMENDMENT.

(c) HOW MUCH WILL IT COST TO ADMINISTER THIS PROGRAM FOR THE FIRST YEAR? THERE ARE NO COSTS ASSOCIATED WITH THE ADMINISTRATION OF THIS PROGRAM.

(d) HOW MUCH WILL IT COST TO ADMINISTER THIS PROGRAM FOR SUBSEQUENT YEARS? THERE ARE NO COSTS ASSOCIATED WITH THE ADMINISTRATION OF THIS PROGRAM.

NOTE: IF SPECIFIC DOLLAR ESTIMATES CANNOT BE DETERMINED, PROVIDE A BRIEF NARRATIVE TO EXPLAIN THE FISCAL IMPACT OF THE ADMINISTRATIVE REGULATION.

REVENUES (+/-):

EXPENDITURES (+/-):

OTHER EXPLANATION: THIS IS NOT A FEE GENERATING OR A COST INCURRING PROGRAM BUT, RATHER, ESTABLISHES THE QUALIFICATIONS AND PROCEDURES FOR OBTAINING CERTIFICATION.

EDUCATION PROFESSIONAL STANDARDS BOARD

16 KAR 3:030. PROFESSIONAL CERTIFICATE FOR DIRECTORS AND ASSISTANT DIRECTORS OF PUPIL PERSONNEL

RELATES TO: KRS 159.080, 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028, 161.028, AND 161.030 REQUIRE THAT TEACHERS AND OTHER PROFESSIONAL SCHOOL PERSONNEL HOLD CERTIFICATES OF LEGAL QUALIFICATIONS FOR THEIR RESPECTIVE POSITIONS TO BE ISSUED UPON COMPLETION OF PROGRAMS OF PREPARATION PRESCRIBED BY THE EDUCATION PROFESSIONAL STANDARDS BOARD. ADDITIONALLY, TEACHER EDUCATION INSTITUTIONS ARE REQUIRED TO BE APPROVED FOR OFFERING THE PREPARATION PROGRAMS CORRESPONDING TO PARTICULAR CERTIFICATES ON THE BASIS OF STANDARDS AND PROCEDURES ESTABLISHED BY THE EDUCATION PROFESSIONAL STANDARDS BOARD. THIS ADMINISTRATIVE REGULATION ESTABLISHES THE PREPARATION AND CERTIFICATION PROGRAM FOR DIRECTOR OF PUPIL PERSONNEL SERVICES, AND ESTABLISHES THE REQUIREMENTS FOR A PROBATIONARY CERTIFICATE IF A PERSON HOLDING CERTIFICATE FOR DIRECTOR OF PUPIL PERSONNEL SERVICES IS NOT AVAILABLE.

SECTION 1. DEFINITIONS. (1) "LEVEL I" MEANS THE STANDARDS-BASED PROGRAM OF STUDIES DESIGNED FOR MINIMAL PREPARATION TO SERVE IN THE POSITION OF DIRECTOR OR ASSISTANT DIRECTOR OF PUPIL PERSONNEL.

(2) "LEVEL II" MEANS THE STANDARDS-BASED PROGRAM OF STUDIES TO ATTAIN THE FIRST FIVE (5) YEAR RENEWAL OF THE CERTIFICATE FOR THE POSITION OF DIRECTOR OR ASSISTANT DIRECTOR OF PUPIL PERSONNEL.

(3) "QUALIFIED APPLICANT" MEANS AN APPLICANT WHO HOLDS THE APPROPRIATE CERTIFICATION AS A DIRECTOR OF PUPIL PERSONNEL SERVICES UNLESS THE SUPERINTENDENT OF THE EMPLOYING SCHOOL DISTRICT HAS DOCUMENTED EVIDENCE THAT THE APPLICANT IS UNSUITABLE FOR APPOINTMENT.

SECTION 2. (1) THE PROFESSIONAL CERTIFICATE FOR DIRECTOR OF PUPIL PERSONNEL SERVICES SHALL BE ISSUED IN ACCORDANCE WITH THE PERTINENT KENTUCKY STATUTES AND THIS ADMINISTRATIVE REGULATION TO AN APPLICANT WHO HAS COMPLETED THE APPROVED PROGRAM OF PREPARATION WHICH CORRESPONDS TO THE CERTIFICATE AT A TEACHER EDUCATION INSTITUTION APPROVED UNDER THE STANDARDS AND PROCEDURES INCLUDED IN 16 KAR 5:010.

(2) AS PREREQUISITES FOR THE LEVEL I PROGRAM OF PREPARATION FOR THE INITIAL PROFESSIONAL CERTIFICATE FOR DIRECTOR OF PUPIL PERSONNEL SERVICES, THE CANDIDATE SHALL:

(a) HAVE BEEN ADMITTED TO A PREPARATION PROGRAM APPROVED BY THE EDUCATION PROFESSIONAL STANDARDS BOARD PURSUANT TO 16 KAR 5:010;

(b) HAVE COMPLETED THREE (3) YEARS OF FULL-TIME TEACHING EXPERIENCE;

(c) HAVE COMPLETED THE MASTER'S DEGREE;

(d) QUALIFY FOR A KENTUCKY TEACHING CERTIFICATE.

(3) APPLICATION FOR THE PROFESSIONAL CERTIFICATE FOR DIRECTOR OF PUPIL PERSONNEL SERVICES SHALL BE MADE ON FORM CA-1, INCORPORATED BY REFERENCE IN 16 KAR 2:010[TC-1].

(4) THE INITIAL PROFESSIONAL CERTIFICATE FOR DIRECTOR OF PUPIL PERSONNEL SERVICES SHALL BE:

(A) ISSUED FOR A DURATION PERIOD OF FIVE (5) YEARS UPON THE SUCCESSFUL COMPLETION OF A LEVEL I PROGRAM APPROVED BY THE EDUCATION PROFESSIONAL STANDARDS BOARD PURSUANT TO 16 KAR 5:010; AND

(B) RENEWED SUBSEQUENTLY FOR FIVE (5) YEAR PERIODS.

2. EACH FIVE (5) YEAR RENEWAL THEREAFTER SHALL REQUIRE THE COMPLETION OF:

(a) TWO (2) YEARS OF EXPERIENCE AS A DIRECTOR OF PUPIL PERSONNEL SERVICES;

(b) THIRTY-TWO (32) HOURS OF APPROVED TRAINING SELECTED FROM PROGRAMS APPROVED FOR THE KENTUCKY EFFECTIVE LEADERSHIP TRAINING PROGRAM PROVIDED IN KRS 156.101.

(c) FORTY-TWO (42) HOURS OF APPROVED TRAINING SELECTED FROM PROGRAMS APPROVED FOR THE KENTUCKY EFFECTIVE LEADERSHIP TRAINING PROGRAM PROVIDED IN KRS 156.101.


SECTION 3. GRADUATE LEVEL CREDIT EARNED IN THE LEVEL I AND LEVEL II PREPARATION PROGRAM IDENTIFIED IN SECTION 2 OF THIS ADMINISTRATIVE REGULATION SHALL BE ELIGIBLE FOR CONSIDERATION OF RANK I CLASSIFICATION PURSUANT TO 16 KAR 8:010, "PLAN I" OR "PLAN II".

SECTION 4. (1) IF A QUALIFIED APPLICANT FOR DIRECTOR OF PUPIL PERSONNEL SERVICES IS NOT AVAILABLE AS ATTESTED BY THE LOCAL SCHOOL SUPERINTENDENT, THE SUPERINTENDENT, ON BEHALF OF THE LOCAL BOARD OF EDUCATION, MAY REQUEST A ONE (1) YEAR PROBATIONARY CERTIFICATE FOR A DIRECTOR OF PUPIL PERSONNEL SERVICES WHO HAS:

(a) A VALID KENTUCKY CLASSROOM TEACHING CERTIFICATE;

(b) A MASTER'S DEGREE;

(c) THREE (3) YEARS OF SUCCESSFUL TEACHING EXPERIENCE; AND

(d) BEEN ADMITTED TO THE PREPARATION PROGRAM FOR THE PROFESSIONAL CERTIFICATE FOR DIRECTOR OF PUPIL PERSONNEL SERVICES.

(3) EACH ANNUAL RENEWAL OF THE PROBATIONARY CERTIFICATE FOR DIRECTOR OF PUPIL PERSONNEL SERVICES SHALL REQUIRE COMPLETION OF AN ADDITIONAL NINE (9) SEMESTER HOURS SELECTED FROM THE APPROVED PROGRAM.

SECTION 5. A PREPARATION PROGRAM FOR THE CERTIFICATE FOR DIRECTOR OF PUPIL PERSONNEL SERVICES SHALL BE CONSISTENT WITH THE SIX (6) STANDARDS INCLUDED IN THE EDUCATIONAL LEADERSHIP POLICY STANDARDS: [ISLC][INTERSTATE SCHOOL LEADERS LICENSURE CONSORTIUM STANDARDS FOR SCHOOL LEADERS] AND THE SIX (6) STANDARDS INCLUDED IN [TECHNOLOGY STANDARDS FOR SCHOOL ADMINISTRATORS, BOTH INCORPORATED BY REFERENCE FOUND IN 16 KAR 3:050, SECTION 3, AND INCORPORATED BY REFERENCE].

SECTION 6. INCORPORATION BY REFERENCE. (1) "FORM CA-40", 08/15, IS INCORPORATED BY REFERENCE. THE FOLLOWING MATERIAL IS INCORPORATED BY REFERENCE:

(a) "INTERSTATE SCHOOL LEADERS LICENSURE CONSORTIUM STANDARDS FOR SCHOOL LEADERS", NOVEMBER 2, 1996.

(b) "FORM TC-1, REV. 10/02".

(c) "FORM TC-40, REV. 10/03".

807

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 14, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to present their views on the necessity of this 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jimmy Adams

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the qualifications for the director and assistant director of pupil personnel certification.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for director and assistant director of pupil personnel certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant's qualifications and fitness to work with students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to submit to the Education Professional Standards Board the appropriate application. School districts and students will not have to take any actions to comply with 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 should be no additional charge for this regulatory amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have modernized forms that increase clarity. School districts and students will benefit from increased scrutiny by the Education Professional Standards Board of each applicant's qualifications and fitness to work with students.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering will not apply since teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and the 173 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028 and KRS 161.030.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect:
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities,
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.
(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.
(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

EDUCATION PROFESSIONAL STANDARDS BOARD
( Amendment)

16 KAR 3:040. Director of special education.

RELATES TO: KRS 157.250, 161.020, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the director of special education certification, the program approval standards for the preparation-certification program for directors of special education, and identifies acceptable certificates for individuals who may serve in a position which supervises, directs, administers, or coordinates special education programs.

Section 1. Definitions. (1) “Level I” means the standards-based program of studies designed for minimal preparation to serve in the position of director of special education.
(2) “Level II” means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of director of special education.
(3) “Qualified applicant” means an applicant who holds the appropriate certification as a director of special education unless the superintendent of the employing school district has documented evidence that the applicant is unsuitable for appointment.

Section 2. (1) The professional certificate for director of special education shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who has satisfied the prerequisites and who has completed an approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures established by the Education Professional Standards Board.

(2) As prerequisites for the Level I program of preparation for the initial professional certificate for director of special education, the candidate shall:
(a) Have been admitted to a preparation program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010;
(b) Have completed three (3) years of full-time experience as a teacher or school psychologist with a minimum of one (1) year as a teacher of exceptional children or school psychologist;
(c) Have attained a master’s degree[Rank II certification]; and
(d) Qualify for a Kentucky teaching certificate or school psychologist certificate.
(3) If a candidate’s Rank II certification is not in the educational leadership field, a teacher education institution may require additional coursework in this field as part of the Level I preparation.
(4) Application for the professional certificate for director of special education shall be made on Form CA-1, incorporated by reference in 16 KAR 2:010[TC-1].

5 The initial professional certificate for director of special education shall be:
(a) Issued for a duration period of five (5) years (except as provided in Section 4(1) of this administrative regulation) upon the successful completion of a Level I program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010; and
(b) Renewed subsequently for five (5) year periods.
1. The first renewal shall require the completion of a Level II program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010.
2. Each five (5) year renewal thereafter shall require the completion of:
   a. Two (2) years of experience as a director of special education;
   b. Three (3) semester hours of additional graduate credit or the equivalent related to the position of director of special education;
   c. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program provided in KRS 156.101.
(6) If a lapse in certification occurs for lack of completion of the Level II preparation, the certificate may be reissued for a five (5) year period upon successful completion of the Level II preparation, but for the lack of the renewal requirements, the certificate may be reissued after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.
(7) Graduate level credit earned in the Level I and Level II preparation programs identified in this section shall be eligible for consideration of Rank I classification pursuant to 16 KAR 8:010, “Plan I” or “Plan II”.

Section 3. All persons whose job description includes supervising, directing, administering, or coordinating special education programs, at the district-wide level shall be required to hold one (1) of the following:
(1) The endorsement for director of special education;
(2) The professional certificate for director of special education;
(3) The endorsement for supervisor of special education;
(4) The endorsement for teacher consultant for special education;
(5) A certificate valid for supervisor of instruction for persons serving in that position[such positions] on July 14, 1992, as provided by KRS 157.250; or
(6) A valid certificate possessing the code ADSE for approval of director of special education.

Section 4. (1) If a qualified applicant is not available for the position of director of special education, the superintendent on behalf of the local board of education may request a professional certificate for director of special education for a two (2) year period for an applicant who has:
(a) A valid Kentucky certificate for teachers of exceptional children;
(b) A master’s degree[Rank II certification];
(c) Three (3) years of full-time experience teaching exceptional children;
(d) Completed a course in special and regular education case law; and
(e) Been admitted to the preparation program for the professional certificate for director of special education.
(2) Application for the two (2) year certificate for a director of special education shall be made on Form CA-28[TC-28].

809
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

The applicant shall complete the total curriculum for the professional certificate for director of special education by September 1 of the year of expiration.

Section 5. Incorporation by Reference. (1) “Form CA-28”, 08/15, is incorporated by reference. The following material is incorporated by reference:
   (a) “Interstate School Leaders Licensure Consortium Standards for School Leaders” November 2, 1996;
   (b) “Form TC-1, rev. 10/02”;
   (c) “Form TC-28, rev. 10/02”; and

(2) This material may be inspected, copied, or obtained, directly or indirectly, increased any fees:

(3) The applicant shall complete the total curriculum for the special education certification, and students.

The following material is incorporated by reference:

(1) What units, parts, or divisions of state or local government
   (2) This material may be inspected, copied, or obtained, directly or indirectly.
   (3) Will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize the current administrative regulation, if new, or by the change.
   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with 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: State General Fund.

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and the 173 public school districts.

(2) This material may be inspected, copied, or obtained, directly or indirectly.

(3) Will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: No, tiering will not apply since

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028 and KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

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

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 9:030. Professional certificate for college faculty[secondary education].

RELATES TO: KRS 161.020, 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for and renewal of the professional certificate for college faculty[secondary education].

Section 1. Prerequisites. (1)(a) An eligible candidate who meets the requirements of KRS 161.048(4)(a) and (b) shall be issued a statement of eligibility for the professional certificate for college faculty[secondary education] valid for five (5) years.

(b) Application for the statement of eligibility for the professional certificate for college faculty[secondary education] shall be made on Form CA-194[TC-194].

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on the statement of eligibility, a provisional teaching certificate shall be issued.

(3) Upon successful completion of the Kentucky Teacher Internship Program as provided in KRS 161.030 and 16 KAR 7:010, the professional certificate for college faculty[secondary education] shall be issued[valid] for an additional four (4) years.

Section 2. Renewal. Each five (5) year renewal of the professional certificate for college faculty[secondary education] shall require:

(1) Three (3) years of successful classroom teaching experience; or

(2) Six (6) semester hours of additional graduate credit.

Section 3. Equivalent College Teaching Experience. (1) Ninety (90) semester credit hours taught at the postsecondary level at a regionally- or nationally-accredited institution of higher education shall be accepted as the equivalent of five (5) years of full-time teaching experience.

(2) The ninety (90) hours of college teaching experience may:

(a) Be accumulated at more than one (1) institution of higher education; and

(b) Include part-time teaching or adjunct teaching positions.

(3)(a) A full-time faculty member’s experience at a regionally- or nationally-accredited institution of higher education may include the following activities in lieu of regular full-time teaching experience as established in subsection (1) of this section:

1. Action research;

2. Service to the P-12 schools; or

3. Other activities undertaken as part of a full-time faculty member’s assigned responsibilities at the institution of higher education.

(b) The head of the faculty member’s unit shall verify the validity of the experiences or responsibilities in this subsection in lieu of regular full-time teaching load on a per semester basis.

Section 4. An applicant for a professional certificate for college faculty who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.

Section 5. Incorporation by Reference. (1) "Form CA-194", 08/15[04-194], revised 03/2001, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 14, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jimmy Adams, Acting Executive Director, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jimmy Adams

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications for the professional certificate for college faculty.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for professional certificate for college faculty.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030.
certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. KRS 161.048 establishes the eight alternative routes to educator certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for professional certificate for college faculty and establishes the procedures by which an applicant may apply for teaching certification in all grades certification.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment requires applicants for the professional certificate for college faculty to use Form CA-194. The CA-194 contains character and fitness questions adopted by the Education Professional Standards Board in 2013. The amendment also requires initial certification applicants to submit a national and state background check with their applications.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant’s qualifications and fitness to work with students.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant’s qualifications and fitness to work with students.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to submit to the Education Professional Standards Board the appropriate application form as well as the required national and state criminal background checks when applying for initial certification. School districts and students will not have to take any actions to comply with 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 may be an additional cost to applicants to the Education Professional Standards Board and the 173 public school districts.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, tiering will not apply since all applicants for certification are required to meet 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 Education Professional Standards Board and the 173 public school districts.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, KRS 161.030 and 161.048
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.
(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.
(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

EDUCATION PROFESSIONAL STANDARDS BOARD

(Amendment)


RELATES TO: KRS 161.020, 161.028(1)(a), (c), 161.030, 161.046, 161.048(5), 161.120
STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), 161.030, 161.046(2), 161.048(1)(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.046 and 161.048(5) establish the position of adjunct instructor and require the Education Professional Standards Board to promulgate administrative regulations to establish certification requirements. This administrative regulation establishes the minimum requirements for an adjunct instructor certificate.

Section 1. Definition. “Exceptional life or work experience candidate” means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally-accepted standards in the area in which certification is sought.

Section 2. Candidate Eligibility Requirements. (1) An adjunct instructor shall meet the requirements for good moral character as required in KRS 161.120 and the following requirements relating to
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

educational and occupational experience:
(a) An adjunct instructor employed in middle school or secondary school shall hold:
   1. A bachelor's degree from a regionally accredited institution with:
      a.(i) A cumulative minimum grade point average of 2.50 on a 4.0 scale; or
      b. A major, minor, or area of concentration in the specialty subject to be taught; or
   2. A master's degree in the specialty subject to be taught from a regionally-accredited institution with the minimum grade point average established in subparagraph 1a of this paragraph.

(b) An adjunct instructor in elementary school or early childhood education program shall hold:
   1. A bachelor's degree from a regionally-accredited institution with:
      a.(i) A cumulative minimum grade point average of 2.50 on a 4.0 scale; or
      b. A major, minor, or area of concentration in a planned program of child development or a related area; or
   2. A master's degree in a planned program of child development or a related area from a regionally-accredited institution with the minimum grade point average established in subparagraph 1a of this paragraph.

(c) An adjunct instructor for occupation-based career and technical education shall:
   1. Be a high school graduate;
   2. Have at least four (4) years of appropriate occupational experience for the specialty to be taught; and
   3.a. Complete the specialty area examination prerequisite as identified in 16 KAR 6:020; or
   b. Hold either an associate degree or technical diploma in a related area.

(2)(a) An applicant for adjunct instructor certification who does not meet the minimum academic preparation requirements established in subsection (1) of this section may apply for this certificate as an exceptional life or work experience candidate.

(b) An exceptional life or work experience candidate shall be recommended by the employing school district and complete the application process established in subsection (3) of this section.

(c) An exceptional life or work experience candidate shall include the following information as verification of exceptional qualifications in the field of endeavor to be taught or service to be provided:
   1. Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is an exceptional life or work experience candidate as defined in Section 1 of this administrative regulation and has talents and abilities commensurate with the Kentucky[New] Teacher Standards established in 16 KAR 1:010;
   2. Documentation of achievement that includes academic and nonacademic preparation, distinguished employment, evidence of related study or experience, publications, professional achievement, or recognition attained for contributions to an applicant's field or endeavor; and
   3. Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional life or work experience in this field.

(3) Form CA-25(TC-25) signed by the local district superintendent and approved by the local board of education shall be submitted to the Education Professional Standards Board for each adjunct instructor. The application shall be accompanied by official transcripts of all college credits earned by the prospective adjunct instructor along with documentation of any exceptional competencies or experiences submitted in support of the application. Upon receipt of the application and appropriate documentation, a candidate meeting all of the requirements shall be issued a one (1) year adjunct instructor certificate.

Section 3. Orientation Program. Each local board of education shall provide for an orientation program for the adjunct instructors employed within the district. A detailed description of the orientation program shall be a part of the certificate application form. The orientation program shall include an emphasis on student safety, district policies and procedures, and pedagogical assistance commensurate with the Kentucky[New] Teacher Standards established in 16 KAR 1:010.

Section 4. An applicant for a part-time adjunct instructor who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.

Section 5. Incorporation by Reference. (1) “Form CA-25”, 08/99(Form TC-25), revised 09/99, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CASSANDRA WEBB, Chairperson
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 14, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 30, 2015 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notice 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.

Contact Person: Jimmy Adams
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the qualifications for part-time adjunct instructors for individuals with exceptional life or work experience wishing to teach in a Kentucky public school.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to make applicants aware of the qualifications and procedures for the qualifications for part-time adjunct instructor certification.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. KRS 161.048 establishes the requirements for alternative educator certification in Kentucky.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for part-time adjunct instructors and establishes the procedures by which an applicant may apply for teaching certification as part-time adjunct instructor.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment requires applicants for career and technical education certification to use Form CA-25. The CA-25 contains character and fitness questions adopted by the Education Professional Standards Board in 2013. The amendment also requires certification applicants to submit a national and state background check with their applications. Additionally, amendment updates references to the Kentucky Teacher Standards correcting outdated or incorrect language in the regulation.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to modernize the current application process and to ensure that Education Professional Standards Board collects all the necessary information to make an informed decision regarding each applicant’s qualifications and fitness to work with students.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. KRS 161.048 defines eight (8) alternative routes to educator certification in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Education Professional Standards Board collects all the necessary information to make an informed decision of each applicant’s qualifications and fitness to work with students.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to submit to the Education Professional Standards Board the appropriate application form as well as the required national and state criminal background checks when applying for certification. School districts and students will not have to take any actions to comply with 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 may be an additional cost to applicants to obtain the required background check.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have modernized forms that increase clarity. School districts and students will benefit from increased scrutiny by the Education Professional Standards Board of each applicant’s qualifications and fitness to work with students.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, or directly or indirectly increase fees.
(9) TIERING: Is tiering applied? No, tiering will not apply since all applicants for certification are required to meet 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 Education Professional Standards Board and the 173 public school districts.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, 161.030 and 161.048.
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no additional revenues created by this amendment.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.
(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.
(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

DEPARTMENT OF MILITARY AFFAIRS
( Amendment)

106 KAR 3:010. Kentucky National Guard Tuition Award Program.

RELATES TO: KRS 164.516, 164.5161, 164.5165, 164.5169
STATUTORY AUTHORITY: KRS 164.516, 164.5161, 164.5165, 164.5169
NECESSITY, FUNCTION, AND CONFORMITY: The 1996 Regular Session of the General Assembly established the Kentucky National Guard Tuition Award Program and directed that the Department of Military Affairs promulgate administrative regulations to establish the eligibility of National Guard members to participate in the program. This administrative regulation establishes: (1) eligibility requirements; (2) the application process; (3) individual and educational institution notification; (4) educational institution verification; and (5) referral for payment through the Kentucky Higher Education Assistance Authority.

Section 1. Definitions. (1) "Award period" means the division of the year established by the educational institution, such as a quarter, semester, trimester, or summer session or other academic term.
(2) "Education office" means the Kentucky National Guard Education Office.
(3) "Educational institution" is defined by KRS 164.516(1) and
164.5161(1).

(4) "Kentucky National Guard" is defined by KRS 164.516(2).

(5) "Member" is defined by KRS 164.516(3).

(6) "Participant" means a member whose application for tuition under the Kentucky National Guard Tuition Award Program has been approved and for whom funds have been disbursed by the Kentucky Higher Education Assistance Authority to the appropriate educational institution.

(7) "Program" means the Kentucky National Guard Tuition Award Program established by KRS 164.516, 164.5161, 164.5165, and 164.5169.

(8) "ROTC" means the Reserve Officer Training Corps.

(9) "Simultaneous membership participant" or "SMP" means a person who is simultaneously:

(a) Enrolled in the Reserve Officer Training Corps; and

(b) A member of the Kentucky National Guard.

(10) "Undergraduate degree" means:

(a) A bachelor's degree; or

(b) An associate degree for completion of a course of study in a technical field, such as but not limited to registered nurse, dental hygienist, physical therapy assistant, engineering technology, or business technology.

(11) "Satisfactory membership" means the member has:

(a) Not failed the most recent physical fitness test;

(b) Met the height-weight standard;

(c) Met attendance standards for the past twelve (12) months from the date of application, to include:

1. No unsatisfactory performance; and

2. No absences without leave.

(d) No restrictions on his personnel file that prevent positive personnel actions.

Section 2. Eligibility. (1) A member shall not be eligible for a tuition award if it has been determined that he has failed to meet the minimum requirements for satisfactory membership in the Kentucky National Guard.

(2) (a) Except as provided by paragraph (b) of this subsection, a member shall be eligible for a tuition award for an award period that will end before the expiration of his term of service.

(b) A member shall be eligible for a tuition award for an award period that will end after the expiration of his term of service if the member has submitted his signed application which states his intent to extend his term of service beyond the end of the award period.

(3) Unless he is a simultaneous membership participant, a member who has not completed basic training shall not be eligible for the program.

(4) Beginning with the 2016-2017 academic year, a participating member's eligibility for the Kentucky National Guard Tuition Award Program shall expire if:

(a) The member has completed a Bachelor's degree; or

(b) The aggregate of program funds disbursed on behalf of the member meets the lifetime benefit established in this paragraph based on the education institution in which the member is enrolled for the most recent award period:

1. The lifetime benefit shall be:

   a. $20,000 at an institution within the Kentucky Community and Technical College System;

   b. $40,000 at a Kentucky private postsecondary educational institution;

   c. $40,000 at a Kentucky four (4) year public comprehensive university as defined in KRS 164.001(7); or

   d. $50,000 at a Kentucky four (4) year public research institution which shall be either the University of Louisville or the University of Kentucky.

2. The limit for each type of institution established in subparagraph 1. of this paragraph shall be adjusted annually by five (5) percent to allow for tuition increases.

Section 3: Loss of Eligibility. (1) A participant shall not be eligible to reapply for a tuition award if:

(a) The educational institution for which he received a tuition award has determined that he has been:

1. Placed on academic suspension; or

2. Expelled for a violation of the educational institution's policies or regulations; or

(b) Kentucky National Guard has determined that he has failed to meet the minimum requirements for satisfactory membership in the Kentucky National Guard.

(2) A member who has been determined to be ineligible pursuant to subsection (1) of this section shall remain ineligible to reapply for a tuition award until:

(a) The educational institution permits his reenrollment; and

(b) The Kentucky National Guard has determined that he meets the minimum requirements for satisfactory membership in the Kentucky National Guard.

Section 4. Priority of Applicants. In the selection of participants, priority shall be:

(1) Given to a member who has not:

(a) Earned an undergraduate degree; or

(b) Received a certificate or diploma from a vocational education program; and

(2) Determined by date of receipt of application at the education office.

Section 5. Application. (1) An application for a tuition award shall be submitted for each award period.

(2) Except for fall 1996, an application shall be filed on or before:

(a) April 1, for an award period beginning:

   1. May through July; and

   2. August through December; and

(b) October 1, for an award period beginning January through April.

(3) The member shall:

(a) Complete a Kentucky National Guard Tuition Award Program Application for the educational institution the member plans to attend; and

(b) Forward the completed form to the member's unit commander.

(4) A unit commander shall:

(a) Verify an applicant's eligibility; and

(b) Transmit the application and verification of eligibility to the education office.

(5) The education services officer shall:

(a) Review the application;

(b) Determine the priority of the application;

(c) Assign a control number to each application;

(d) Mail a written notification to the applicant stating:

1. That his application has been approved, or disapproved; and

2. If disapproved, the reasons therefore; and

(e) Transmit a copy of the Kentucky National Guard Tuition Award Roster to the appropriate educational institution.

(6) The Kentucky National Guard Tuition Award Roster shall contain:

(a) Name and federal I.D. code of educational institution;

(b) Names of approved applicants;

(c) Social Security number of each applicant;

(d) The amount of the tuition award granted each applicant;

(e) Control number for each applicant;

(f) Date of award roster;

(g) Signature and date signed by education services officer;

(h) Educational institution certification statement, signature, and date signed;

(i) Educational institution fund transfer account entry line, if applicable;

(j) Adjusted amount of tuition entry line;

(k) Period of enrollment for each roster;

(l) Academic year;

(m) Total number of eligible students; and

(n) Total amount of awards.

(7) The education officer shall request the educational institution to:

(a) Verify enrollment; and

(b) State in the adjusted amount entry line the exact amount of
tuition charged the participant.

Section 6. The Kentucky Higher Education Assistance Authority shall, to the extent that funds have been appropriated and are available to the Kentucky National Guard Tuition Award Program, disburse funds pursuant to 11 KAR 13:010.

Section 7. Tuition Award Period. (1) A tuition award shall be granted for an award period.

(2)(a) A participant's award shall not exceed the amount of the tuition charged by the educational institution minus the amount received by the applicant that is restricted to the payment of tuition from:
1. A government agency;
2. An educational institution;
3. Charity;
4. Public educational trust; or
5. Any other entity.
(b) The provisions of paragraph (a) of this subsection shall not apply to an amount received by an applicant:
1. Pursuant to 10 U.S.C. 1606 (Montgomery GI Bill, Reserve Components);
2. Pursuant to 38 U.S.C. 30 (New GI Bill, Active Duty);
3. Pursuant to 38 U.S.C. 32 (G.I. Bill, Vietnam Era);
4. Pursuant to 20 U.S.C. 1070A (Federal Pell Grant Program);
5. From a loan obtained by an applicant; and
6. From scholarships that are not restricted to the payment of tuition.

Section 8. Appeals. A member whose application has been disapproved, or whose application has been approved for an amount disputed by the member, may request reconsideration, in writing with supporting documents, through command channels to the Adjutant General.

Section 9. Incorporation by Reference. (1) The following forms are incorporated by reference:
(a) "Kentucky National Guard Tuition Award Program, Application AGO KyForm 18-7_15 August 1996[2]; and
(b) "Kentucky National Guard Tuition Award Roster AGO KyForm 18-9_15 August 1996[2].
(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky National Guard Education Services Office, Vets Building, Boone National Guard Center, Frankfort Kentucky 40601-6168, Monday through Friday, 7:30 a.m. to 5 p.m.
(b) The office may be closed on alternate Mondays due to being under an adjusted work schedule. It is suggested that a call be made to the office on the Friday prior to determine actual work hours, (502) 607-1039 or (502) 607-1307.

[Total number of pages incorporated by reference: three (3)]

STEVEN P. BULLARD, Director
EDWARD W. TONINI, Maj, Gen
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 12, 2015 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2015, at 1 p.m., at the Emergency Operations Center Conference Room, Boone National Guard Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Steven P. Bullard, Director of Administrative Services, Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, phone 502-607-1738, fax 502-607-1240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes a lifetime benefit limit for the Kentucky National Guard Tuition Assistance Program.
(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides guidance on the eligibility and grant caps for recipients.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Adjutant General and his designated Kentucky National Guard Tuition Assistance Program staff in the execution of this program for approving 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: This amendment places a lifetime limit on benefits at the following levels: Completion of an applicant’s first Bachelor’s Degree or total receipt of $20,000 at an institution within the Kentucky Community and Technical College System; $40,000 at a Kentucky private postsecondary educational institution; or $40,000 at a Kentucky four year public comprehensive university as defined in KRS 164.001(7); or $50,000 at a Kentucky four year public research institution, which shall be either the University of Louisville or the University of Kentucky.
(b) The necessity of the amendment to this administrative regulation: Funds available for grants are limited and are now being fully expended.
(c) How the amendment conforms to the content of the authorizing statutes: This regulation is written to provide specific guidance to administrators and recipients regarding eligibility criteria for the Kentucky National Guard Tuition Assistance Program.
(d) How the amendment will assist in the effective administration of the statutes: This regulation is written to provide specific guidance to administrators and recipients regarding eligibility criteria for the Kentucky National Guard Tuition Assistance Program.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation covers only military personnel currently serving in the Kentucky Air and Army National Guard.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) have to take to comply with this administrative regulation or amendment: No specific action is required. However, the Kentucky National Guard educates its personnel on the availability of the program and will notify all personnel of the change, once enacted.
(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 for any entity.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The intent of this regulation is to ensure that grants are available to qualifying personnel through a fair and equitable application process. The intent of the Kentucky National Guard Tuition Assistance Program is to provide the opportunity for Kentucky National Guard personnel to obtain a college degree. With grant funding now fully utilized, Kentucky
National Guard leadership believes it is essential to prioritize grant awards to Kentucky National Guard members who are still working towards a Bachelor's Degree and who are making satisfactory progress towards that goal.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional funding is required.
(b) On a continuing basis: The Kentucky National Guard Tuition Assistance Program currently receives $4.8 million in annual funding through the Governor's Budget. These funds are now being fully appropriated. The lifetime limitations will ensure funding remains available to all applicants who are still working towards a Bachelor's Degree and who are making satisfactory progress towards that goal. If lifetime limitations are not put into place, further funding will be required to meet all qualifying grant requests.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional funding, if required, may be appropriated by future Kentucky General Assembly action.

(7) Provide an assessment of whether an 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 increases are required at this time.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased (none are associated with the program).

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simply or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What 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 Kentucky Department of Military Affairs, which administers the Kentucky National Guard Tuition Assistance Program. The regulations were drafted in consultation with the Kentucky Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.516, 164.5161, 164.5165, 164.5169

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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?
(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 (+/-): 
Expending (+/-): 
Other Explanation:

**GENERAL GOVERNMENT CABINET**

**Kentucky State Board of Accountancy**

**(Amendment)**

**201 KAR 1:050. License application.**


STATUTORY AUTHORITY: KRS 325.240(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.261 establishes the standards for licensure as a certified public accountant. KRS 325.280 establishes the standards for licensure as a certified public accountant by reciprocity. KRS 325.330 establishes the process for issuing a license. This administrative regulation describes the procedure to obtain a license as a certified public accountant.

Section 1. (1) A person who has met the qualifications contained in KRS 325.261 shall submit the [Application for] License as a Kentucky Certified Public Accountant:
(a) With his or her application, the person shall include:
   (a) A check or money order, which is nonrefundable, made payable to the [Kentucky State Board of Accountancy] for $100;
   (b) The certificate of experience as described in 201 KAR 1:063;
   (c) One (1) photograph taken within ninety (90) days preceding the application, the back of which shall contain the signature in ink of the applicant;
   (d) A list of colleges and universities with graduation dates, degrees awarded, and the official transcript described in 201 KAR 1:190, unless it is already in possession of the board;
   (e) An official transcript as described in 201 KAR 1:190 from an accredited college or university as described in 201 KAR 1:190 which verifies the candidate has satisfied the 150-hour requirement of KRS 325.261;
   (f) Proof of successful completion of the Uniform CPA Exam [Certified Public Accountants Examination]. If the applicant successfully completed the examination in Kentucky, no documentation is required. If the examination was successfully completed in another jurisdiction, the applicant shall have an [Authorization for Interstate Exchange of Information] submitted to the board on his or her behalf; and
   (g) If the applicant is not a citizen of the United States:
      (1) Documentation from the United States Citizenship and Immigration Services, or its successor, to verify the person is legally residing in the United States; or
      (2) Documentation from the employer that verifies the person is an employee of a public accounting firm, company, or institution of postsecondary education located outside the United States, but also has an office or campus located in the United States.

Section 2. License by Reciprocity. (1) An applicant for a license by reciprocity shall submit or cause to have submitted:
(a) An [Application for Reciprocal License as a Kentucky Certified Public Accountant by Reciprocity];
(b) Payment of the fee and other documents required by Section 1(2) of this administrative regulation, except for an official transcript; and
(c) An [Authorization for Interstate Exchange of Information] form completed by the licensing jurisdiction where the applicant holds a valid and active license to practice.

(2) If the applicant cannot provide the certificate of experience as required in Section 1 of this administrative regulation; and:
(a) Is applying under the provisions of KRS 325.280(1)(c)1, the applicant shall have the licensing jurisdiction where he or she holds a valid and active license send certified copies of experience requirement documents from his or her license file; or
(b) Is applying under the provisions of KRS 325.280(1)(c)2, he or she shall submit or cause to have submitted one (1) of the following documents which clearly reflects that the applicant has practiced public accounting as a full-time profession for four (4) of the last ten (10) years:
   1. Proof of public accounting errors and omissions insurance;
2. A letter from an attorney, client, or certified public accountant that has knowledge of the applicant's practice;
3. Copies of firm license applications; or

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Application for Initial License", August 2015 as a Kentucky Certified Public Accountant (2006);
   (b) "Application for Reciprocal License", August 2015 as a Kentucky Certified Public Accountant by Reciprocity (2005);
   and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. and 4:30 p.m.

KEVIN DOYLE, President
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 13, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2015 at 10 a.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five work days prior to the meeting, 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 the 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:
   (a) What this administrative regulation does: Establishes the procedures to obtain a CPA license;
   (b) The necessity of this administrative regulation: For people to understand how to apply to obtain a CPA license.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes authorize the board to establish procedures to obtain a CPA license.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the procedures to obtain a CPA 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 removes the need to submit a photograph and updates the accompanying forms.
   (b) The necessity of the amendment to this administrative regulation: To remove the photograph requirement and use updated forms.
   (c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the board to establish procedures via a regulation.
   (d) How the amendment will assist in the effective administration of the statutes: Describing the licensing processes.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those applying to obtain a CPA license—approximately 350/year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Complete the revised forms.
   (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 increase in cost to comply with the amendment as to the fees remain the same.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will not have to submit a photograph.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: Nothing
   (b) On a continuing basis: Nothing
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency restricted 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: The fees were already established and are not increasing directly or indirectly.

(9) TIERING: Is tiering applied? No, since all candidates are 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? Board of Accountancy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.240, KRS 325.261, KRS 325.280, and KRS 325.330.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue since the fees will not increase from their existing levels, however in 2014 the Board collected $34,500 for issuing initial licenses.
   (b) How 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 the answer for (a).
   (c) How much will it cost to administer this program for the first year? No new costs are involved.
   (d) How much will it cost to administer this program for subsequent years? No new costs are involved.

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

Revenues (+/-): Expenditures (+/-): Other Explanation: There is no increase in fees with this proposed amendment therefore there will be no change regarding the fiscal impact of this proposed amendment.
GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(Amendment)


RELATES TO: KRS 325.261(4)
STATUTORY AUTHORITY: KRS 325.240(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.261 establishes the standards for licensure as a certified public accountant. This administrative regulation describes the experience to be documented when one applies to become a certified public accountant.

Section 1. Definitions. (1) “One (1) year” means the completion of 2,000 hours of employment obtained after the award of a baccalaureate degree during an employment period of not less than twelve (12) months, excluding any leave or holiday time.
(2) “Verification” means a certified public accountant as described in KRS 325.261(6) confirming the truth or accuracy of the applicant’s accounting or attest experience.

Section 2. (1) An applicant for licensure shall have submitted by the certified public accountant verifying the experience a ‘[Certificate of Experience]’.
(2) If the applicant has been employed by more than one (1) employer to meet the experience requirement described in KRS 325.261 and this administrative regulation, a certificate shall be submitted for each employment situation.

Section 3. Experience Verification. The certificate of experience shall include the following information verified by a certified public accountant as described in KRS 325.261(6):
(1) The name and address of the employing firm, company, agency, or institution of higher education;
(2) The month, day and year the employment began, and the month, day and year the employment was terminated or the experience was completed;
(3) Total number of hours worked during the employment period excluding holiday or leave time;
(4) A brief description of the applicant’s job duties;
(5) The applicant’s working titles during employment; and
(6) The signature of the verifying certified public accountant which attests to the truth and accuracy of the statements made regarding the applicant’s experience.

Section 4. Documentation and Verification of Applicant Experience. A false or misleading statement made by a certified public accountant on a certificate of experience shall constitute a violation of KRS 325.340(1)(h).

Section 5. Incorporation by Reference. (1) “Certificate of Experience”, August 2015, is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. to 4:30 p.m.

KEVIN DOYLE, President
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 13, 2015 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2015 at 10 a.m., EST at the office of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing, by five work days prior to the meeting, 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 the 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes the procedures for someone to meet the experience requirement to become a CPA.
(b) The necessity of this administrative regulation: Establishes the procedures for someone to meet the experience requirement to become a CPA.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.340 and 325.261 authorize the Board to establish procedures to meet the experience requirement.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Will assist those wanting to meet the experience requirement to receive 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: Updates the form.
(b) The necessity of the amendment to this administrative regulation: To update the form.
(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the Board to establish procedures by regulation.
(d) How the amendment will assist in the effective administration of the statutes: Provide a current form.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those seeking a CPA license.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Complete and submit the updated form.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing other than mailing in the form.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will complete an updated form.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency restricted 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: 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? No, since all candidates are treated the same.
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.240 and 325.261(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue since there are no fees associated with 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? None.

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

(d) How much will it cost to administer this program for subsequent years? No change in 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: There is no increase in fees with this proposed amendment.

Section 3. Effective August 1, 2012. A sole proprietor shall obtain a public accounting firm license according to the procedures contained in Section 2 of this administrative regulation.

Section 4. A certified public accountant shall:

(a) Have ultimate responsibility for all services provided by the firm;

(b) Paying the $100 renewal fee; and

(c) Comply with the [¶Statement on Quality Control Standards][8], January 2012(April 2000), issued by the American Institute of Certified Public Accountants Auditing Standards Board, as incorporated by reference.

Section 5. A nonlicensed owner of the firm shall not sell or otherwise transfer any ownership interest in the firm to any person who fails to satisfy the requirements of KRS 325.301(3).

Section 6. Renewal of a Firm License. (1) Except as provided in subsection (2) of this section, a firm manager shall renew a firm license by:

(a) Using the online [¶Firm License Renewal System][8] offered by the board at www.cpa.ky.gov; and

(b) Paying a renewal fee in the amount of $100.

(2) If a firm manager is unable to use the online procedure, he or she shall:

(a) Submit a written request to obtain a paper copy of the [¶Firm License Renewal][8] form to the Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202;

(b) Complete and submit the form to the board; and

(c) Paying the $100 late fee. A firm manager shall renew his or her firm license according to the procedures contained in this section.

(3) Effective August 1, 2012. A sole proprietor shall renew his or her firm license according to the procedures described in Section 4 of this administrative regulation.

Section 7. (1) A firm manager who fails to renew the firm license by the August 1 deadline shall renew the license on or before September 1 by:

(a) Utilizing the online [¶Firm License Renewal System][8] offered by the board at www.cpa.ky.gov; and

(b) Paying the $100 renewal fee; and

(c) Paying a $100 late fee.

(2) A firm manager shall correct any outdated or inaccurate information listed on the [¶Firm License Renewal System][8] except for a change in the name of the firm.

Section 8. A firm license that expired on July 1, 2011 shall be renewed by the firm manager utilizing the process described in Section 6 of this administrative regulation.

Section 9. A firm is prohibited from operating and holding out as a CPA firm if the firm license is expired for a period of more than one (1) month.

Section 10. Changes in firm information. A firm manager shall notify the board within thirty (30) days of any changes to the licensing information on file with the board by submitting a [¶Firm Change][8] form.

Section 11. Upon the death or retirement of a firm member which is composed of only two (2) certified public accountant owners, the board shall authorize the continuation of the use of the firm name by the surviving certified public accountant owner for a period of time not to exceed two (2) years from the date of the certified public accountant owner’s death or retirement.
(2) The remaining certified public accountant owner shall advise the board in writing of this change within thirty (30) days of its occurrence.

Section 11 [12.] The firm name registered with the board shall be the firm name used in all circumstances.

Section 12 [43.] (1) The following material is incorporated by reference:
(a) "Instate[initial] Firm[License] Application", August, 2015[2012];
(b) "Firm Change Form" August, 2015[2012];
(c) "Firm Online License Renewal Process", August, 2015[2012];
(d) "Firm License Renewal", January, 2015[2012];
(e) "Statement on Quality Control Standards", January 2012; and
(f) "Sole Proprietor Firm Application", August, 2015[2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday [between] 8 a.m. to [and] 4:30 p.m.

KEVIN DOYLE, President
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 13, 2015 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2015, at 10 a.m., EST at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing, by five work days prior to the meeting, 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 the 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Richard Carroll
(1) Provide a brief summary of:
(a) What this administrative regulation does: Describes the procedures to obtain and renew a CPA firm license
(b) The necessity of this administrative regulation: To establish the procedures to obtain and renew a CPA firm license.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.301 authorizes the board to license CPA firms and 325.340 authorizes the board to issue regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 325.301 authorizes the board to license CPA firms and 325.340 authorizes the board to issue regulations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It will update forms and remove language that is no longer necessary.
(b) The necessity of the amendment to this administrative regulation: It will update forms and remove language that is no longer necessary.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 325.301 authorizes the board to license CPA firms and 325.340 authorizes the board to issue regulations.
(d) How the amendment will assist in the effective administration of the statutes: Update forms and eliminate outdated language.
(e) How much will it cost the entities identified in question (3): Nothing in addition to the current cost since it is an updated form.
(f) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will complete an updated form.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees have been in place for a number of years and there is no increase.

(9) TIERING: Is tiering applied? No, since all firms are 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? Board of Accountancy
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.301 and 325.340
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated for local and state government by this amendment to this regulation since fees are not being increased. However firms renew their licenses once every two years and in 2014 the fees collected amounted to approximately $125,000.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See the answer to question 3(a).
(c) How much will it cost to administer this program for the first year? There is no precise estimate since processing applications are a normal part of the duties of the board employees and the overwhelming number of application are renewed online.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative
Section 4. (1) If a license was revoked for reasons other than failure to satisfy the continuing professional education requirements, it may be considered for reinstatement if the applicant for reinstatement submits to the board fifteen (15) days prior to the next scheduled meeting:
   (a) A letter;
   1. Requesting reinstatement;
   2. Specifying the manner in which the applicant for reinstatement has complied with the terms of a disciplinary order of the board; and
   3. A statement of the reasons the board for the reinstatement request.
   (2)(a) Except as provided in paragraph (b) of this subsection, the board shall:
      1. Review the request for reinstatement, the findings of fact, conclusions of law, and board order;
      2. Affirm or deny the request; and
      3. If denied, state in writing the corrective or remedial education, training or review required before reinstatement shall be granted.
   (b) The board shall not consider a request for reinstatement submitted to the board:
      1. Prior to the date for resubmission that is specified in the disciplinary order of the board; or
      2. If the CPA or CPA firm in a disciplinary order waived the ability to seek reinstatement.
   (3)(a) If an applicant for reinstatement disagrees with the board's determination under this section, he or she may file a written request for a hearing before the board.
   (b) A hearing held pursuant to the provisions of this subsection shall be conducted in accordance with KRS 325.360 and 201 KAR 1:150.

Section 5. Incorporation by Reference. (1) "[Reinstatement]License Reinstatement Application", August 2015[January 2014], is incorporated by reference.
   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday between 8 a.m. to 4:30 p.m.

KEVIN DOYLE, CPA, President
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 13, 2015 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2015 at 10 a.m., EST at the office of the board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing, by five work days prior to the meeting, 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 the 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 955-3037, fax (502) 955-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll
   (1) Provide a brief summary of:
   (a) What this administrative regulation does: Establishes the procedures to reinstate a CPA license.
   (b) The necessity of this administrative regulation: To advise
CPAs how to reinstate their license.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes the procedures to reinstate a CPA license as authorized by statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes the procedures to reinstate a CPA 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: Changes the reinstatement form revision date and prohibits CPAs and firms from seeking reinstatement if they agreed to waive this process when they settled their disciplinary case.
(b) The necessity of the amendment to this administrative regulation: To notify CPAs how to reinstate their license.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 325.240 authorizes the board to enact regulations. 325.330(6) authorizes the board to reinstate licenses and 325.370(2) authorizes the board to enact a regulation to reinstate a license.
(d) How the amendment will assist in the effective administration of the statutes: Describes the reinstatement processes.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: CPAs who failed to renew their license, and those who surrendered their license and want the license back. The number of CPAs affected varies but approximately thirty (30) to (forty) 40 per year.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: File a new form.
(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 $100 fee to reinstate a license.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be allowed to seek reinstatement of their license.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency restricted 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 required.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees were already established and are not increasing directly or indirectly.
(9) TIERING: Is tiering applied? No, since all candidates are 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? Board of Accountancy
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.240, KRS 325.261, 325.280, and 325.330.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? In the past the average has been between $3,000-$4,000/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? See the answer for (a).
(c) How much will it cost to administer this program for the first year? No new costs are involved.
(d) How much will it cost to administer this program for subsequent years? No new costs are involved.

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: Based upon previous years the average number of reinstatements is approximately thirty (30)-forty (40)/year at $100/ reinstatement.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(Amendment)

201 KAR 1:150. Procedures for the dissemination of information relative to hearings held before the Kentucky State Board of Accountancy.

RELATES TO: KRS 325.360 (10), (11)
STATUTORY AUTHORITY: KRS 325.240(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.360(11) authorizes the board to exchange information regarding disciplinary actions with public authorities or private organizations. This administrative regulation facilitates the dissemination of information.

Section 1. Following the board's adoption of a final order which concludes a disciplinary action, the name of the licensee and a summary of the findings shall be published in the next edition of the board's newsletter and a copy of the order shall be placed on the board's Web site.

KEVIN DOYLE, CPA, President
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 13, 2015 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2015 at 10 a.m., EST at the office of the board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing, by five work days prior to the meeting, 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 the 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.
Contact Person: Richard Carroll

1. Provide a brief summary of:
   (a) What this administrative regulation does: It governs the dissemination of information following the conclusion of a disciplinary action.
   (b) The necessity of this administrative regulation: To provide for publication of disciplinary actions on the board’s Web site and in its newsletter.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: It allows for other agencies and the public to become aware of the disciplinary information by accessing the board’s website as mentioned in KRS 325.360(10) and (11).
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will place information regarding disciplinary actions on the board’s website.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How much 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 the first year? 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

3. Other Explanation: The orders are scanned in on our copy machine and placed on the Web site. This work will not have any fiscal impact since we already are charged a monthly fee for the use of the copy machine and maintaining the Web page.

GENERAL GOVERNMENT CABINET
Kentucky Board of Optometric Examiners

Amendment

RELATES TO: KRS 218A.205(3)(h), 320.280
STATUTORY AUTHORITY: KRS 218A.205(3)(h), 320.240(7), 320.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.280(2) requires all licensed optometrists to annually take courses of study in subjects relating to the practice of optometry. KRS 218A.205(3)(h) requires optometrists to obtain seven and one-half (7.5) percent of their continuing education credits in the use of the electronic monitoring system established pursuant to KRS 218A.202, pain management, or addiction disorders. This administrative regulation establishes the required hours of study and prescribes the approved programs and those records which shall be maintained and submitted showing proof of attendance at those programs.

Section 1. (1) The annual course of study shall be completed each calendar year.
   (2)(a) A licensee shall attend a minimum of eight (8) continuing education credit hours.
   (b) In addition to the requirements of paragraph (a) of this subsection, an optometrist who is authorized to prescribe therapeutic agents shall attend a minimum of seven (7) credit hours in ocular therapy and pharmacology, for a total of at least fifteen (15) continuing education credits.
   (c) In addition to the requirements of paragraph (a) and (b) of this subsection, an optometrist who is credentialed by the board to perform expanded therapeutic procedures shall attend a minimum of five (5) additional credit hours in expanded therapeutic procedures, for a total of at least twenty (20) continuing education credits.
(d) A licensee who is authorized to prescribe controlled substances shall obtain two (2) credit hours that relate to the use of the electronic monitoring system established in accordance with KRS 218A.202 known as Kentucky All Schedule Prescription Electronic Reporting (KASPER), pain management, or addiction disorders as part of the licensee’s total continuing education credits.

Section 2. In order to be approved, an educational course shall be sponsored by a recognized and established state, regional (multistate) or national optometric association, an accredited college of optometry, or an accredited college of medicine.

Section 3. (1) In order to be credited for an educational course, a licensee shall submit an attendance form to the board.

(2) The attendance form shall be submitted on or before December 31 of each calendar year.

Section 4. A sponsor of an approved educational course shall furnish an attendance form to a licensee. The attendance form shall contain the following information:

1. Name of the sponsoring organization;
2. Name and address of the licensee;
3. Educational topics addressed at the course;
4. Identity of the speakers;
5. Number of hours attended by the licensee;
6. Date of the program;
7. Statement by the licensee that he or she has attended the course; and
8. Signature of an official of the sponsoring organization.

Section 5. Credit shall not be given for more than two (2) hours attendance in a course of office management and administration.

Section 6. (1) Except as provided in subsection (2) of this section, credit may be granted for a maximum of five (5) hours continuing education through the Internet.

(2) The credit hours required by Section 1(2)(c) of this administrative regulation shall not be obtained through the Internet.

[Section 7. Within one (1) year of initial licensure and thereafter every decennial year, an optometrist shall successfully complete a continuing education course of not less than one (1) hour containing HIV/AIDS that complies with KRS 214.610(1) and is approved by the Cabinet for Health and Family Services, HIV/AIDS Branch.]

JERALD COMBS, President
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 11, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 4:00 p.m. at the Keeneland Room of Embassy Suites Hotel, 1801 Newtown Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on September 17, 2015, 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 September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes continuing education requirements.
   (b) The necessity of this administrative regulation: This regulation is necessary to comply with the mandates of KRS 320.250 and KRS 320.280, which requires optometrists to obtain continuing education.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes criteria for mandated continuing education.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation qualifies how many hours and what subject matter must be completed by optometrists.

2. If 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 deletes the requirement for HIV/AIDS continuing education pursuant to the elimination of that requirement in KRS 320.250 and KRS 320.280, effective on June 24, 2015.
   (b) The necessity of the amendment to this administrative regulation: The amendment brings the regulation in conformity with the authorizing statutes.
   (c) How the amendment conforms to the content of the authorizing statutes: The amendment eliminates the requirement for HIV/AIDS continuing education, as do the authorizing statutes.
   (d) How the amendment will assist in the effective administration of the statutes: There will be conformity between the statutes and regulation.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 700 optometrists are required to obtain continuing education each year.

4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Optometrists have to receive eight (8) hours of continuing education; an optometrist prescribing therapeutic agents must obtain fifteen (15) hours of continuing education; an optometrist credentialed by the board to perform expanded therapeutic procedures shall obtain twenty (20) hours of continuing education. Optometrists prescribing controlled substances must have two (2) hours of particularized education as part of their total continuing education hours. No optometrist will now be required to obtain HIV/AIDS continuing education for renewal.
   (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 monetary cost to the entities identified in question (3).
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment eliminates a requirement rather than adds one, so there is no benefit of compliance.

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 board.
   (b) On a continuing basis: No new costs will be incurred by the board.

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 this amendment.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation:
regulation, if new, or by the change if it is an amendment: Implementation of this regulation is not dependent on an increase in fees or funding.

(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.

(9) TIERINGS: Is tiering applied? Tiering was not applied as the regulation is applicable 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? This administrative regulation will impact licensees of the Kentucky Board of Optometric Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.250 and 320.280 require 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. The board does not expect a difference in expenditures and revenues for the first year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government agency (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 agency (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 Optometric Examiners (Amendment)

201 KAR 5:110. Expanded therapeutic procedures.

RELATES TO: KRS 320.210(2) and 320.240(4), (5), and (7)

STATUTORY AUTHORITY: KRS 320.210(2) and 320.240(4), (5), and (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.240(4) grants the Kentucky Board of Optometric Examiners the authority to promulgate reasonable regulations and the board’s administrative regulations shall include the classification and licensure of optometrists by examination and credentials. KRS 320.240(5) requires a therapeutically licensed optometrist to meet educational and competence criteria set forth by the board in order to perform expanded therapeutic procedures, and evidence of proof of continuing competency shall be determined by the board. This administrative regulation establishes the educational and competence criteria necessary for a therapeutically licensed optometrist to perform expanded therapeutic procedures.

Section 1. Qualifications for a Kentucky Licensed Optometrist to be Credentialed to Utilize Expanded Therapeutic Procedures. A Kentucky licensed optometrist shall be credentialed to perform expanded therapeutic procedures if:

1. The applicant provides proof that the applicant:
   (a) Holds an active license in good standing by another state;
   (b) Is also credentialed by that state to perform expanded therapeutic procedures; and
   (c) The requirements in the state of licensure for performing expanded therapeutic procedures meet or exceed the requirements in this section;
   2. The applicant is currently therapeutically licensed in Kentucky; and
   (b) Provides proof of completion of a course approved by the Board that includes:
      1. The following didactic instruction:
         - Class room instruction covering:
            - Laser Physics, Hazards and Safety;
            - Biophysics of laser;
            - Laser application in Clinical Optometry;
            - Laser Tissue Interactions;
            - Laser Indications, Contraindications and Potential Complications;
            - Gonioscopy;
            - Laser Therapy for Open Angle Glaucoma;
            - Laser Therapy for Angle Closure Glaucoma;
            - Posterior Capsulotomy;
            - Common complications: Lids, Lashes, Lacrimal;
            -Medicolegal Aspects of Anterior Segment Procedures;
            - Peripheral Iridotomy;
            - Laser Trabeculoplasty;
            - Minor surgical procedures;
            - Overview of surgical instruments, Asepsis and OSHA;
            - The surgical anatomy of the Eyelids;
            - Emergency Surgical Procedures;
            - Chalazion Management;
            - Epiluminescence Microscopy;
            - Suture techniques;
            - Local anesthesia: techniques and complications;
            - Anaphylaxis and other office emergencies;
            - Radiofrequency Surgery; and
            - Post-operative Wound Care;
      2. Clinical or Laboratory experience including:
         - Video Tape Demonstration;
         - In Vitro Observation or participation;
         - In Vivo Observation; and
         - A formal Clinical or Laboratory Practical Examination; and
      3. Passage of a written test utilizing the National Board of Examiners in Optometry format.
   (3) A board approved course shall be:
   (a) Provided by an accredited optometry or medical school;
   (b) Taught by full-time or adjunct faculty members of an accredited optometry or medical school;
   (c) A minimum of thirty-two (32) clock hours in length; and
   (d) Sponsored by an organization that meets the standards of 201 KAR 5:030.

Section 2. Qualifications for a New Applicant for Licensure to be Credentialed to Utilize Expanded Therapeutic Procedures. A new applicant for licensure as an optometrist shall be credentialed to perform expanded therapeutic procedures if:

1. The applicant provides proof that the applicant has graduated from an optometry school whose program includes all of the education, training, and testing requirements established in Section 1; or
2. By the end of the second[largest] licensure renewal period, the licensee shall provide proof of compliance with Section 1 of this administrative regulation.

Section 3. Qualifications for an Applicant for Licensure by Endorsement to be Credentialed to Utilize Expanded Therapeutic Procedures. An applicant for licensure by endorsement shall be credentialed to perform expanded therapeutic procedures in Kentucky if:

1. The applicant provides proof that:
   (a) The applicant holds an active license in good standing by another state;
   (b) Is credentialed by that state to perform expanded
therapeutic procedures; and
(c) The requirements in the state of licensure for performing expanded therapeutic procedures meet or exceed the requirements in Section 1; or
(2) By the end of the second last licensure renewal period, the licensee shall provide proof of compliance with Section 1 of this administrative regulation.

Section 4. Qualifications for an Optometrist to be Credentialed to Utilize Expanded Therapeutic Laser Procedures. (1) An optometrist credentialed in Kentucky to perform expanded therapeutic procedures shall be credentialed to perform expanded therapeutic laser procedures if the optometrist:
(a) Provides documentation to the board from a board approved preceptor indicating that the optometrist has:
   1. Performed the anterior segment laser procedure in the presence of the board approved qualified preceptor; and
   2. Demonstrated clinical proficiency in the performance of the procedure on a living human eye to the satisfaction of the board approved qualified preceptor.
(2) The board approved qualified preceptor shall document in writing the preceptor’s observations of the optometrist’s performance and state that the optometrist has satisfactorily demonstrated his knowledge and qualifications in the performance of the procedure.
(3) A board approved qualified preceptor shall be:
   (a) A licensed optometrist or ophthalmologist whose license is in good standing;
   (b) A full-time or adjunct faculty member of an accredited optometry or medical school; and
   (c) Credentialed in the expanded therapeutic procedure or expanded therapeutic laser procedure that the preceptor is teaching.

Section 5. Prohibitions and Referrals. (1) Performing expanded therapeutic procedures without credentialing based upon the education requirements outlined in this administrative regulation shall be grounds for discipline pursuant to the requirements of KRS 320.310(1).
(2) Injections into the posterior segment/chamber or retinal tissue to treat any macular or retinal disease shall not be permitted under KRS 320.210(2)(b)(1).
(3) Any eyelid or adnexal lesion found to be malignant shall be referred to a practitioner trained and qualified to treat those lesions.

Section 6. Annual Course of Study. (1) In addition to the continuing education credit hours required by 201 KAR 5:030 Section 1(1) and 2(a)(a) and (b), an optometrist who is credentialed by the board to perform expanded therapeutic procedures shall attend a minimum of five (5) additional credit hours in expanded therapeutic procedures, for a total of twenty (20) continuing education credits.
(2) None of the five (5) required contact credit hours in expanded therapeutic procedures may be obtained through the internet.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Application for Expanded Therapeutic Procedures Course", August 2011;
   (b) "Application for Kentucky Licensed Optometrist to be Credentialed to Utilize Expanded Therapeutic Procedures", August 2011;
   (c) "Application for New Applicant to be Credentialed to Utilize Expanded Therapeutic Procedures", August 2011;
   (d) "Application for Endorsement to be Credentialed to Utilize Expanded Therapeutic Procedures", August 2011;
   (e) "Preceptor Approval Form", August 2011;
   (f) "Preceptor Evaluation of Expanded Therapeutic Laser Procedure", August 2011; and
   (g) "Application to Utilize Expanded Therapeutic Laser Procedure(s)", August 2011
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, telephone (859) 246-2744, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JERALD COMBS, President
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 11, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 5:00 p.m. at the Keeneland Room of Embassy Suites Hotel, 1801 Newtown Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on September 17, 2015, 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 September 30, 2015. Send written notification to:
CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone (859) 246-2744; fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the educational and competence criteria necessary for a therapeutically licensed optometrist to perform expanded therapeutic procedures.
(b) The necessity of this administrative regulation: This regulation establishes the criteria required by KRS 320.240(5).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes criteria for an optometrist that performs expanded therapeutic procedures.
(d) How this administrative regulation conforms to the content of the authorizing regulations: The regulation gives an applicant adequate time to complete the required course of study by the second renewal period.
(e) How this administrative regulation conforms to the content of the authorizing administrative regulations: The regulation gives an applicant adequate time to complete the required course of study by the second renewal period.
(f) The necessity of the amendment to this administrative regulation: The amendment gives a new applicant adequate time to complete the required course of study.
(g) How the amendment conforms to the content of the authorizing statutes: The statute establishes competence criteria and the amendment gives an applicant adequate time to complete the required course of study.
(h) How the amendment will assist in the effective administration of the statutes: An applicant will complete a course of study that will permit the optometrist to perform expanded therapeutic procedures.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment requires a new applicant or applicant by endorsement to complete a required course of study by the second renewal period.
(b) The necessity of the amendment to this administrative regulation: The amendment gives a new applicant adequate time to complete the required course of study.
(c) How the amendment conforms to the content of the authorizing statutes: The statute requires competence criteria and the amendment gives an applicant adequate time to complete the required course of study.
(d) How the amendment will assist in the effective administration of the statutes: An applicant will complete a course of study that will permit the optometrist to perform expanded therapeutic procedures.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately twenty (20) optometrists annually take the course of study required to perform expanded therapeutic procedures.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified
in question (3) will have to take to comply with this administrative regulation or amendment: Optometrists will have to complete the required course of study by the second renewal period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no additional monetary cost to the entities identified in question (3); the approximate cost of the required course of study is $2,000.00.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The optometrist may perform expanded therapeutic procedures.

(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 board.

(b) On a continuing basis: No new costs will be incurred by the Board.

(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 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: Implementation of this regulation is not dependent on an increase in fees or funding.

(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.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable 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? This administrative regulation will impact licensees of the Kentucky Board of Optometric Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.240(4) and 320.240(5) authorize 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. The board does not expect a difference in expenditures and revenues for the first year the administrative regulation is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate new revenue for the board 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? 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:
paragraph shall not fulfill more than one-half (1/2) of a licensee’s continuing education requirement;
(b) A relevant program, including a home study course or in-service training provided by another organization, educational institution, or other service provider approved by the board;
(c) A relevant program or academic course presented by the licensee. A presenter of a relevant program or academic course shall 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; or
(d) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall be granted for an article that was published within the two (2) year period immediately preceding the renewal date if the licensee has not received credit for another publication during that renewal period. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication.

Section 4. Procedures for Approval of Continuing Education Programs. A course which has not been preapproved by the board may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review this program, the licensee requesting approval shall submit:
(1) A published course or similar description;
(2) Names and qualifications of the instructors;
(3) A copy of the program agenda indicating hours of education, coffee breaks, and lunch breaks;
(4) Number of continuing education hours requested;
(5) Official certificate of completion or college transcript from the sponsoring agency or college;
(6) Application for Continuing Education; and
(7) The fee required by 201 KAR 6:060, Section 7.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval.
(a) Any entity seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.
(b) An applicant shall satisfy the board that the entity seeking this status:
1. Consistently offers programs which meet or exceed all the requirements established in subsection (2) of this section; and
2. Does not exclude any licensee from its programs.
(2) A continuing education activity shall be qualified for approval if the board finds the activity being presented:
(a) Is an organized program of learning;
(b) Pertains to subject matters which integrally relate to the practice of long term care administration;
(c) Contributes to the professional competency of the licensee; and
(d) Is conducted by individuals who have relevant educational training or experience.

Section 6. Responsibilities and Reporting Requirements of Licensees. (1) Each licensee shall be responsible for obtaining the required continuing education hours established in Section 2 of this administrative regulation. The licensee shall:
(a) Identify his or her own continuing education needs;
(b) Take the initiative in seeking continuing professional education activities to meet these needs; and
(c) Seek ways to integrate new knowledge, skills, and attitudes.
(2) Each person holding licensure shall:
(a) Select approved activities by which to earn continuing education hours;
(b) Submit to the board, if applicable, a request for continuing education activities requiring approval by the board as established in Section 4 of this administrative regulation;
(c) Maintain or have available records of continuing education hours;
(d) At renewal, list the continuing education hours obtained during that licensure renewal period; and
(e) At renewal, furnish documentation of attendance and participation in the number of continuing education hours required by Section 2 of this administrative regulation and as required by this paragraph.
1. Each person holding licensure shall maintain, for a period of two (2) years from the date of renewal, all documentation verifying successful completion of continuing education hours.
2. During the two (2) year licensure renewal period, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the number of continuing education hours, required by Section 2 of this administrative regulation, for the current renewal period.
3. Verification of continuing education hours shall not otherwise be reported to the board.
4. Documentation shall take the form of official documents including:
   a. Transcripts;
   b. Certificates;
   c. Affidavits signed by instructors; or
   d. Receipts for fees paid to the sponsor.
5. Each licensee shall retain copies of the documentation.\n
Section 7. Responsibilities and Reporting Requirements of Providers. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 4 of this administrative regulation, directly to the licensee.
(2) A provider of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal when Approval Denied. (1) If an application for approval of continuing education hours is denied, the licensee may request reconsideration by the board of its decision.
(2) 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.
(3) An appeal shall be conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in an individual case involving medical disability, illness, or undue hardship, grant a waiver of the minimum continuing education requirements or an extension of time within which to fulfill the requirements or make a required report.
(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding a license and shall be accompanied by a verifying document signed by a licensed physician.
(3) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the continuing education requirements shall be granted by the board for a period of time not to exceed one (1) calendar year.
(4) 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 person holding licensure shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the twenty-four (24) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.
(2) Upon request by a licensee, the board may permit the licensee to resume practice, with the provision that the licensee shall receive thirty (30) hours continuing education within six (6) months of the date on which the licensee is approved to resume.
practice.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

GREG WELLS, Chairman

APPROVED BY AGENCY: July 30, 2015

FILED WITH LRC: August 12, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 23, 2015 at 2:30 p.m. Eastern time, at the Kentucky Board of Licensure for Long-term Care Administrators, 911 Leawood Drive, Frankfort, Kentucky 40601. 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 within five (5) days of the hearing 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 end of day, Wednesday, September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: J. Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 564-6801, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marcus Jones

(1) Provide a brief summary of: Establishes continuing education requirements for licensees.

(a) What this administrative regulation does: Sets the continuing education requirements and methods of getting board approval for continuing education courses.

(b) The necessity of this administrative regulation: The regulation is necessary because uniform continuing education requirements protect the public and inform long-term care licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216A.090 authorizes the board to establish continuing education requirements for the renewal of licenses. KRS 216A.070(3) authorizes the board to promulgate regulations to perform its duties under the Chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the required continuing education standards and methods for obtaining board approval for continuing education 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: The amendment will incorporate the current version of the regulation into the application for continuing education.

(b) The necessity of the amendment to this administrative regulation: The continuing education regulation has been amended in recent years. The board must incorporate the current version of the application for continuing education to keep the application consistent with the regulation’s current continuing education requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216A.090 authorizes the board to establish continuing education requirements for the renewal of licenses, and the amendment will incorporate a revised application that accurately states the continuing education requirements listed in the regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the board to accurately inform licensees 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: There are approximately 860 licensees 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: List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will have to apply for continuing education requirements consistently with the regulations and application for continuing education. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The licensees must pay the appropriate biennial renewal fee listed in administrative regulation 201 KAR 6:080. As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be granted approval of continuing education courses that meet the current standards listed in regulations.

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

(a) Initially: There will be no additional cost to implement this regulation.

(b) On a continuing basis: There will be no additional ongoing cost to implement this regulation.

(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 solely by fees paid by the 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: This administrative regulation does not require an increase in fees to implement the regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: The regulation does not increase or establish a fee.

(9) TIERING: Is tiering applied? No. Tiering is not necessary because the terms and conditions of this regulation will be applied to all licensees equally.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Long-term Care Administrators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216A.080; KRS 216A.070(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? $0.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? $0.
counties, fire departments, or school districts) for subsequent years? $61,000.
(c) How much will it cost to administer this program for the first year? None.
(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/−); N/A
Expenditures (+/−); N/A
Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(Amendment )

201 KAR 18:104. Seals and signatures.

RELATES TO: KRS 322.290(13), 322.340
STATUTORY AUTHORITY: KRS 323.340, 322.290(4), (13)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.340
and 322.290(13) require the board to promulgate administrative regulations regulating the design of seals and the use of seals and signatures in electronic transactions. The administrative regulation establishes the requirements for the use of seals and signatures in electronic transactions.

Section 1. Definitions. (1) "Digital signature" means a signature generated electronically with an authentication process attached to or logically associated with an electronic document which shall carry the same weight, authority, and effect as an original signature. "Document" means reports, specifications, drawings, plans or plats in physical form pertaining to engineering or land surveying which require certification by application of a seal or stamp, a signature and a date.
(2) "Document" means reports, specifications, drawings, plans, or plats in physical form pertaining to engineering or land surveying which require certification by application of a seal or stamp, a signature and a date. "Electronic document" means an electronic data file which is capable of being viewed by use of a computer and video monitor or converted into a document by use of a computer and printer or plotter.
(3) "Electronic document" means an electronic data file which is capable of being viewed by use of a computer and video monitor or converted into a document by use of a computer and printer or plotter. "Signature" means a digital signature with an authentication process attached to or logically associated with an electronic document which shall carry the same weight, authority, and effect as an original signature.
(4) "Electronic transmission" means the transmission of electronic data files from one (1) computer to another, and shall include the manual delivery of electronic data storage media from one (1) person or entity to another.
(5) "Licensee" means a person licensed as a professional engineer or professional land surveyor pursuant to KRS Chapter 322.
(6) "Original signature" means the handwritten name of a person applied to a document that identifies the person, serves as a means of authentication of the contents of the document, provides responsibility for the contents of the document, and provides for accountability for the contents of the documents.
(7) "Original seal or stamp" means a rubber stamp or embossing seal meeting the design requirements set out in Section 5 of this administrative regulation.
(8) "Signature" means either original signature or digital electronic signature.

Section 2. (1) When documents are to be presented to a client or to a public or governmental entity, at least one (1) copy shall bear the licensee’s original seal or stamp, original signature, and date.
(2) Any other copy of the documents may contain a facsimile of the licensee’s stamp, signature, and date applied manually by the use of stamps or by the use of a computer and printer or plotter.

Section 3. A digital[electronic] signature shall be permitted in place of an original seal, signature, and date when the following criteria are met:
(1) It is a unique identification of the licensee;
(2) It is verifiable;
(3) It is under the licensee’s direct and exclusive control;
(4) It is linked to the electronic document in such a manner that causes changes to be easily determined and visually displayed if any data in the electronic document file is changed subsequent to the digital[electronic] signature having been affixed to the electronic document;
(5) An attempt to change the electronic document after the digital[electronic] signature is affixed shall cause the digital[electronic] signature to be removed or altered significantly enough to invalidate the document; and
(6) If the electronic document is to be electronically transmitted, the electronic document is converted to a read-only format.

Section 4. (1) A licensee may electronically transmit an electronic document without affixing a digital[electronic] signature provided there is inserted the following language in lieu of an image of a seal or stamp, signature, and date: "This shall not be considered a certified document."
(2) This language shall not be required for documents electronically transmitted to a commercial printer or blueprint service for the purpose of reproducing documents or to the licensee’s employer or employees.

Section 5. Approved Stamps and Seals. The stamps and seals used by a licensee shall be similar in design and conform to the size restrictions established in ["Approved Stamps and Seals,"] [§ 41999].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 12, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2015 at 2:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five working days prior to the date of the hearing. If no written notification of an individual’s intent to attend the hearing is received by that date, the hearing may be canceled.
This hearing is open to the public. If the public hearing is held, 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, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. 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 September 30, 2015. Send written notification of intent to be heard at a public hearing and 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...
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the design of seals for the professional engineer, and for the professional land surveyor, and establishes the requirements for the use of seals and signatures of professional engineers and professional land surveyors in electronic transactions.

(b) The necessity of this administrative regulation: KRS 322.290(13) and KRS 322.340 require the board to design the seal or stamp for use by professional engineers and by professional land surveyors, and to promulgate administrative regulations for the use of the stamp, seal, or signature in electronic transactions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation prescribes the design of the seals or stamp for the professional engineer, and for the professional land surveyor, and further, prescribes regulations for the use of the stamp, seal, or signature of the professional engineer and professional land surveyor in electronic transactions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation complies with the mandates of KRS 322.290(13) and KRS 322.340, which requires the board to design the seals or stamp for the professional engineer, and for the professional land surveyor, and further, to prescribe regulations for the use of the stamp, seal, or signature of the professional engineer and professional land surveyor in electronic transactions.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment changes the term "electronic signature" to "digital signature", so as to conform to what has developed to be the ordinary use of the term "digital signature" in current digital or electronic commercial and governmental transactions.

(b) The necessity of the amendment to this administrative regulation: The existing definition of "electronic signature", while appropriate to the time period in which this regulation was originally created, has now become inappropriate in current digital or electronic commercial and governmental transactions. The board, by this amendment, is changing the outdated terminology to be in conformance with the terminology relating to digital signatures normally used in current commercial and governmental transactions.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation complies with the mandates of KRS 322.290(13) and KRS 322.340 which requires the board to create regulations for the use of the stamp, seal, or signature in electronic transactions.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will provide the terminology relating to the use of the stamp, seal, or signature in electronic transactions by the licensees of the board, shall be in concordance with that of the industries in which the licensees work, thereby eliminating possible confusion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed regulation will not affect businesses, organizations, or state and local governments. It will affect only professional engineers and professional land surveyors by eliminating a potential area of confusion between those professionals and their clients.

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

(a) A detailed explanation of 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 licensee will be required to do anything differently than he or she is already doing with regard to signatures used in electronic transactions other than using the terminology "digital signature" where previously, they would have used "electronic signature".

(b) An estimate of the costs imposed on entities identified in question (3) in complying with this administrative regulation or amendment: There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees shall benefit by using the same terminology regarding signatures used in electronic transactions that their customers are using, thereby eliminating possible areas of confusion.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Agency Funds. The board receives no general or federal funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Licensure for Professional Engineers and Land Surveyors

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.290(13) and KRS 322.340

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are no revenue or expenditure effects for any government agency.

(a) How much revenue will this administrative regulation generate for the state or local government agency (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 agency (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? $0

(d) How much will it cost to administer this program for subsequent years? $0

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no additional cost or revenue generated by this amendment.
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(AMENDMENT)

201 KAR 18:142. Code of professional practice and conduct.

RELATES TO: KRS 322.180(3), 322.290(11)
STATUTORY AUTHORITY: KRS 322.290(11)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(11) requires the board to promulgate a code of professional practice and conduct, which shall be binding upon persons licensed under KRS Chapter 322. This administrative regulation establishes a code of professional practice and conduct.

Section 1. Definitions. (1) "Conflict of interest" means any circumstance in which a licensee has a private or personal interest sufficient to appear to influence, or possibly influence, the objective exercise of the licensee's professional judgment to the detriment of the public, his or her employer, or current[or past] client; for the purposes of this definition, the private or personal interests of the licensee shall include the personal or business interests of the members of the licensee's family, his or her close relatives, or business associates.

(2) "Direct supervisory control" in the practice of engineering means that an engineer licensee directly supervises and takes responsibility for the approval of services to be performed by an employee as defined in subsection (4) of this section.

(3) "Direct supervisory control" in the practice of land surveying means that a surveyor licensee who certifies a work product directly supervises and takes responsibility for the survey and includes only that work performed by an employee as defined in subsection (4) of this section.

(4) "Employee" means a person who works for a licensee or his or her employer for wages or a salary and includes professional and technical support personnel contracted on a temporary or occasional basis, if the compensation is paid directly by the licensee or his or her employer. It does not include a person who provides services to the licensee as an outside consultant or speciator.

(5) "Licensee" means any natural person licensed by the board to practice professional engineering or professional land surveying, or any business entity permitted under KRS 322.060.

(6) "Work product" means any engineering or land surveying plan, plat, document or other deliverable requiring certification that is intended to represent activities conducted in the practice of engineering or land surveying.

Section 2. The engineer or land surveyor shall conduct his or her practice in order to protect the public health, safety, and welfare. (1) The practice of professional engineering and land surveying is a privilege, and not a right.

(2) If a licensee's judgment is overruled and a licensee has reason to believe the public health, safety or welfare may be endangered, the licensee shall inform his or her employer or client of the possible consequences and, if not resolved, notify appropriate authorities.

Section 3. A licensee shall issue all professional communications and work products in an objective and truthful manner. (1) A licensee shall be objective and truthful in all professional reports, statements or testimony and shall include all material facts.

(2) If serving as an expert or technical witness before any tribunal, a licensee shall express an opinion only if it is founded on adequate knowledge of the facts in issue, on the basis of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of that testimony, and shall act with objectivity and impartiality. A licensee shall not ignore or suppress a material fact.

(3) A licensee shall not issue a statement or opinion on professional matters connected with public policy unless the licensee has identified himself or herself, has disclosed the identity of the party on whose behalf the licensee is speaking, and has disclosed any pecuniary interest the licensee may have in the matter.

(4) A licensee shall not maliciously injure the professional reputation, prospect, practice or employment of another licensee.

(5) A licensee shall not accept a contingency fee for serving as an expert witness before any tribunal.

(6) A licensee shall maintain for a period of not less than five (5) years, calculations and documents necessary to support work products.

(7) A professional land surveyor shall maintain records for boundary surveys under 201 KAR 18:150, Section 10(2) and (3).

(8) The requirements of subsections (6) and (7) of this section shall be satisfied for the individual licensee employed by a business entity permitted by the board in conformance with KRS 322.060 by that permitted entity's compliance with subsections (6) and (7) of this section.

(9) A licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive, or unfair statement regarding the cost, quality, or extent of services to be performed.

(10) A licensee shall not misrepresent his or her professional qualifications or experience, or those of the licensee's associates.

Section 4. A licensee shall avoid conflicts of interest. The public, as well as a professional's employer and clients, have the expectation that the professional engineer or land surveyor shall act objectively and independently. Conflicts of interest involve the abuse, actual or potential, of the trust people have in professional engineers and land surveyors. (1) If a situation occurs in which a reasonable person would think that a licensee's professional judgment is likely to be compromised by an interest, [is contrary to the interests of the public or the licensee's family, his or her close relatives, or business associates], a licensee shall promptly disclose the possibility of the conflict of interest to [his or her employer, or client, and shall, if reasonably possible, withdraw from participation in the situation which gave rise to the conflict of interest or past client].

(2) A licensee shall not accept a valuable consideration from more than one (1) party for services pertaining to the same[identical] project, unless the circumstances are fully disclosed to all other principal parties directly involved in the project.

(3) A licensee shall not solicit or accept a valuable consideration from any vendor, contractor, or client, or their agents for acceptance, rejection, approval, or disapproval of any work performed by others, or[either] for specifying materials or equipment, or from contractors, their agents or other parties dealing with a client or employed in connection with work for which the licensee is responsible.

(4) A licensee serving as a member, advisor, or employee of a governmental body shall not, when utilizing either his status as a licensed professional engineer or land surveyor, or his skill, experience, or knowledge as a licensed professional engineer or land surveyor, participate in decisions in which he or she has a personal or personal interest, and shall not review or approve work that was performed by the licensee, or by others, on behalf of a business entity in which the licensee has any control, or personal interest. [shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive, or unfair statement regarding the cost, quality, or extent of services to be performed.]

(5) A licensee serving as a member, advisor, or employee of a governmental body shall not participate in decisions with respect to professional services offered or provided by him or her or by a business entity in which the licensee is a principal, officer, or employee, to that governmental body.

Section 5. A licensee shall solicit or accept engineering or land surveying work only on the basis of his or her, or the licensee's
firm’s or associates’ qualifications for the work offered. (1) A licensee shall not offer or accept any valuable consideration in order to secure specific work, exclusive of commissions paid by individual licensees for securing salaried positions through employment agencies. A licensee may participate in design-build projects. (2) A licensee may advertise professional services if the advertising is not false or misleading.

Section 6. A licensee shall not knowingly associate with any person engaging in fraudulent, illegal or dishonest activities. (1) A licensee shall not permit the use of his or her, or the licensee’s business entity’s name by any person or business entity that he or she knows or has reason to believe is engaging in fraudulent, dishonest or illegal activities. (2) A licensee shall not aid or abet the illegal practice of engineering or land surveying.

Section 7. A licensee shall perform his or her services only in the areas of his or her competence. (1) A licensee shall undertake to perform professional assignments only if qualified by education or experience in the specific technical field involved. (2) A licensee may accept an assignment requiring education or experience outside his or her own field of competence, but only to the extent that his or her services are restricted to those parts of the project in which the licensee is competent. All other parts of the project shall be certified by licensed associates, consultants or employees.

Section 8. Except as provided by this section, a licensee shall not certify any work product dealing with subject matter in which he or she lacks competence by virtue of education or experience, or any work product not prepared by him or her under his or her direct supervisory control. (1) A professional engineer may review and certify the work product of another professional engineer if: (a) The review and certification are made at the request of the other professional engineer; (b) He or she does not remove or obliterate the identity of the other professional engineer; (c) He or she performs and retains in his or her possession for not less than five (5) years all calculations and documents necessary to perform an adequate review; and (d) He or she confirms that the other professional engineer was licensed when the work was created. (2) If a professional engineer undertakes to review only a portion of the work product of another professional engineer, his or her certification shall clearly identify the portion reviewed. (3) A professional engineer may modify the work product of another professional engineer, whether or not the project has been built, if he or she retains in his or her possession for not less than five (5) years a record of his or her modifications. (4) If a professional engineer modifies the work product of another professional engineer, his or her certification shall clearly identify, by words or graphics, that portion that was modified. (5) A professional engineer may incorporate in his or her work product the designs of manufactured or standard components developed by manufacturers, suppliers or professional or technical societies and associations. (6) If, in the professional land surveyor’s reasonable judgment, his or her personal participation is not required in performing a particular aspect of a project, he or she may delegate those tasks to an employee, if all work is actually reviewed by the licensee.

Section 9. The professional engineer or professional land surveyor shall avoid conduct likely to discredit or reflect unfavorably upon the dignity or honor of his or her profession.

Section 10. If a licensee has knowledge or reason to believe that any person or other licensee is in violation of KRS Chapter 322 or any administrative regulation adopted by this board, the licensee shall present that information to the board in writing and shall cooperate with the board in furnishing information within his or her knowledge.

Section 11. (1) A licensee shall not, directly or indirectly, contact a board member concerning any ongoing disciplinary action, or any existing investigation being conducted by the board staff. (2) Any communication by a licensee concerning an ongoing disciplinary action or an existing investigation shall be directed to a board staff member.

Section 12. A licensee who is in doubt about the ethical propriety of any professional act or omission contemplated by that licensee may request an informal opinion from the executive director of the board. The request shall be in writing, or email with the subject line of “Request for Advisory Opinion Pursuant to 201 KAR 18:142”, the request shall include the name and address of the licensee making the request, a phone number and email address at which the licensee can be contacted, and all relevant information. Based on the information provided in the request, the executive director shall respond in writing as to the ethical propriety of the act or course of conduct in question. A licensee shall not be disciplined for any professional act performed by that licensee in compliance with the written advisory opinion furnished by the executive director pursuant to the licensee’s written request. If the licensee’s written request clearly, fairly, accurately, and completely states the licensee’s contemplated professional act and all relevant information.

B. DAVID COX, Executive director
APPROVED BY AGENCY: August 10, 2015
FILED WITH LRC: August 12, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2015 at 3:00 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five workdays prior to the date of the hearing. If no written notice is received, the hearing shall be held. If a public hearing is held, 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, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. David Cox

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a code of professional practice and conduct for professional engineers and land surveyors.

(b) The necessity of this administrative regulation: KRS 322.290(11) requires the board to adopt and promulgate by administrative regulation a code of professional practice and conduct, which shall be based upon generally recognized principles of professional ethical conduct and binding upon persons licensed under KRS Chapter 322.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The provisions of this regulation constitute the code required by KRS 322.290.

(d) How this administrative regulation currently assists or will assist in the effectual administration of the statutes: This regulation establishes written requirements for professional practice and conduct so that licensees may understand what is required of them, and assists board staff to insure compliance with those provisions.

(2) If 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 provisions relating to conflicts of interest and provides a mechanism for licensees to receive an advisory opinion from the board in the event the licensee has a question about the ethical propriety of a situation contemplated course of conduct.

(b) The necessity of the amendment to this administrative regulation: The concept of conflict of interest has evolved to include personal interests unrelated to personal financial gain, and this amendment reflects that change. Additionally, this amendment creates a "safe harbor" procedure for any licensee who has a question or concern about the ethical propriety of a contemplated course of action or situation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the mandate of KRS 322.290(11) since this provision is directed at one aspect of licensees acting ethically.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide more clarity to the issue of conflicts of interest, and provides an advisory mechanism to assist the licensee who may have a question about the ethical propriety of a contemplated course of action or situation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect all licensees, approximately 12,000 in number, subject to the provisions of the Code of Professional Practice and Conduct.

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

(a) A detailed explanation of the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be required of either the licensees or the board.

(b) An estimate of the costs imposed on entities identified in question (3) in complying with this administrative regulation or amendment: There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will assist any licensee in understanding conflicts of interest, and what course of conduct is required in the event of the licensee being involved with a conflict of interest, and provides a mechanism for a licensee to receive guidance from the board for situations in which ethical issues may be present.

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

a. Initially: $0
b. On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Agency Funds. The board receives no general or federal funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Licensure for Professional Engineers and Land Surveyors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.290(11)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue or expenditure to any agency as a result of this 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? 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? $0

(d) How much will it cost to administer this program for subsequent years? $0

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

Revenues (+/-): 
Expenditures (+/-): Other Explanation: There is no additional cost or revenue generated by this amendment.

GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Licensure for Marriage and Family Therapists

(Amendment)

201 KAR 32:025. Marriage and family therapist associate.

RELATES TO: KRS 335.332
STATUTORY AUTHORITY: KRS 335.320(9), 335.332(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.332(3) requires the board to promulgate administrative regulations establishing the fees and other requirements for a marriage and family therapist associate permit. This administrative regulation establishes the requirements for marriage and family therapist associates.

Section 1. Marriage and Family Therapist Associate Application and Renewal. (1)(a) A person desiring to be a marriage and family therapist associate shall apply for and submit to the
board an Application for Permit as a [Licensure as a Marriage and Family Therapist] or Marriage and Family Therapist Associate with a fee of fifty (50) dollars for the first year.

(b) The initial application shall include a copy of a supervisory contract[s][contract] with the designated supervisor[s][supervisor] for approval by the board.

(2)(a) An annual renewal fee of fifty (50) dollars for each subsequent year shall be submitted to the board.

(b) Contract renewal and extension shall be granted in accordance with Section 4 of this administrative regulation.

(c) Effective January 1, 2016, the associate permit shall be limited to a total of five (5) years of practice as a marriage and family therapist associate to meet the requirements for licensure as a marriage and family therapist. An associate may submit in writing to the board a request for two (2) additional years to complete the requirements for licensure as a marriage and family therapist. Associate permit holders who have held a permit for seven (7) or more years prior to January 1, 2016, shall be granted an additional year to complete the requirements and apply for licensure as a marriage and family therapist.

(3) An associate desiring to renew a permit shall file a completed Marriage and Family Therapist Associate Permit Renewal Application [Form] and the completed supervision logs[s][log] to accompany the fee established in subsection (2) of this section.

(4) An associate who fails to renew by his or her expiration date shall have thirty (30) days to pay the renewal fee of fifty (50) dollars plus a late fee of twenty (20) dollars for a total of seventy (70) dollars.

(a) The fee shall be postmarked on or before the end of the thirty (30) day grace period in accordance with the expiration date indicated on the renewal form.

(b) Failure to renew the permit in a timely manner as established in this subsection shall result in termination of the permit.

Section 2. Supervisory Contract. (1) Prior to beginning a course of supervision for the purpose of meeting licensure requirements, a marriage and family therapist associate shall contract with an approved supervisor(s) for supervision.

(2) The approved supervisor shall enter into a Supervision Plan[s][Plan] for Clinical Experience with a person who meets the criteria for becoming a marriage and family therapist associate.

(3) The approved supervisor shall be responsible for the marriage and family therapist associate’s development and the well-being of the client served by the therapist associate in accordance with the code of ethics established in 201 KAR 32:050 and the provisions in 201 KAR 32:035.

(4) If a new supervisory contract is entered into with a different supervisor, approval shall be obtained from the board.

(5)(a) If a supervisory contract is terminated, the approved supervisor shall, within thirty (30) days, notify the board in writing that he or she is no longer the supervisor.

(b) The marriage and family therapist associate has thirty (30) days from the date of termination to submit the new supervisory contract to the board.

Section 3. Contract Information. The supervisory contract between the marriage and family therapist associate and the approved supervisor shall contain the following information:

(1) The name of the marriage and family therapist associate;

(2) The name and license number of the approved supervisor;

(3) The name and license number of any other approved supervisors;

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

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

(a) Clients to be seen;

(b) Therapies and treatment modalities that shall be used including the prospective length of treatment; and

(c) Problems or conditions that shall be treated;

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

(a) Number of hours of supervision per week;

(b) Amount of group and individual supervision; and

(c) Methodology for transmission of case information;

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

(8) A statement that:

(a) The approved supervisor understands that he or she shall be accountable to the board for the care given to the marriage and family therapist associate’s clients; and

(b) The approved supervisor and other supervisors meet the criteria established in 201 KAR Chapter 32.

Section 4. Contract Renewal and Extension. (1) Upon approval of the board, a supervisory contract shall be issued for a term of one (1) year. [There shall not be a limit on the number of extensions that may be granted to a marriage and family therapist associate.]

(2) Upon associate permit renewal, the supervisory contract shall be reaffirmed by written correspondence from the applicant and the approved supervisor or a new supervisory[super] contract shall be supplied by the applicant.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) “Application for Permit[Licensure] as a Marriage and Family Therapist Associate”, 8/2015/10/2011; and

(b) “Supervision Plan[s][Plan] for Clinical Experience”, 6/2015/10/2011; and

(c) “Marriage and Family Therapist Associate Permit Renewal[Form]”, 8/2015; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY BADAMI, Chairperson
APPROVED BY AGENCY: July 29, 2015
FILED WITH LRC: August 6, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2015 at 10:00 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leewood 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 shall 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nicole S. Biddle, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Biddle

(1) Provide a brief summary of: This administrative regulation sets forth the requirements of Marriage and Family Therapist associate to meet the requirements for licensure as a marriage and family therapist.
What this administrative regulation does: This administrative regulation sets forth the requirements of Marriage and Family Therapist licensees and associates.

The necessity of this administrative regulation: These changes are allowed under KRS 335.332 and KRS 335.320(9).

How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth the requirements for marriage and family therapist licensure.

How the amendment will assist in the effective administration of the statutes: This administrative regulation limits the years an associate can practice prior to meeting the requirements for licensure as a marriage and family therapist.

The necessity of the amendment to this administrative regulation: This amendment is necessary because it sets limits the years of practice as a marriage and family therapist.

How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes.

How the amendment will assist in the effective administration of the statutes: The amendment will provide licensees and associates with clarity regarding practice limits.

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.

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

- List the activities 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 limited in the time they may practice as marriage and family associates.
- 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.
- As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will have specific time limits to practice as marriage and family therapist associates.

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

- Initially: No additional cost.
- On a continuing basis: No additional cost.

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.

Provide an assessment of whether an 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.

State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation did not establish any fees or increase any fees.

TIERING: Is tiering applied? No. Tiering was not applied as the criteria apply to all licensees

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

What 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.

Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.332, 335.320(9).

Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year the administrative regulation is to be in effect. Expenditures will not be affected by this amendment.

How much 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.

How 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

How much revenue will the state or local government (including cities, counties, fire departments, or school districts) 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.

How much revenue will the state or local government (including cities, counties, fire departments, or school districts) generate for the first year? N/A

How much will it cost to administer this program for the first year? N/A

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

GENERAL GOVERNMENT CABINET

Board of Licensure For Marriage And Family Therapists

(Amendment)

201 KAR 32:035. Supervision of marriage and family therapist associates.

RELATES TO: KRS 335.300, 335.320(6), 335.330, 335.332

STATUTORY AUTHORITY: KRS 335.320(4), (5), (9)

NECESSITY FUNCTION AND CONFORMITY: KRS 335.320(9) requires the board to promulgate administrative regulations to implement KRS 335.300 to 335.399. KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid the fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Definitions. (1) “Group supervision” means supervision of three (3) to six (6) supervisees with the supervisor.

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

(3) “Qualified mental health professional” means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker.

(4) “Raw data” means video recorded sessions, live observation, or co-therapy with a board-approved supervisor.

Section 2. Qualifications for Board-Approved Supervisors Status. (1) Until December 31, 2015, a board-approved supervisor shall be:

(a) An American Association [for] Marriage and Family Therapy[Therapists] (AAMFT) approved supervisor in good standing;

(b) A marriage and family therapist[licensed in Kentucky]; or

(c) A marriage and family therapist[licensed in Kentucky and] in good standing, who is licensed in Kentucky and has[with] a minimum of five (5) years of post licensure experience in the practice of marriage and family therapy.

(d) A person licensed in good standing with a minimum of five (5) years of experience as a marriage and family therapist in

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
another state, and who meets the licensure requirements for Kentucky.

(2) Effective January 1, 2016, a board-approved supervisor shall be:
(a) An American Association for Marriage and Family Therapy (AAMFT) approved supervisor in good standing, who is licensed in Kentucky and has a minimum of two (2) years of post licensure experience in the practice of marriage and family therapy; and has been licensed in Kentucky for a minimum of five (5) years;
(b) An AAMFT supervisor candidate in good standing who is licensed in Kentucky and has three (3) years of post licensure experience in the practice of marriage and family therapy; or training who has been licensed in Kentucky for a minimum of five (5) years;
(c) A marriage and family therapist (licensed in Kentucky and in good standing, who is licensed in Kentucky and has) with a minimum of five (5) years of post licensure experience in the practice of marriage and family therapy, with the last eighteen (18) months of experience being in Kentucky.

AAMFT approved supervisors, AAMFT supervisor candidates, and non-AAMFT board approved supervisors, approved as of December 31, 2015, shall maintain their board approved status, notwithstanding the requirement of subsection (2) of this section.

(4) To obtain initial board-approved supervisor status, an applicant who is not an AAMFT supervisor or supervisor candidate, in good standing shall provide proof of completion of six (6) hours of board-approved continuing education courses in supervision.

(a) The course shall be taken within the two (2) years preceding the date of application to become a board-approved supervisor.
(b) This requirement shall be in addition to the hours of continuing education required for licensure renewal.
(c) Each approved course shall be live or online and shall include:
   1. Kentucky law governing the practice of marriage and family therapy, both in KRS 335.300 to 335.399 and 201 KAR Chapter 32;
   2. Theories of supervision;
   3. Ethical issues involved in supervision; and
   4. Supervisor responsibilities such as logs, treatment planning, and recording.

(5) To maintain board-approved supervisor status, a non-AAMFT approved supervisor shall complete at least two (2) hours of continuing education in supervision every year. These two (2) hours shall be included in the hours of continuing education required for licensure renewal.

(a) Each approved course shall be live or online and shall include:
   1. Kentucky law governing the practice of marriage and family therapy, both in KRS 335.300 to 335.399 and 201 KAR Chapter 32;
   2. Theories of supervision;
   3. Ethical issues involved in supervision; and
   4. Supervisor responsibilities such as logs, treatment planning, and recording.

(6) To renew as a board-approved supervisor, an AAMFT approved supervisor or supervisor candidate in training shall complete at least one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy found both in KRS 335.300 to 335.399 and 201 KAR Chapter 32. The course shall be attended live or on-line. The one (1) hour shall be included in the hours of continuing education required for licensure renewal.

Section 3. Clinical Supervision. (1) Clinical supervision shall:
(a) Be equally distributed throughout the qualifying period and shall average at least four (4) hours per month as specified in the supervision contract;
(b) Be clearly distinguishable from psychotherapy, didactic enrichment, or training activities;
(c) Focus on raw data from the supervisee’s clinical work within in the last twelve (12) months;
(d) Be direct, face-to-face contact between the supervisor and supervisee, unless an alternative form of supervision has been approved by the board based on undue burden for the supervisor or supervisee such as in cases of serious illness or injury; and
(e) Continue until the supervisee is licensed by the board.

(2) The supervision process shall focus on:
(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as established in DSM-IV-TR: Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (2000), or DSM V: Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (2013);
(b) Development of treatment skills appropriate to the therapeutic process;
(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;
(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;
(e) Increased theoretical and applied knowledge for the therapist;
(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and
(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

Section 4. Standards for Raw Data Used for Supervision. The use of raw data in a supervision session shall constitute a minimum of fifty (50) hours of the 200 hours of required supervision.

Section 5. In a therapy session involving a board-approved supervisor and supervisee:
(1) The role of the board-approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session; and
(2) The supervisees shall receive credit for client contact hours and supervision hours.

Section 6. Documentation Requirements. (1) The board-approved supervisor and marriage and family therapist associate shall maintain copies of the completed Supervisory [Supervision] Log, which shall document:
(a) The frequency and type of supervision provided; and
(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.
(2) No more than 100 hours of supervision shall take place in group supervision.

(3) At least 100 hours shall take place in individual supervision.

Section 7. Number of Supervisees. (1) A board-approved supervisor shall not supervise more than six (6) marriage and family therapist associates at the same time, unless approved by the board.
(2) A request to supervise more than six (6) marriage and family therapist associates shall be submitted to the board for approval and shall demonstrate in writing the supervisor’s plan and ability to supervise additional marriage and family therapist associates.

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a marriage and family therapist associate is without supervision, the associate may continue working up to ninety (90) calendar days under the supervision of a qualified mental health professional while an appropriate board-approved supervisor is sought and a new supervision contract is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor’s
employment.

(2)(a) Within thirty (30) calendar days of a change in status of board-approved supervision, the supervisee shall:
1. Notify the board of these circumstances; and
2. Submit, in writing, a plan for resolution of the situation.
(b) The written plan shall include:
1. The name of the temporary supervisor;
2. Verification of the credential held by the temporary supervisor;
3. An address for the temporary supervisor; and
4. A telephone number for the temporary supervisor.

Section 9. Board-approved Supervisor’s Responsibilities to Clients and Supervisees: (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.
(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family therapist associates under his or her supervision.
(3) A board-approved supervisor shall be responsible for compliance with the code of ethics established in 201 KAR 32:050 and take steps to ensure that supervisees comply with the code of ethics as well.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office 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 27, 2015
FILED WITH LRC: July 28, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 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 September 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, phone (502) 696-5300, fax (502) 564-6801

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Biddle

(1) Provide a brief summary of: This administrative regulation sets forth the requirements for supervision of marriage and family therapist associates.
(a) What this administrative regulation does: This administrative regulation sets forth the requirements of supervision of marriage and family therapist associates.
(b) The necessity of this administrative regulation: These changes are allowed under 335.320(5) and KRS 335.320(9).
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth the requirements for supervision of marriage and family therapist associates.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the supervisory requirements for a board approved supervisor.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation sets forth the requirements for a board approved supervisor.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it clarifies the definition of a “board approved supervisor”.
(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 clarity regarding board approved supervisors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Board approved supervisors.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment clarifies the requirements of a board approved supervisor.
(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): Licensees will have specific requirements to qualify as a board approved supervisor.
(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 administrative 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(4), (5), (9).
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. Expenditures will not be affected by this 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 from 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? 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

GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Licensure For Marriage and Family Therapists
(AMENDMENT)

201 KAR 32:045. Examination.

RELATES TO: KRS 335.320, 335.322(1)
STATUTORY AUTHORITY: KRS 335.320(9), 335.330
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 requires an applicant to pass a written examination prescribed by the board. This administrative regulation establishes the process for taking the examination.

Section 1. Examination for Licensure. (1) An applicant for licensure shall submit to a written examination in accordance with subsections (2) and (3) of this section.

(2) An applicant shall submit a completed Application for Permit as a Marriage and Family Therapist Associate[complete "Application for Licensure as a Marriage and Family Therapist." Once the application is approved by the Board, the applicant's name shall be sent to the testing agency. The applicant shall then contact the testing agency to schedule the examination.] The applicant shall be required to pass the national exam offered through the Association of Marriage and Family Therapy Regulatory Board(The board shall contract with a testing agency that tests on the requirements in KRS 335.330(1) and (2) and 335.340(2). The test shall be administered to an applicant upon completion of the requirements of KRS 335.330(1) and (2) and 335.340(2). Upon receipt of the test results from the testing agency, the Board shall notify the applicant of the results.

(3) The applicant shall be required to pass the national exam offered through the Association of Marriage and Family Therapy Regulatory Board(The board shall contract with a testing agency that tests on the requirements in KRS 335.330(1) and (2) and 335.340(2). The test shall be administered to an applicant upon completion of the requirements of KRS 335.330(1) and (2) and 335.340(2). Upon receipt of the test results from the testing agency, the Board shall notify the applicant of the results.

(4) If an applicant for licensure fails the objective examination, the candidate shall, with payment of the required fee, be permitted [rescheduled to retake] the examination [at its next regularly scheduled date].

(5) The candidate may continue to function as a marriage and family therapist associate under the supervision of the board-approved supervisor until:

(a) The examination is successfully completed;

(b) The supervisory contract is terminated; or

(c) The candidate ceases to practice as a marriage and family therapist associate and notifies the board in writing.

(6) Any request for deferment of the examination shall be made by the applicant directly to the testing agency, who shall have full discretion to grant or deny the request.


(2) This administrative regulation 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 29, 2015
FILED WITH LRC: August 6, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nicole S. Biddle, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Biddle

(1) Provide a brief summary of: This administrative regulation sets forth the examination requirements for licensure as a marriage and family therapist.

(a) What this administrative regulation does: This administrative regulation sets forth the process for taking the board approved examination.

(b) The necessity of this administrative regulation: These changes are allowed under KRS 335.320(9).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth the written examination requirements for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the written examination process for marriage and family therapist licensure.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation sets forth the process for taking the written examination.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it clarifies the definition of a “board approved supervisor”.

(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 applicants with clarity regarding the written examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky marriage and family therapy applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment clarifies the requirements of a licensed marriage and family therapist.

(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): Licensees are required to take a written examination.

(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? No. 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 335.330(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 in effect. Expenditures will not be affected by this 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 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

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(AMENDMENT)

201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 210.366, 335.535(8)

STATUTORY AUTHORITY: KRS 210.366, 335.515(3), (6), 335.535(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years. KRS 335.515(3), (6) and 335.535(8) require the board to promulgate an administrative regulation requiring a licensee to complete continuing education requirements as a condition of renewal of his license. This administrative regulation delineates the requirements for continuing education and specifies methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means:

(a) A professional counseling course, designated by a professional counseling title or content; or

(b) An academic course, relevant to professional counseling.

(2) "Approved" means recognized by the Kentucky Board of Licensed Professional Counselors.

(3) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(4) "Program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or a series.

(5) "Provider" means an organization approved by the Kentucky Board of Licensed Professional Counselors for providing continuing education programs.

(6) "Relevant" means having content applicable to the practice of professional counseling as determined by the board.

Section 2. Accrual of Continuing Education Hours. (1) A minimum of ten (10) continuing education hours shall be accrued by each person holding a license during the annual period for renewal.

(2) All continuing education hours shall be in or related to the field of professional counseling.

(3) A person holding a license shall complete a minimum of three (3) hours of continuing education in domestic violence within three (3) years of initial licensure as required by KRS 194A.540.

(4) 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 exempt from the requirement to complete a continuing education in suicide assessment, treatment, and management within the first year of licensure if the counselor:

1. Graduated from a Council for Accreditation of Counseling and Related Education Program since 2009; or

2. Completed a three (3) semester hours graduate course in suicide and crisis assessment, prevention, and intervention.

(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 counselor:

1. Is employed in a position that requires at least forty (40) hours of counseling in suicide and crisis assessment, prevention, and intervention;

2. Teaches a graduate-level counseling 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 per year during the six (6) year period.

(c) The continuing education course in suicide assessment, treatment, and management shall be board approved in accordance with Section 3 of this administrative regulation.

(5) A person holding a license shall complete a minimum of three (3) hours of continuing education on the law for regulating professional counseling. KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36, every three (3) years. A person holding a license shall be exempt from this requirement if the person:

(a) Teaches a graduate-level course which includes KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36; or

(b) Teaches a continuing education course on KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36 during the three (3) year period.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license
shall be directly related to the professional growth and development of the licensee’s practice of professional counseling. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of professional counseling and shall be approved without further review by the board if it is:

(a) Sponsored or approved by:
   1. The American Counseling Association, or any of its affiliated branches or divisions;
   2. The Kentucky Counseling Association, or any of its affiliated chapters or divisions;
   3. [The National Association of Social Workers, or any of its affiliated state chapters;
   4. The American Association of Marriage and Family Therapy or any of its affiliated state chapters;
   5. The American School Counselor Association or any of its affiliated state chapters; or
   6. The American Psychological Association, or any of its affiliated state chapters or divisions;
   7. The American Counseling Association, or any of its affiliated state chapters or divisions;
   8. The National Board for Certified Counselors; or
   (b) An academic course offered by an accredited post-secondary institution directly related to professional counseling or counseling psychology.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board:

(a) A program, including a home study course and in-service training provided by another organization, educational institution, or service provider approved by the board;

(b) A program or academic course presented by the licensee. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, except the earned credit shall not exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted for an article unless it was published within the one (1) year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal. More than one (1) publication shall not be counted during a renewal period.

(d) A continuing education program in domestic violence under Section 2(3) of this administrative regulation; supervision training under 201 KAR 36:060. Section 2(3); or suicide assessment, treatment, and management under Section 2(4) of this administrative regulation shall be presented by an instructor who is licensed by the board.

(3) A general education course, either elective or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 4. Procedures for Approval of Continuing Education Programs. A course, which has not been preapproved by the board, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

(1) A published course or similar description;
(2) Names and qualifications of the instructors;
(3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
(4) Number of continuing education hours requested;
(5) Official certificate of completion or college transcript from the sponsoring agency or college;
(6) Application to the board for continuing education credits approval; and
(7) If a provider seeking approval for a continuing education course, an application review fee of twenty (20) dollars.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation on an annual basis for each program; and

(b) As a prior-authorized continuing education provider under Section 3(1) of this administrative regulation, shall satisfy the board that the entity seeking this status:
   1. Consistently offers programs which meet or exceed all the requirements set forth in Section 2(2) of this administrative regulation; and
   2. Does not exclude a licensee from its programs.

(2) A continuing education activity shall be qualified for approval 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 professional counseling;
(c) Contributes to the professional competency of the licensee; and
(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 6. Responsibilities and Reporting Requirements of a Licensee. (1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A licensee shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify his own continuing education needs and seek activities that meets those needs;

(c) Seek ways to integrate new knowledge, skills and attitudes;

(d) Select approved activities by which to earn continuing education hours; or

2. Submit to the board a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;

(e) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(f) Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal; and

(g) Maintain records of continuing education hours.

(3) The following items may be used to document continuing education activity:

(a) Transcript;
(b) Certificate;
(c) Affidavit signed by the instructor; or
(d) Receipt for the fee paid to the sponsor;

(4) Comply with the provisions of this administrative regulation.

Failure to comply shall constitute a violation of KRS 335.540(1)(b) and shall result in sanctions in accordance with KRS 335.540(1).

(5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.

Section 7. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 6(3) of this administrative regulation, directly to the licensee.

(2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as
approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the licensee shall have the right to appeal the board’s decision.

(2) An appeal shall be:
(a) In writing;
(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and
(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:
(a) Medical disability of the licensee;
(b) Illness of the licensee or an immediate family member; and
(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:
(a) Submitted by the person holding a license; and
(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) 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 person holding a license shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of License. (1) A person requesting reinstatement or reactivation of a license shall submit:
(a) Evidence of ten (10) hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board; or
(b) Upon request by the applicant, the board may permit the applicant to resume practice, with the provision that he shall obtain the ten (10) hours continuing education within three (3) months of the date on which the applicant is approved to resume practice.

(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.


(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER A. GRIFFITH, Chairperson
APPROVED BY AGENCY: July 17, 2015
FILED WITH LRC: August 13, 2015 at 2 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2015, at 9:30 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 September 30, 2015. Send written notification to:

CONTACT PERSON: Diana Jarboe, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Diana Jarboe

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a continuing education requirement for a credential holder to maintain competency in the practice.

(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 continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the continuing education requirements of a credential holder and protect the public seeking alcohol and drug related 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 implements the requirements and allowable exceptions of KRS 210.366, which requires continuing education on suicide assessment, treatment, and management of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to implement KRS 210.366.

(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 continuing education requirement for a credential holder and KRS 210.366.

(d) How the amendment will assist in the effective administration of the statutes: The amendment implements KRS 210.366.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently Licensed Professional Counselors and Licensed Professional Counselor 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: A credential holder will be required to complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six (6) years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.
(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: There are no increases in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(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 Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 210.366, 335.515(3), (6), 335.535(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. 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 GOVERNMENTAL CABINET
Office of Occupations and Professions
Kentucky Board of Interpreters for the Deaf and Hard of Hearing
(1) What this administrative regulation does: This administrative regulation establishes the procedures for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing. This administrative regulation establishes these requirements.

   Section 1. Application. Each applicant for a license shall:
   (1) Submit a completed Application for Licensure form to the board;
   (2) Pay the application and license fee as set forth in 201 KAR 39:040; and
   (3) Submit proof of valid certification;
   (a) At a level recognized by RID, with the exception of NAD III;
   (b) At EIPA level 4.0[4.5] and passage of the EIPA written[3] applying prior to July 1, 2013;
   (c) TECUnit; or
   (d) Other certifications as described in 201 KAR 39:080, if applying for licensure via reciprocity.

   Section 2. Incorporation by Reference. (1) "Application for Licensure", August 2015[March 2013], 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, 8:00 a.m. to 4:30 p.m.

NINA COYER, Acting Board Chair
APPROVED BY AGENCY: July 14, 2015
FILED WITH LRC: August 10, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 23, 2015, at 1:00 p.m., local time, at the Kentucky Board of Interpreters for the Deaf and Hard of Hearing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing 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 in writing five (5) workdays prior to the hearing. 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 day Wednesday, September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5635, fax (502) 696-3921.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones
(1) Provide a brief summary of: Establishes the requirements to obtain a license as an Interpreter for the Deaf and Hard of Hearing.

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the process and minimum certification testing score for licensure.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 309 requires the board to verify the qualifications of and establish a procedure for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing. This administrative regulation establishes the minimum qualifications and requirements for licensure.

(d) How this administrative regulation currently assists or will assist with meeting the requirements of: None.
assist in the effective administration of the statutes: This administrative regulation informs the applicants of the examinations required, minimum test scores, and requirements for obtaining licensure from the board.  

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:  
(a) How the amendment will change this existing administrative regulation: The amendment will establish a minimum test score for the EIPA.  
(b) The necessity of the amendment to this administrative regulation: The amendment will notify applicants of the EIPA level required for all applicants.  
(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.304(1) requires the board to evaluate the qualifications for applicants for licensure and establish procedures for the issuance of licenses. KRS 309.312 requires applicants to meet current certification standards from a nationally recognized organization at the requisite level for sign language interpreters.  
(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the board to judge applications based on the current certification standards.  
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated fifty (50) persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.  
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires applicants to meet an EIPA level of 4.0 for applicants filing for all applicants.  
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the regulation.  
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will know the minimum required score for the EIPA.  
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:  
(a) Initially: The budget for the board is $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.  
(b) On a continuing basis: The budget for the board is estimated to continue to have a budget of $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.  
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by the licensees and applicants.  
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation change.  
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish the fees. This regulation only sets the procedure for obtaining a license.  
(9) Tiering: Is tiering applied? No. Tiering is not applied to this regulation because the criteria will apply to all license 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?
Section 2. Temporary Licensure Duration. (1) An individual may hold temporary licensure for a maximum of five (5) consecutive licensure years from the date of initial issuance.

(2) An individual who is deaf or hard of hearing may hold temporary licensure for a maximum of ten (10) consecutive licensure years from the date of initial issuance. (3) Any reinstatement or extension of a temporary license shall occur during the period established in subsection (1) or (2) of this section.

Section 3. Supervision Requirements. (1) Each applicant for a temporary license shall be trained and supervised by a board-approved mentor.

(2) During the period of training and supervision the mentor shall meet with each licensee on a quarterly basis. One (1) of these meetings shall be on a face to face basis with each person being mentored. The remaining meetings may be through the use of video or video teleconferencing or any other method outlined in the approved plan of supervision.

(3) A mentor shall contract with no more than twenty (20) temporary licensees during a calendar year.

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

(a) "Application for License/Temporary License", August 2015(2014); and

(b) "Plan of Supervision for Temporary License", 10/2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, September 23, 2015, at 1:00 p.m., local time, at the Kentucky Board of Interpreters for the Deaf and Hard of Hearing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing date set by the certifying agency.

Section 3. Supervision Requirements. (a) The necessity of this administrative regulation: This administrative regulation is necessary to set the process and minimum certification testing scores for temporary licensure and establish an expiration date for certifications.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 309 requires the board to verify the qualifications of and establish a procedure for the temporary licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing. This administrative regulation establishes the minimum qualifications and supervision requirements for temporary licensure and the expiration date for certifications.

(d) How does this administrative regulation currently assist or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the examinations required, minimum test scores, and supervision requirements for obtaining temporary licensure from the board.

(e) How does this administrative regulation conform to the content of the authorizing statutes: KRS 309.304(1) requires the board to evaluate the qualifications for applicants for licensure and establish procedures for the issuance of temporary licenses. KRS 309.312 requires applicants to meet current certification standards from a nationally recognized organization at the requisite level for sign language interpreters.

(f) How the amendment will assist in the effective administration of the statutes: This amendment will incorporate the current application for licensure form and inform applicants of the proper title of the document. The amendment provides a certification that certifications must be obtained within three years of application to match the expiration date set by the certifying agency.

(g) How does this administrative regulation conform to the content of the authorizing statutes: KRS 309.304(1) requires the board to evaluate the qualifications for applicants for licensure and establish procedures for the issuance of temporary licenses. KRS 309.312 requires applicants to meet current certification standards from a nationally recognized organization at the requisite level for sign language interpreters.

(h) How the amendment will assist in the effective administration of the statutes: This amendment will incorporate the current application for licensure form and notify applicants of the proper title for the document. The amendment will notify applicants that certifications must be completed within two years of application to match the expiration date set by the certifying agency.

(i) How does this administrative regulation conform to the content of the authorizing statutes: KRS 309.304(1) requires the board to evaluate the qualifications for applicants for licensure and establish procedures for the issuance of temporary licenses. KRS 309.312 requires applicants to meet current certification standards from a nationally recognized organization at the requisite level for sign language interpreters.

Contact person: John Marcus Jones

(1) Provide a brief summary of: Establishes the requirements to obtain a temporary license as an Interpreter for the Deaf and Hard of Hearing.

(a) What this administrative regulation does: This administrative regulation establishes the procedures and certification levels for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the process and minimum certification testing scores for temporary licensure and establish an expiration date for certifications.

To the Director: The budget for the board is $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the board is estimated to continue to have a budget of $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.
not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The board’s operation is funded by fees paid by the licensees and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation established the fees: This regulation only sets the procedure for obtaining a temporary license.

(9) Tiering: Is tiering applied? No. Tiering is not applied because the criteria established in this regulation apply equally to all applicants for temporary licenses.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304, KRS 309.312.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 not have any effect on the expenditures and revenues of state and local government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated will depend on the number of applicants for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the subsequent years? The revenue will depend on the number of applicants for the subsequent years.

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

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

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

Revenues (+/−): N/A

Expenditures (+/−): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:010. Application procedures for licensure.

RELATES TO: KRS 319C.070, 319C.080(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for licensure.

Section 1. Application Procedures. (1) An Application for Licensure as a behavior analyst or assistant behavior analyst may be submitted after the requirements established in KRS 319C.080(1) and (2) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed Form ABA-001, Application for Licensure, to the board. The application shall include:

(a) A certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board shall take disciplinary action in accordance with KRS 319C.070 if the application contains a misrepresentation of fact or omission; and

(b) An official transcript for all levels of education required for licensure.

Section 2. Licensure of Behavior Analysts. The applicant for licensure as a behavior analyst shall submit:

(1) A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 43:030;

(2) Proof of compliance with the educational, examination, and credentialing requirements established by KRS 319C.080(1); and

(3) Proof of completion of at least five (5) hours of training in:

(a) Adult abuse and neglect prevention;

(b) Child abuse, neglect, and dependency prevention; or

(c) A combination of paragraphs (a) and (b) of this subsection.

Section 3. Licensure of Assistant Behavior Analysts. The applicant for licensure as an assistant behavior analyst shall submit:

(1) A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 43:030;

(2) Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(2); and

(3) Proof of completion of at least five (5) hours of training in:

(a) Adult abuse and neglect prevention;

(b) Child abuse, neglect, and dependency prevention; or

(c) A combination of paragraphs (a) and (b) of this subsection.


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

DR. TAMMY HAMMOND-NATOF, PhD, BCBA
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2015, at 9:30 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 September 30, 2015. Send written notification to:

CONTACT PERSON: Lindsey Melton, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8809, fax (502) 696-4961.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lindsey Melton

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the application procedures for licensure.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the application procedures for licensure.
(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 continuing education requirement for a credential holder.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the application process for licensure.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) The amendment only changes the form used to apply for licensure.
(b) The necessity of the amendment to this administrative regulation: The amendment to the regulation is to incorporate an updated application form for licensure.
(c) How the amendment conforms to the content of the authorizing statute: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations and regulate temporary licenses.
(d) How the amendment will assist in the effective administration of the statutes: See response to answer (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the number of applicants for licensure varies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List 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 does not add any additional requirements for an applicant.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An applicant as a behavior analyst will pay a $100 nonrefundable application review fee and a $200 licensure fee. An applicant as an assistant behavior analyst will pay a $100 nonrefundable application review fee and a $200 licensure fee.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant will obtain a license to engage in the practice of applied behavioral analysis as a licensed behavior analyst or assistant behavior analyst.

(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: There are no increases in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:
(a) No new fees or fee increases associated with the amendments.
(b) None

(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? Applied Behavior Analysis Licensing Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319C.080(2)(a), 319C.070, 319C.080(1), (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. 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
Applied Behavior Analysis Licensing Board
(AMENDMENT)

201 KAR 43:020. Application procedures for temporary licensure.

RELATES TO: KRS 319C.080(3)
STATUTORY AUTHORITY: KRS 319C.060(2)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for temporary licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for temporary licensure.

Section 1. Application procedures. (1) An application for a temporary license as a behavior analyst or assistant behavior analyst may be submitted after the requirements established in KRS 319C.080(3) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed Form ABA-001, Application for Licensure, to the board.

(a) The application shall include a certification by the applicant that the:
   1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;
   2. Applicant is aware that the board may take disciplinary action in accordance with KRS 319C.070 if the application contains a misrepresentation or falsification; and
   3. Applicant is aware that the temporary license shall expire two (2) years from the issuance date and shall not be renewed.
(b) If the applicant has completed the coursework through a BCAB-approved program, the application shall include an original.
Section 2. Temporary Licensure of Behavior Analysts. The applicant for temporary licensure as a behavior analyst shall:

(1) Submit a check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 43:030;
(2) Submit proof of compliance with the requirements established in KRS 319C.080(3); and
(3) Submit proof of completion of at least five (5) hours of training in:
   (a) Adult abuse and neglect prevention; and
   (b) Child abuse, neglect, and dependency prevention.

Section 3. Temporary Licensure of Assistant Behavior Analysts. The applicant for temporary licensure as an assistant behavior analyst shall:

(1) Submit a check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 43:030;
(2) Submit proof of compliance with the requirements established in KRS 319C.080(3); and
(3) Submit proof of completion of at least five (5) hours of training in:
   (a) Adult abuse and neglect prevention; and
   (b) Child abuse, neglect, and dependency prevention.

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

DR. TAMMY HAMMOND-NATOF, PhD, BCBA
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2015, at 9:30 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 September 30, 2015. Send written notification to:

CONTACT PERSON: Lindsey Melton, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8809, fax (502) 696-4961.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lindsey Melton

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the application procedures for an applicant to obtain a temporary license.
   (b) The necessity of this administrative regulation: The necessity of this regulation is to provide the board with regulatory control of those individuals who are engaged in the practice of applied behavior analysis while the applicant completes the experience requirement.
   (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 continuing education requirement for a credential holder.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the application process for an individual to obtain a temporary 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: The amendments do not change the existing administrative regulation.
      (b) The necessity of the amendment to this administrative regulation: The necessity of this regulation is to provide the board with regulatory control of those individuals who are engaged in the practice of applied behavior analysis while the applicant completes the experience requirement.
      (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 and regulate temporary licenses.
      (d) How the amendment will assist in the effective administration of the statutes: See response to answer (2)(a).
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the number of temporary license vary.
   (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
      (a) List 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 does not add any additional requirements for an applicant to comply with in order to obtain a temporary license.
      (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An applicant as a behavior analyst will pay a $100 nonrefundable application review fee and a $200 temporary licensure fee, which is for a two (2)-year period. An applicant as an assistant behavior analyst will pay a $100 nonrefundable application review fee and a $100 temporary licensure fee, which is for a two (2)-year period
      (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An individual who needs to complete the requirements of KRS 319C.080 and can still engage in the practice of applied behavior analysis.
   (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: There are no increases in fees or funding is required to implement this administrative regulation.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.
(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? Applied Behavior Analysis Licensing Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319C.060(2)(a), 319C.080(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
Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:050. Requirements for supervision.

RELATES TO: KRS 319C.050(1) and 319C.060(2)(a)-(d)
STATUTORY AUTHORITY: KRS 319C.060(2)(a)-(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate an administrative regulation governing the supervision of a licensed assistant behavior analyst, temporarily licensed behavior analyst, and temporarily licensed assistant behavior analyst. This administrative regulation establishes the requirements for supervision.

Section 1. Definitions. (1) "Direct supervision" means in-person interactions between the supervisor and the licensee under his or her supervision which includes direct observation of actual service provision to individuals.

(2) "General supervision" means interactions between the supervisor and the licensee under his or her supervision involving real time visual and auditory contact, conducted in-person or via electronic means.

Section 2. In order to provide supervision to a licensed assistant behavior analyst, a temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, a licensed behavior analyst shall be currently certified by the Behavior Analyst Certification Board as a:

(1) Board Certified Behavior Analyst, BCBA; or
(2) Board Certified Behavior Analyst - Doctoral, BCBA-D.

Section 3. Supervisor Responsibilities. (1) Except as provided in Section 16 of this administrative regulation, a supervisory arrangement shall be submitted to the board using the Application for Licensure Form, with the supervisor and the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst petitioning the board in writing.

(2) The supervisor and licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement by submitting an updated Annual Supervisory Plan no later than thirty (30) days after a change in the effective date of the arrangement or change.

Section 4. (1) The supervisor shall make all reasonable efforts to be assured that the practice of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst is in compliance with this administrative regulation. The supervisor shall include review, discussions, and recommendations and shall focus on:

(a) Case background information;
(b) Planned behavioral assessment procedures;
(c) Assessment outcomes;
(d) Data collection procedures;
(e) Intervention procedures and materials;
(f) Intervention outcome data;
(g) Modifications of intervention procedures;
(h) Ethical issues associated with behavior change services or employment; and
(i) Professional development needs and opportunities.

(2) The supervisor shall report to the board an apparent violation of KRS Chapter 319C on the part of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to function in the practice as a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst in a competent manner.

(4) The supervisor shall control, direct or limit the behavior analytic duties performed by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor as appropriate to insure that these duties are competently performed.

(5)(a) The supervisor of record shall be responsible for the behavior analytic duties of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor.
(b) If the board initiates an investigation concerning a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor, the investigation shall include the supervisor of record.

(a) For each person supervised, the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session.

(b) This record shall be maintained for a period of not fewer than six (6) years after the last date of supervision.

Section 5. (1) In calculating the amount of time spent in full-time practice while under supervision, 1,500 hours of satisfactory supervised practice shall be equivalent to one (1) year of experience.

(2) The board may require additional supervised practice if recommended by the supervisor on a licensee’s Annual Supervisory Plan or Annual Report of Supervision.

(3)(a) The supervisor shall provide reports to the board of the supervision of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the
supervisor as follows: 

1. A licensed assistant behavior analyst with five (5) or more years of full-time practice, or its equivalent, shall submit a report every two (2) years on the anniversary of the date of licensure as a licensed assistant behavior analyst.

2. A licensed assistant behavior analyst with fewer than five (5) years of full-time practice, or its equivalent, shall submit a report annually on the anniversary of the date of licensure as a licensed assistant behavior analyst.

3. A temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst shall submit a report annually on the anniversary of the date of licensure as a temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst.

(b) The report shall be submitted on the Annual Report of Supervision which shall include:

1. A description of the frequency, format, and duration of supervision;

2. An assessment of the functioning of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, including the strengths and weaknesses; and

3. Any other information which the supervisor deems relevant to an adequate assessment of the practice of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.

Section 6. (1) If a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall be subject to board approval and shall be submitted by new applicants on the licensure application and the Annual Supervisory Plan and by existing licensees on the Annual Supervisory Plan, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 7. If a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor is a behavior analyst with less than five (5) years of full-time, post-certification practice, or its equivalent, shall submit a report annually on the anniversary of the date of licensure as a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to render applied analytic services.

(3) Jointly establish a supervisory plan with the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;

(4) Have general supervision of the work performed by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor at least twice per month;

(5) Have direct supervision of the work performed by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor at least once every three (3) months;

(6) Have direct knowledge of the size and complexity of the caseload for each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor;

(7) Limit and control the caseload as appropriate to the level of competence of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor;

(8) Have knowledge of the techniques being used by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, and

(9) Have knowledge of the physical and emotional well-being of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

Section 8. If the licensed assistant behavior analyst or temporarily licensed behavior analyst is a behavior analyst with more than five (5) years of full-time, post-certification practice, or its equivalent, the supervisor of record shall:

(1) Review and countersign assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

(3) Jointly establish a supervisory plan with each licensed assistant behavior analyst, temporarily licensed behavior analyst practicing under the direction of the supervisor, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and licensed assistant behavior analyst, or temporarily licensed behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;

(4) Have general supervision of the work performed by each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor at least once per month;

(5) Have direct supervision of the work performed by each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor at least twice a year;

(6) Have direct knowledge of the size and complexity of the caseloads for each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor;

(7) Limit and control the caseload as appropriate to the level of competence of each licensed assistant behavior analyst or temporarily licensed behavior analyst;

(8) Have knowledge of the techniques being used by each licensed assistant behavior analyst or temporarily licensed behavior analyst, and

(9) Have knowledge of the physical and emotional well-being of each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

Section 9. Supervision Requirements. (1) (a) A licensed assistant behavior analyst shall meet these supervision requirements, even if he or she is not currently providing behavior analytic services.

(b) If the licensed assistant behavior analyst is not currently providing behavior analytic services, supervision may focus on guiding the development and maintenance of the licensed
assistant behavior analyst's professional knowledge and skills and remaining current with the professional literature in the field.

(2) Upon resumption of practice, the licensed assistant behavior analyst shall document compliance with continuing education requirements and shall report on his or her activities and employment related to behavior analysis during the period in which the analyst did not practice.

Section 10. Supervision for Part-Time Practice. Supervision requirements for part-time practice may be modified at the discretion of the board upon approval of the submitted plan. Additional modifications of the format, frequency, or duration of supervision may be submitted for approval by the board.

Section 11. Supervisory Changes. (1) Upon a change of supervisor, an updated Annual Supervisory Plan shall be submitted by the supervisor and licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to the board for approval. This plan may require additional supervision than was previously approved by the board.

(2) Upon termination of the supervisory relationship, the final Annual Report of Supervision shall be submitted to the board within thirty (30) days of the termination.

Section 12. Responsibilities of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst shall:

(1) Keep the supervisor adequately informed at all times of his or her activities and ability to function;

(2) Seek supervision as needed in addition to a regularly scheduled supervisory session;

(3) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(4) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 5 of this administrative regulation; and

(5) Report to the board any apparent violation of KRS Chapter 319C on the part of the supervisor.

Section 13. Identification of Provider in Billing. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the assistant behavior analyst, temporarily licensed behavior analyst, trainee, or other provider and supervised by the licensed behavior analyst.

Section 14. Disciplinary Procedures and Supervision of a Disciplined License Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined license holder for the period of time defined by the final order or settlement agreement conferring the discipline.

(2) When specified by the final order or settlement agreement, the disciplined license holder shall be responsible for paying the costs of supervision.

(3) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined license holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined license holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined license holder’s practice is in compliance with KRS Chapter 319C and 201 KAR Chapter 43;

(f) Report to the board any apparent violation of KRS Chapter 319C on the part of the disciplined license holder;

(g) Immediately report to the board, in writing, a change in the ability to supervise, or in the ability of the disciplined license holder to function in the practice of a licensed behavior analyst in a competent manner;

(h) Review and countersign assessments as needed or appropriate;

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

(j) Have direct observation of the disciplined license holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined license holder's caseload;

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined license holder; and

(m) Have knowledge of the disciplined license holder's physical and emotional well-being when it has direct bearing on the disciplined license holder's competence to practice.

(4) The supervisor shall control, direct, or limit the disciplined license holder's practice as appropriate to ensure that the disciplined license holder's practice is competent.

(5) The supervisor shall contact the board liaison with any concern or problem with the disciplined license holder, his or her practice, or the supervision process.

(6)(a) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision.

(b) The meeting shall include the supervisor, disciplined license holder, and board liaison.

(c) A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 15. Board Liaison for Disciplined License Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising licensed behavior analyst from a list provided by the board;

(2) Provide the supervising licensed behavior analyst with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the supervising licensed behavior analyst is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board and has immunity commensurate with that of a board member;

(4) Provide the supervising licensed behavior analyst with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined license holder. The notification letter shall:

(a) State the name of the supervising licensed behavior analyst; and

(b) Specify that the disciplined license holder shall meet with the supervising licensed behavior analyst and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising licensed behavior analyst and disciplined license holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined license holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the report of supervision to the board for approval.

(a) The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting.
(b) In the interim, the supervising licensed behavior analyst and disciplined license holder shall continue to meet;

(8) Remain available to the supervising licensed behavior analyst to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising licensed behavior analyst;

(10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising licensed behavior analyst and the disciplined license holder at the end of the term of supervision to summarize the supervision.

Section 16. Graduate Training. Applied behavior analysis graduate students. Graduate-level applied behavior analysis students who are providing services in mental health care settings including independent practice settings shall:

(1) Be supervised by a behavior analyst licensed by the board in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify his or her status as unlicensed trainees to all clients and payers;

(4) Give to all clients and payers the name of the licensed behavior analyst responsible for his or her work; and

(5) Not accept employment or placement to perform the same or similar activities following the completion of his or her university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ABA-003, “Annual Report of Supervision”, July 2015 [October 2012]; and


(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 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. TAMMY HAMMOND-NATOF, PhD, BCBA, Chairperson
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2015, at 9:30 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 September 30, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Lindsey Melton, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8809, fax (502) 696-4961.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lindsey Melton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to obtain supervision.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the procedure to obtain supervision.

(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 supervision.

(d) 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 and regulate temporary licenses.

(e) How the amendment will assist in the effective administration of the statutes: See response to answer (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the number of applicants for licensure varies.

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

(a) List 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 does not add any additional requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holder will be able to document the supervision received and know the supervision is acceptable to the board.

(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: There are no increases in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the
FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Applied Behavior Analysis Licensing Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319C.050(1) and 319C.060(2)(a)–(d).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 (+/−): Other Explanation:

   Expenditures (+/−):

GENERAL GOVERNMENT CABINET
Applied Behavior Analysis Licensing Board (Amendment)

201 KAR 43:080. Renewals.

RELATES TO: KRS 319C.050, 319C.060
STATUTORY AUTHORITY: KRS 319C.050, 319C.060(2).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the board to promulgate administrative regulations required to establish conditions for the renewal and reinstatement of licenses. This administrative regulation establishes procedures for the renewal of licenses.

Section 1. Renewal. A behavior analyst or assistant behavior analyst shall biennially, on or before the last day of the calendar month during which the license was issued:

   (1) File a completed Application for Licensure Renewal; and

   (2) Pay to the board the renewal fee established by 201 KAR 43:030.

Section 2. Late Renewal. A behavior analyst or assistant behavior analyst who fails to renew his or her license on or before the last day of the calendar month during which the license was issued may submit his or her application on or before the last day of the calendar month following the month in which the license was issued if accompanied by the appropriate late fee as required by 201 KAR 43:030.

Section 3. Expiration of License. (1) A license that is not renewed before the last day of the calendar month during which the license was issued shall be expired and lapsed for failure to renew.

   (2) Upon expiration of the license for failure to renew, a behavior analyst or assistant behavior analyst shall not practice in the Commonwealth of Kentucky.

Section 4. Reinstatement. After the last day of the calendar month following the month in which the license was issued, a person whose license has expired for failure to renew shall submit, in order to have his or her license reinstatement request considered by the Board:

   (1) Payment of the fee established by 201 KAR 43:030;

   (2) Completion of the Application for Licensure Renewal; and

   (3) Documentation of employment from the time of expiration of employment until the present.


   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. TAMMY HAMMOND-NATOF, PhD, BCBA, Chairperson
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2015, at 9:30 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 September 30, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

   CONTACT PERSON: Lindsey Melton, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8809, fax (502) 696-4961.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lindsey Melton

(1) Provide a brief summary of:

   (a) What this administrative regulation does: This administrative regulation establishes the procedures for renewing a license.

   (b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedures for renewing a license.

   (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 continuing education requirement for a credential holder.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedures for renewing 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: The amendment only changes the form used to renew a license.

   (b) The necessity of the amendment to this administrative regulation: The amendment to the regulation is to incorporate an
updated application form for renewing a license.

(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 and regulate temporary licenses.

(d) How the amendment will assist in the effective administration of the statutes: See response to answer (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently three (3) licensed assistant behavioral analyst and one hundred and eleven (111) licensed behavioral analyst.

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

(a) List 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 does not add any additional requirements for an applicant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A renewal applicant as a behavior analyst will pay a $300 licensure renewal fee. A renewal applicant as an assistant behavior analyst will pay a $200 licensure renewal fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A renewal applicant will obtain a license to continue to lawfully engage in the practice of applied behavioral analysis as a licensed behavior analyst or assistant behavior analyst.

(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: There are no increases in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no new fees or fee increases associated with the amendments.

(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? Applied Behavior Analysis Licensing Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.C.050, 319.C.060(2), 319.C.120.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is 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 subsequent years? 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 the first year? None.

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

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

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

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators

(Amendment)

201 KAR 45:110. Supervision and work experience.

RELATES TO: KRS 309.331
STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(a)
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 309.334(2)(a) requires the board to promulgate administrative regulations to establish the duties of the apprentice diabetes educator supervisor. This administrative regulation establishes the amount of work experience required for licensure and the qualifications to be a supervisor.

Section 1. Accumulation of Work Experience. An apprentice diabetes educator shall accumulate at least 750 hours of supervised work experience within five (5) years from the date of application for licensure, of which 250 hours shall have been obtained within the last twelve (12) months preceding licensure application.

Section 2. Supervision. (1)(a) The supervisor[apprentice diabetes educator] shall:

1. Interact with the supervisor no less than two (2) hours per month in any month in which the apprentice accumulates work experience to discuss the apprentice diabetes educator’s work with clients; and

2. Review the apprentice diabetes educator’s provision of diabetes self-management education.

(b) The apprentice diabetes educator shall interact with the supervisor no less than two (2) hours quarterly, one (1) hour of which shall be while being physically present in the same room.

(2) The hours of work experience and verification by the apprentice diabetes educator and supervisor shall be documented on the Application for Licensure, Form DE-01.

(3) A supervisor shall not serve as a supervisor for more than four (4) apprentice diabetes educators at a time.

4. The supervision process shall focus on:

(a) Identifying strengths, developmental needs, and providing direct feedback to foster the professional development of the apprentice diabetes educator;

(b) Identifying and providing resources to facilitate learning and professional growth;

(c) Developing awareness of professional and ethical responsibilities in the practice of diabetes education; and

(d) Ensuring the safe and effective delivery of diabetes education services and fostering the professional competence and development of the apprentice diabetes educator.

Section 3. Documentation Requirements. The documentation required by the Supervised Work Experience Report, Form DE-05 shall be maintained for a period of five (5) years and provided to the board at the request of the board.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Licensure", Form DE-01, 01/2015; and
(b) "Supervised Work Experience Report", Form DE-05, 06/2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 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 administrative regulation. A transcript of the public hearing will 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the work experience and supervision required for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it explains the amount of work experience needed for licensure and the standards for supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish administrative regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the definitions of work experience and supervision for apprentice diabetes educators.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the requirement for an apprentice diabetes educator to interact no less than two hours per month in any month in which the apprentice diabetes educator accumulates work experience, and reduces the number of hours of in-person supervision required quarterly from two hours to one hour.

(b) The necessity of the amendment to this administrative regulation: The supervision requirements of the regulation were proving difficult for supervisors and apprentice diabetes educators to meet.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes supervision requirements for apprentice diabetes educators.

(d) How the amendment will assist in the effective and administration of the statutes: This amendment will set manageable supervision goals for supervisors and apprentice diabetes educators.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 500 individuals are licensed or master licensed diabetes educators, and there are currently several apprentice diabetes educators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: The supervisors and apprentice diabetes educators will have to complete the supervision requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators will be able to apply for licensure and receive supervision.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.334

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

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

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

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

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

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A
CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(AMENDMENT)

307 KAR 1:005. Applications for Kentucky Incentive Programs.


NECESSITY, FUNCTION AND CONFORMITY: KRS 154.12-100(2), 154.20-236(3), 154.20-256(11), 154.26-080(1), 154.27-030(10), 154.30-030(2)(b), 154.30-033, 154.31-030(2), and 154.60-030 authorize the Kentucky Economic Development Finance Authority to establish additional procedures and standards for the application process for various incentive programs. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation incorporates by reference the applications for economic development incentive programs.

Section 1. Application Process for Kentucky Business Investment (KBI) Program. In addition to the requirements of KRS 154.32-030, the applicant shall provide:

1. All information required by the Application for Kentucky Business Investment (KBI) Program;
2. An application fee in the amount of $1,000; and
3. An administrative fee equal to one-fourth (1/4) of one (1) percent of the incentive amount authorized in the tax incentive agreement up to a maximum of $50,000.

Section 2. Application Process for Kentucky Enterprise Initiative Act (KEIA) Program. In addition to the requirements of KRS 154.31-030, the applicant shall provide:

1. All information required by the Application for Kentucky Enterprise Initiative Act (KEIA); and
2. An application fee in the amount of $500.

Section 3. Application Process for Kentucky Economic Development Bond (EDB) Program. In addition to the requirements of KRS 154.12-100, the applicant shall provide all information required by the Application for Economic Development Bond (EDB).

Section 4. Application Process for Kentucky Angel Investment Tax Credit Program. In addition to the requirements of KRS 154.20-234, the applicant shall provide:

1. For qualified small businesses:
   a. All information required by the Application for Kentucky Angel Investment Act Qualified Small Business Certification; and
   b. A non-refundable application fee of twenty-five (25) dollars;
2. For qualified investors:
   a. All information required by the Application for Kentucky Angel Investment Act Qualified Investor Certification; and
   b. A non-refundable application fee of twenty-five (25) dollars; and
3. For applicants seeking a qualified investment:
   a. All information required by the Application for Kentucky Angel Investment Act Qualified Investment; and
   b. A non-refundable application fee of $250.

Section 5. Application Process for Incentives for Energy Independence Act (IEIA) Tax Incentive Program:

1. All information required by the Kentucky Economic Development Financing Authority (KEDFA) Application for Incentives for Energy Independence Act (IEIA) Tax Incentive Program;
2. An application fee of $1,000; and
3. Upon final approval and execution of the tax incentive agreement, an administrative fee equal to one-fourth (1/4) of one (1) percent of the incentives authorized in the tax incentive agreement, not to exceed $50,000. This administrative fee shall be exclusive of any expert consultant or legal fees that may be due pursuant to the application required by subsection (1) of this section.

Section 6. Application for Kentucky Small Business Tax Credit (KSBTC) Program. In addition to the requirements of KRS 154.60-020, the applicant shall provide:

1. All information required by the Application for Kentucky Small Business Tax Credit (KSBTC) Program; and
2. A non-refundable application fee equal to one (1) percent of the qualifying tax credit amount.

Section 7. Application Process for Tax Increment Financing (TIF) Program. In addition to the requirements of KRS 154.30-030, the applicant shall provide:

1. All information required by the Application for Kentucky Tax Increment Financing (TIF) Program;
2. An application fee in the amount of $1,000; and
3. Prior to final approval, an administrative fee equal to one-fourth (1/4) of one (1) percent of the final, authorized incentive amount, up to a maximum of $50,000. This administrative fee shall be exclusive of any expert consultant or legal fees that may be due pursuant to the application required by subsection (1) of this section.

Section 8. Application Process for Kentucky Industrial Revitalization Act (KIRA) Tax Credit Program. In addition to the requirements of KRS 154.28-080, the applicant shall provide:

1. All information required by the Application for Kentucky Industrial Revitalization Act (KIRA) Program;
2. A non-refundable application fee of $500; and
3. An administrative fee equal to one-tenth (1/10) of one (1) percent of the final KIRA amount authorized in the KIRA Agreement. This administrative fee shall be exclusive of any legal fees that may be due for preparation of the KIRA agreement and pursuant to the application required by subsection (1) of this section.

Section 9. Application Process for Kentucky Investment Fund Act (KIFA) Tax Credit Program. In addition to the requirements of KRS 154.20-255, the applicant shall provide all information required by the Application for Kentucky Investment Fund Act (KIFA) Tax Credit Program.

Section 10. Application Process for Kentucky Reinvestment Act (KRA) Program. In addition to the requirements of KRS 154.34-070, the applicant shall provide:

1. All information required by the Application for Kentucky Reinvestment Act (KRA) Program;
2. An application fee in the amount of $1,000; and
3. Prior to final approval, an administrative fee equal to one-fourth (1/4) of one (1) percent of the final KRA amount authorized in the KIRA Agreement, up to a maximum of $50,000. This administrative fee shall be exclusive of any legal fees that may be due for the preparation of the KRA Agreement and pursuant to the application required by subsection (1) of this section.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Kentucky Business Investment (KBI) Program", 7/2015;
(b) "Application for Kentucky Enterprise Initiative Act (KEIA)", 7/2015;
(c) "Application for Economic Development Bond (EDB)", 7/2015;
(d) "Application for Kentucky Angel Investment Act Qualified Investment Agreement", 7/2015;
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

Small Business Certification", 7/2015;
(a) "Application for: Kentucky Angel Investment Act Qualified Investor Certification", 7/2015;
(f) "Application for: Kentucky Angel Investment Act Qualified Investment", 7/2015;
(h) "Application for Kentucky Small Business Tax Credit (KSBTC) Program", 6/2015;
(i) "Application for Kentucky Tax Increment Financing (TIF)* Program, 6/2015;
(j) "Application for Kentucky Industrial Revitalization Act (KIRA) Program", 1/2009;
(k) "Application for Kentucky Investment Fund Act (KIFA) Tax Credit Program", 10/2014; and
(l) "Application for Kentucky Reinvestment Act (KRA)", 7/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m. An applicant for an incentive program shall submit the information required by the Instruction Sheet Application for Kentucky Business Investment (KBI) Program, Kentucky Enterprise Initiative Act (KEIA), Economic Development Bond (EDB).

Section 2. Kentucky Business Investment (KBI) Program. An applicant for the Kentucky Business Investment (KBI) Program shall submit:
(1) The following completed forms:
(a) Application for Incentive Programs, Project Information;
(b) Application for Incentive Programs, Kentucky Business Investment (KBI) Program;
(c) Application for Incentive Programs, Certification of Application; and
(d) Application for Incentive Programs, Attachment A, Incentive Disclosure Statement;
(2) An application fee in the amount of $1,000; and
(3) An administrative fee equal to one-fourth (0.25) percent of the incentive amount authorized in the tax incentive agreement up to a maximum of $50,000.

Section 3. Kentucky Enterprise Initiative Act (KEIA) Program. An applicant for the Kentucky Enterprise Initiative Act (KEIA) Program shall submit:
(1) The following completed forms:
(a) Application for Incentive Programs, Project Information;
(b) Application for Incentive Programs, Kentucky Enterprise Initiative Act (KEIA);
(c) Application for Incentive Programs, Certification of Application; and
(d) Application for Incentive Programs, Attachment A, Incentive Disclosure Statement; and
(2) An application fee in the amount of $500.

Section 4. Economic Development Bond (EDB) Program. An applicant for an Economic Development Bond (EDB) shall submit the following completed forms:
(1) Application for Incentive Programs, Project Information;
(2) Application for Incentive Programs, Economic Development Bonds (EDB) - Company portion;
(3) Application for Incentive Programs, Economic Development Bonds (EDB) - Local portion;
(4) Application for Incentive Programs, Certification of Application; and
(5) Application for Incentive Programs, Attachment A, incentive Disclosure Statement.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Application for Incentive Programs, Project Information, "Application for Kentucky Business Investment (KBI) Program, Kentucky Enterprise Initiative Act (KEIA), Economic Development Bond (EDB)”, Rev. 4/2012;
(b) "Application for Incentive Programs, Project Information", Rev. 4/2012;
(c) "Application for Incentive Programs, Kentucky Business Investment (KBI) Program", Rev. 4/2012;
(d) "Application for Incentive Programs, Kentucky Enterprise Initiative Act (KEIA)”, Rev. 4/2012;
(e) "Application for Incentive Programs, Economic Development Bonds (EDB) - Company portion", Rev. 4/2012;
(f) "Application for Incentive Programs, Economic Development Bonds (EDB) - Local portion", Rev. 4/2012;
(g) "Application for Incentive Programs, Certification of Application", Rev. 4/2012; and
(h) "Application for Incentive Programs, Attachment A, Incentive Disclosure Statement", Rev. 4/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JEAN HALE, Chairman
LARRY M. HAYES, Secretary
APPROVED BY AGENCY: July 21, 2015
FILED WITH LRC: August 7, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall be held on Monday, September 21, 2015, at 2:00 p.m. at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, September 14, 2015, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript 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 Wednesday, September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: John Christian Enochs, Senior Attorney, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Christian Enochs
(1) Provide a brief summary of:
(a) What this administrative regulation does: This amended regulation provides updated applications for economic development tax incentives pursuant to KRS 154.12-100, 154.20-033, 154.32-030, 154.20-236(3), 154.27-030(10), 154.60-030, 154.30-030(2)(b), 154.26-080(1), 154.20-256(11) and 154.34-070(2).
(b) The necessity of this administrative regulation: The regulation provides the current means of applying for economic development incentives under the statutes identified in (1)(a), above.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The cited statutes direct the Kentucky Economic Development Finance Authority (the Authority) to promulgate regulations for this purpose.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is statutorily required and provides an efficient means to apply for economic development incentives.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative
401 KAR 10:026. Designation of uses of surface waters.

RELATES TO: KRS 146.200-146.360, 146.410-146.525, 146.550-146.570, 146.600-146.619, 146.990, 224.1-010[224.01-.010], 224.1-400[224.01-.400], 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:010, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. This administrative regulation also establishes that makes all surface waters subject to the general criteria specified in 401 KAR 10:031, Section 2.

Section 1. Scope of Designation. (1) Surface waters listed in this administrative regulation shall be designated for all legitimate uses contained in KRS 224.70-100(1) except as specified in 401 KAR 10:031, Sections 5 and 8, or until redesignated in accordance with the procedures of this administrative regulation.

(2) Designated uses are:
(a) Warm water aquatic habitat;
(b) Cold water aquatic habitat;
(c) Primary contact recreation;
(d) Secondary contact recreation;
(e) Domestic water supply; and
(f) Outstanding state resource water.

(3) Listed waters shall meet all criteria applicable to their designated uses and those criteria listed in 401 KAR 10:031, Section 2, unless the cabinet grants an exception pursuant to 401 KAR 10:031, Section 10 or 11.

(4) Outstanding state resource waters may have unique water...
quality characteristics that shall be protected by additional criteria established in 401 KAR 10:031, Section 8.

Section 2. Redesignation of Surface Water Uses. (1)(a) Surface waters may be redesignated only upon affirmative findings by the cabinet pursuant to Sections 3 and 4 of this administrative regulation.

(b) Before redesignating a surface water, the cabinet shall provide notice and an opportunity for a public hearing.

(2) In redesignating a surface water, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A designated use shall not be removed for a surface water if:

(a) That use is an existing use,

(b) II The use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, and by implementing cost-effective best management practices for nonpoint source control.

(4) If a surface water is designated for an existing use that is not an existing use, the cabinet shall redesignate the surface water upon demonstration that the designated use is unattainable because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the use;

(b) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges;

(c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(d) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the modification in a way that would result in the attainment of the use;

(e) Physical conditions related to the natural features of the surface water, but unrelated to water quality, preclude attainment of the aquatic life use, such as the lack of a proper substrate, cover, flow, depth, pools, or riffles; or

(f) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, would result in substantial and widespread economic and social impacts as determined by the guidelines in Interim Economic Guidance for Water Quality Standards Workbook, EPA, March 1995.

(5) Redesignations shall be consistent with the antidegradation provisions of 401 KAR 10:029 and 10:030.

Section 3. Documentation for Redesignations. (1)(a) A person may request redesignation of surface water uses by petition to the cabinet.

(b) The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2)(a) The cabinet may propose redesignations of surface water uses.

(b) The cabinet shall provide documentation for those surface waters that it proposes for use redesignation.

(3) Documentation to support the redesignation of a surface water of the Commonwealth shall be:

(a) A United States Geological Survey 7.5 minute topographic map or its equivalent showing those surface waters to be redesignated, with a description consisting of a river mile index with existing and proposed discharge points;

(b) Existing uses and water quality data for the surface waters for which the redesignation is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

(c) Descriptions of general land uses and specific land uses adjacent to the surface waters for which the redesignation is proposed;

(d) The existing and designated uses of the downstream waters into which the surface water under consideration discharges;

(e) General physical characteristics of the surface water including width, depth, bottom composition, and slope;

(f) The frequency of occasions when there is no natural flow in the surface water and the 7Q10 and harmonic mean flow values for the surface water and adjacent surface waters;

(g) An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters.

1. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed;

2. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of unique native biota shall be documented;

(h) The proposed designated uses for the surface water in question; and

(i) An explanation of the irretrievable person-induced, or natural conditions that preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the sources.

Section 4. Procedures for Redesignation. (1) For each of the surface waters for which a redesignation is proposed, the cabinet or petitioner shall prepare a fact sheet containing the following information:

(a) The name and address of the petitioner;

(b) The name and sketch or description of the surface water proposed for specified use redesignations, including the location of existing and proposed discharges;

(c) The proposed use redesignations;

(d) A brief abstract of the supporting documentation, which demonstrates that the redesignation is appropriate;

(e) The appropriate water quality criteria for the surface water based on the proposed designated use;

(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use; and

(g) A "plain English" summary of the implications of the designation for the community and other users or potential users of the surface water in question in economic and social terms as determined by the guidelines in Interim Economic Guidance for Water Quality Standards Workbook, EPA, March 1995.

(2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

Section 5. Surface Water Use Designations. (1) Listed in the tables in this administrative regulation are the use designations for specific surface waters of the Commonwealth. The county column indicates the county in which the mouth or outlet of the surface water is located. The identifying symbols for use designations are listed in table A of this section.

<table>
<thead>
<tr>
<th>Table A: Use Designation Symbols</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAH</td>
</tr>
<tr>
<td>CAH</td>
</tr>
<tr>
<td>PCR</td>
</tr>
<tr>
<td>SCR</td>
</tr>
<tr>
<td>DWS</td>
</tr>
<tr>
<td>OSRW</td>
</tr>
</tbody>
</table>

(2)(a) Surface waters not specifically listed in this section are designated for the uses of warm water aquatic habitat, primary contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this administrative regulation.

(b) Domestic water supply criteria in 401 KAR 10:031, Section 6, are implemented at locations listed in Table B in this paragraph.
### Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE

<table>
<thead>
<tr>
<th>Name</th>
<th>Description</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIG SANDY RIVER BASIN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paintsville Municipal Water Works</td>
<td>Mile 9.3 of Paint Creek</td>
<td>Johnson</td>
</tr>
<tr>
<td>Paintsville Utilities Commission</td>
<td>Mile 38.9 of Levisa Fork</td>
<td>Johnson</td>
</tr>
<tr>
<td>Louisa Municipal Water Works</td>
<td>Mile 68.4 of Levisa Fork</td>
<td>Lawrence</td>
</tr>
<tr>
<td>Prestonsburg City Utilities Commission</td>
<td>Mile 57.3 of Levisa Fork</td>
<td>Floyd</td>
</tr>
<tr>
<td>Pikeville Water Works/US Filter</td>
<td>Mile 87.4 of Levisa Fork</td>
<td>Pike</td>
</tr>
<tr>
<td>Martin County Water District #1</td>
<td>Mile 23.8 of Tug Fork</td>
<td>Martin</td>
</tr>
<tr>
<td>US Filter/Southern Water &amp; Sewer District</td>
<td>Mile 65.4 of Levisa Fork</td>
<td>Floyd</td>
</tr>
<tr>
<td>Jenkins Water Works</td>
<td>Mile 0.2 of Little Elkhorn Creek (Elkhorn Lake)</td>
<td>Letcher</td>
</tr>
<tr>
<td>Mountain Water District</td>
<td>Mile 4.6 of Russell Fork</td>
<td>Pike</td>
</tr>
<tr>
<td>Martin County Water District #1</td>
<td>Mile 1.3 of Little Indian Camp Creek (Crum Reservoir)</td>
<td>Martin</td>
</tr>
<tr>
<td>Jenkins Water Works</td>
<td>Mile 24.4 of Elkhorn Creek</td>
<td>Letcher</td>
</tr>
<tr>
<td>Little Sandy River Basin</td>
<td>Mile 39.0 of Little Sandy River</td>
<td>Carter</td>
</tr>
<tr>
<td>Greenup Water Plant</td>
<td>Mile 0.7 of Little Sandy River</td>
<td>Greenup</td>
</tr>
<tr>
<td>Rattlesnake Ridge Water District</td>
<td>Mile 58.2 of Little Sandy River (Grayson Lake)</td>
<td>Elliott</td>
</tr>
<tr>
<td>Tygarts Creek Basin</td>
<td>Mile 2.2 of Perry Branch (Olive Hill Reservoir)</td>
<td>Carter</td>
</tr>
<tr>
<td>Olive Hill Water Works</td>
<td>Mile 81.3 of Tygarts Creek</td>
<td>Carter</td>
</tr>
<tr>
<td>Upper Cumberland River Basin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Service Corporation of KY</td>
<td>Mile 3.2 of Little Yellow Creek (Fern Lake)</td>
<td>Bell</td>
</tr>
<tr>
<td>Somerset Water Service</td>
<td>Mile 504.5 of Cumberland River (Lake Cumberland)</td>
<td>Pulaski</td>
</tr>
<tr>
<td>Corbin City Utilities Commission</td>
<td>Mile 18.6 of Laurel River (City Reservoir)</td>
<td>Laurel</td>
</tr>
<tr>
<td>Burnside Water Company</td>
<td>Mile 508.4 of Cumberland River (Lake Cumberland)</td>
<td>Pulaski</td>
</tr>
<tr>
<td>City of Albany [Municipal Water Works Plant A]</td>
<td>Mile 635.4 of Indian Creek (Lake Cumberland)</td>
<td></td>
</tr>
<tr>
<td>Monticello Water &amp; Sewer Commission</td>
<td>Mile 493.5 of Cumberland River (Lake Cumberland)</td>
<td>Wayne</td>
</tr>
<tr>
<td>London Utility Commission</td>
<td>Mile 1.3 of Indian Camp Creek (Laurel River Reservoir)</td>
<td>Laurel</td>
</tr>
<tr>
<td>Harlan Municipal Water Works</td>
<td>Mile 0.2 of Poor Fork</td>
<td>Harlan</td>
</tr>
<tr>
<td>Mt Vernon Municipal Water Works</td>
<td>Mile 3.3 of Renfro Creek (Lake Linville) (emergency use only)</td>
<td>Rockcastle</td>
</tr>
<tr>
<td>Laurel County Water District [Department] #2</td>
<td>Mile 1.0 of Indian Camp Creek (Laurel River Lake)</td>
<td>Laurel</td>
</tr>
<tr>
<td>Laurel County Water District [Department] #2</td>
<td>Mile 25.2 of Laurel River (Dorthea Dam) (emergency use only)</td>
<td>Laurel</td>
</tr>
<tr>
<td>McCrory County Water District Plant A</td>
<td>Mile 8.9 of Laurel Creek (Laurel Creek Reservoir)</td>
<td>McCrory</td>
</tr>
<tr>
<td>Burkesville Municipal Water Works</td>
<td>Mile 421.95 of Cumberland River</td>
<td>Cumberland</td>
</tr>
<tr>
<td>Mckee Municipal Water Works</td>
<td>Mile 235 of Bills Branch (Mckee City Reservoir)</td>
<td>Jackson</td>
</tr>
<tr>
<td>Williamsburg Water Works</td>
<td>Mile 581.35 of Cumberland River</td>
<td>Whitley</td>
</tr>
<tr>
<td>Jamestown Municipal Water Works</td>
<td>Mile 3.75 of Greasy Creek Branch (Lake Cumberland)</td>
<td>Russell</td>
</tr>
<tr>
<td>Jamestown Municipal Water Works</td>
<td>Mile 4.3 of Greasy Creek Branch (Lake Cumberland due to the lowering)</td>
<td>Russell</td>
</tr>
<tr>
<td>Jackson County Water Association Inc</td>
<td>Mile 2.1 of Flat Creek (Beulah Lake)</td>
<td>Jackson</td>
</tr>
<tr>
<td>Knox County Utility Commission</td>
<td>Mile 635.6 of Cumberland River</td>
<td>Knox</td>
</tr>
<tr>
<td>Wood Creek Water District</td>
<td>Mile 4.15 of Wood Creek (Wood Creek Lake)</td>
<td>Laurel</td>
</tr>
<tr>
<td>Cumberland Water Works</td>
<td>Mile 25.0 of Poor Fork</td>
<td>Harlan</td>
</tr>
<tr>
<td>Pineville Water System</td>
<td>Mile 3.2 of Cannon Creek (Cannon Creek Lake)</td>
<td>Bell</td>
</tr>
<tr>
<td>Benham Water Works</td>
<td>Mile 3.5 of Looney Creek</td>
<td>Harlan</td>
</tr>
<tr>
<td>Woodson Bend Resort</td>
<td>Mile 2.98 of South Fk. Cumberland River (Lake Cumberland)</td>
<td>Pulaski</td>
</tr>
<tr>
<td>Barbourville Utility Commission</td>
<td>Mile 1.3 of Indian Camp Creek (Laurel River Lake)</td>
<td>Laurel</td>
</tr>
<tr>
<td>Barbourville Utility Commission</td>
<td>Mile 17.5 of Laurel River (main intake)</td>
<td>Laurel</td>
</tr>
<tr>
<td>Cawood Water District</td>
<td>Mile 10.2 of Martins Fork</td>
<td>Harlan</td>
</tr>
<tr>
<td>Barbourville Utility Commission</td>
<td>Mile 628.45 of Cumberland River</td>
<td>Knox</td>
</tr>
<tr>
<td>[Albany Municipal Water Works Plant B]</td>
<td>Mile 3.9 of Indian Creek (Lake Cumberland)</td>
<td>Clinton</td>
</tr>
<tr>
<td>McCreary County Water District Plant B</td>
<td>Mile 31.1 of South Fork Cumberland River (Lake Cumberland)</td>
<td>McCreary</td>
</tr>
<tr>
<td>[Evarts Municipal Water Works]</td>
<td>Mile 0.1 on UT of Bailey Creek. UT at mile 0.8</td>
<td>Harlan</td>
</tr>
<tr>
<td>Evarts Municipal Water Works</td>
<td>Mile 1.0 of Bailey Creek</td>
<td>Harlan</td>
</tr>
<tr>
<td>Bell County Forestry Camp</td>
<td>Mile 13.6 of Clear Creek (Chenoa Lake)</td>
<td>Bell</td>
</tr>
<tr>
<td>Stanford Water Works</td>
<td>Mile 58.1 Buck Creek (Buck Creek Lake)</td>
<td>Lincoln</td>
</tr>
<tr>
<td>Licking River Basin</td>
<td>Mile 32.8 of Hines Creek (Chenoa Lake)</td>
<td>Bourbon</td>
</tr>
<tr>
<td>Paris Municipal Water Works</td>
<td>Mile 16.7 of Stoner Creek</td>
<td>Bourbon</td>
</tr>
<tr>
<td>Location</td>
<td>Mile Mark</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
<td>-----------</td>
<td>-------------</td>
</tr>
<tr>
<td>Slate Creek at mile 36.1 (Reservoir)</td>
<td>4.7(4.55)</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 36.5 of Slate Creek (at the plant)</td>
<td>51.1(50.4)</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 0.7 of UT of Beech Fork Branch (Beech Fork Reservoir)</td>
<td>0.7</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 1.89 of Lake Branch (Lake Williamstown)</td>
<td>1.89</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 0.7 of Evans Branch (Evans Branch Impoundment)</td>
<td>1.89</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 13.7 of Tripletts Creek</td>
<td>1.89</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 3.5 of UT to Brushy Fork (City Lake)</td>
<td>3.5</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 22.7(4.35) of North Fork Licking River (Cave Run Lake)</td>
<td>22.7(4.35)</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 3.7 of North Fork Licking River</td>
<td>3.7</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 196.2(195.9) of Licking River (Cave Run Lake)</td>
<td>196.2(195.9)</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 10.6 of East Hickman Creek (Reservoir #4)</td>
<td>10.6</td>
<td>Licking River</td>
</tr>
<tr>
<td>Mile 150.95 of North Fork Kentucky River</td>
<td>150.95</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 117.29(117.43) of Kentucky River (Pool #9)</td>
<td>117.29(117.43)</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 8.6 of East Hickman Creek (Reservoir #4)</td>
<td>8.6</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 18.9 of Dix River (Herrington Lake)</td>
<td>18.9</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 30.3 of Kentucky River (Pool 5)</td>
<td>30.3</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 17.29(17.43) of Kentucky River (Pool #9)</td>
<td>17.29(17.43)</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 50.9 of North Elkhorn Creek (Royal Springs)</td>
<td>50.9</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 3.9 of Beech Creek (Bert Combs Lake)</td>
<td>3.9</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 50.9 of North Elkhorn Creek (Royal Springs)</td>
<td>50.9</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 3.9 of Beech Creek (Bert Combs Lake)</td>
<td>3.9</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 50.9 of North Elkhorn Creek (Pool #14)</td>
<td>50.9</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 51.95 of North Fork Kentucky River</td>
<td>51.95</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 3.9 of Beech Creek (Bert Combs Lake)</td>
<td>3.9</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 50.9 of North Elkhorn Creek (Pool #14)</td>
<td>50.9</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 3.9 of Beech Creek (Bert Combs Lake)</td>
<td>3.9</td>
<td>Kentucky River</td>
</tr>
<tr>
<td>Mile 51.95 of North Fork Kentucky River</td>
<td>51.95</td>
<td>Kentucky River</td>
</tr>
</tbody>
</table>

**Notes:**
- [Flemingsburg Utilities] UT of Town Branch at mile 1.6 (Old Reservoir) (Fleming)
- [Cynthiana Municipal Water Department] Mile 110.0(107.8) Licking River (Nicholas)
- [West Liberty Water Company] Mile 227.4(35.3) of North Fork Licking River (Cave Run Lake) (Morgan/Rown)
- [West Liberty Water Company] Mile 3.7 of North Fork Licking River (Morgan/Rown)
- [Cave Run Water Commission] Mile 196.2(195.9) of Licking River (Cave Run Lake) (Menifee)
- [Rattlesnake Ridge Water District] Mile 67.1 of Little Sandy River (Grayson Lake) (Carter)
- [Kentucky River Basin] Mile 10.6 of East Hickman Creek (Reservoir #4) (Fayette)
- [Kentucky American Water Company] Mile 0.1(1.0) of Licking River (Primarily used as emergency backup) (Fayette)
- [Danville Water Works] Mile 18.9 of Dix River (Herrington Lake) (Boyle)
- [Lawrenceburg Municipal Water Works] Mile 30.3 of Kentucky River (Pool 5) (Anderson)
- [Versailles Municipal Water Works] Mile 73.2 of Kentucky River (Pool 5) (Woodford)
- [Richmond Utilities Board] Mile 306.2(207.3) of Kentucky River (Pool 11) (Madison)
- [Whitesburg Municipal Water Works/Valdia Water Works] Mile 150.95 of North Fork Kentucky River (Letcher)
- [Manchester Water Works] Mile 3.9 of Beech Creek (Bert Combs Lake) (Clay)
- [Georgetown Municipal Water & Sewer] Mile 50.9 of North Elkhorn Creek (Royal Springs) (Scott)
- [Beattyville Water Works] Mile 3.4 of North Fork Kentucky River (Pool #14) (Lee)
- [Bullock Pen Water District] Mile 2.8 Of Bullock Pen Creek (Bullock Pen Lake) (Grant)
- [Winchester Municipal Utilities] Mile 6.5 of Lower Howard Creek (Winchester Reservoir (Carol E. Eton Reservior) (Clark)
- [Winchester Municipal Utilities] Mile 180.5(176.5) of Kentucky River (Pool #10) (Clark)
- [Campton Water Works] Mile 0.2(0.3) of Hiram Branch (Campton Lake) (Wolfe)
- [Hyden-Leslie County Water District] Mile 76.6 of Middle Fork Kentucky River (Leslie)
- [Booneville Water & Sewer District] Mile 12.8 of South Fork Kentucky River (Owens)
- [Georgetown Municipal Water & Sewer] Mile 0.61 of UT (Royal Springs) at mile 33.5 of North Elkhorn Creek (Scott)
- [Kentucky American Northern Division] Mile 0.55 of Severn Creek (Owen)
- [Kentucky American Northern Division] Mile 6.3 of North Fork of North Severn Creek (Lower Thomas Lake) (Owen)
- [Irvin Municipal Utilities] Mile 223.1(218.5) of Kentucky River (Pool #11) (Estill)
- [Bluegrass Army Depot] Mile 0.25(0.4) of Little Muddy Creek (Lake Vega) (Madison)
- [Beech Fork Water Commission] Mile 0.3 of Beech Fork (Beech Fork Reservoir) (Powell)
- [Berea Municipal Utilities] Mile 2.15(2.1) of East Fork Silver Creek (Lower Silver Creek Lake) (Madison)
- [Berea Municipal Utilities] Mile 2.8 of East Fork Silver Creek (Upper Silver Creek Lake) (Madison)
<table>
<thead>
<tr>
<th>Berea Municipal Utilities</th>
<th>Mile 2.5 of Owsley Fork (Owsley Fork Lake)</th>
<th>Madison</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manchester Water Works</td>
<td>Mile 18.9[19.5] of Goose Creek</td>
<td>Clay</td>
</tr>
<tr>
<td>Beech Fork Water Commission</td>
<td>Mile 31.0 of Red River</td>
<td>Powell</td>
</tr>
<tr>
<td>Kentucky American Water Co (Plant C)</td>
<td>Mile 47.8 of Kentucky River</td>
<td>Franklin</td>
</tr>
<tr>
<td>Knott County Water and Sewer District</td>
<td>Mile 11.6 of Carr Fork Lake</td>
<td>Knott</td>
</tr>
<tr>
<td>Salt River Basin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shelbyville Municipal Water &amp; Sewer Commission</td>
<td>Mile 27.5 of Guist Creek (Guist Creek Lake)</td>
<td>Shelby</td>
</tr>
<tr>
<td>Bardstown Municipal Water Works</td>
<td>Mile 1.1 of Buffalo Creek (Lake Sympron)</td>
<td>Nelson</td>
</tr>
<tr>
<td>Lebanon Water Works Company</td>
<td>Mile 98.2 of Rolling Fork River</td>
<td>Marion</td>
</tr>
<tr>
<td>Springfield Water Works</td>
<td>Mile 4.2 of Long Lick Creek (Willsburg Lake)</td>
<td>Washington</td>
</tr>
<tr>
<td>Lebanon Water Works Company</td>
<td>Mile 2.0 of Fagan Branch (Fagan Branch Reservoir)</td>
<td>Marion</td>
</tr>
<tr>
<td>Springfield Water Works</td>
<td>Mile 1.3 of Allen Branch (Springfield Reservoir)</td>
<td>Washington</td>
</tr>
<tr>
<td>Green River Basin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Morgantown Utilities Commission</td>
<td>Mile 144.6[143.2] of Green River</td>
<td>Butler</td>
</tr>
<tr>
<td>Campbellsville Water Works</td>
<td>Mile 1.3 of Trace Fork (City Reservoir)</td>
<td>Taylor</td>
</tr>
<tr>
<td>Columbia/Adair Co Water Commission</td>
<td>Mile 317.4[311.2] Green River (Green River Lake)</td>
<td>Adair[Taylor]</td>
</tr>
<tr>
<td>Glasgow Water Co/Plant B</td>
<td>Mile 21.5[22.4] of Beaver Creek</td>
<td>Barren</td>
</tr>
<tr>
<td>Greensburg Municipal Water Works</td>
<td>Mile 283.3[279.8] of Green River</td>
<td>Green</td>
</tr>
<tr>
<td>Livermore Water Works</td>
<td>Mile 71.7[74.8] of Green River</td>
<td>McLean</td>
</tr>
<tr>
<td>[Elizabethtown Municipal Water Works A]</td>
<td>From Old City Spring at mile 9.55 of Valley Creek</td>
<td>Hardin</td>
</tr>
<tr>
<td>[Elizabethtown Municipal Water Works A]</td>
<td>Gaithe Station Spring at mile 7.48 of Valley Creek</td>
<td>Hardin</td>
</tr>
<tr>
<td>Bowling Green Municipal Utilities</td>
<td>Mile 38.1[37.8] of Barren River</td>
<td>Warren</td>
</tr>
<tr>
<td>Green River Valley Water District</td>
<td>Rio Springs at UT to Green River at mile 240.5[240.6]</td>
<td>Hart</td>
</tr>
<tr>
<td>Hodgenville Water Works</td>
<td>Mile 5.85[5.84] of North Fork Nolin River</td>
<td>Larue</td>
</tr>
<tr>
<td>Central City Municipal Water &amp; Sewer</td>
<td>Mile 85.9[85.4] of Green River</td>
<td>Muhlenberg</td>
</tr>
<tr>
<td>Calhoun Water Works</td>
<td>Mile 63.7[63.9] of Green River</td>
<td>McLean</td>
</tr>
<tr>
<td>Hartford Municipal Water Works</td>
<td>Mile 29.8 of Rough River</td>
<td>Ohio</td>
</tr>
<tr>
<td>Greenville Utilities Commission</td>
<td>Luzerne Lake (Luzerne Lake no longer connected to Caney Creek at mile 2.3)</td>
<td>Muhlenberg</td>
</tr>
<tr>
<td>Ohio County Water Plant</td>
<td>Mile 131.8[130.55] of Green River</td>
<td>Ohio</td>
</tr>
<tr>
<td>Franklin Water Plant</td>
<td>Mile 23.4 of West Fork Drake's Creek</td>
<td>Simpson</td>
</tr>
<tr>
<td>Glasgow Water Co/Plant A</td>
<td>Embayment [Mile 80.8]of Barren River Lake upstream of mouth of Skaggs Creek (Barren River Reservoir)</td>
<td>Barren</td>
</tr>
<tr>
<td>Leitchfield Municipal Water Works</td>
<td>Mile 107.7 of Rough River (Reservoir)</td>
<td>Grayson</td>
</tr>
<tr>
<td>Campbellsville Water Works</td>
<td>Mile 5.3 of Robinson Creek (Green River Reservoir)</td>
<td>Taylor</td>
</tr>
<tr>
<td>Campbellsville Water Works</td>
<td>Mile 2.1 of Stone Quarry Creek</td>
<td>Taylor</td>
</tr>
<tr>
<td>Edmonson County Water District</td>
<td>Mile 183.6[181.3] of Green River</td>
<td>Edmonson</td>
</tr>
<tr>
<td>Hardin County Water District 2</td>
<td>Mile 2.1 of Freeman Creek (Freeman Lake)</td>
<td>Hardin</td>
</tr>
<tr>
<td>Elizabethtown Municipal Water Works B</td>
<td>Mile 6.0 of Mill Creek (Mill Creek Reservoir)</td>
<td>Monroe</td>
</tr>
<tr>
<td>Madisonville Municipal Water Works</td>
<td>Mile 53.9[54.4] of Green River</td>
<td>Hopkins</td>
</tr>
<tr>
<td>Liberty Water Works</td>
<td>Mile 1.4 of Hickman Creek (Lake Liberty)</td>
<td>Casey</td>
</tr>
<tr>
<td>Stanford Water Works</td>
<td>Mile 0.6 of UT to Green River (James C. Harris Reservoir)</td>
<td>Lincoln</td>
</tr>
<tr>
<td>Hardin County Water District #2</td>
<td>Nolin River at mile 80.4 (White Mills Spring)</td>
<td>Hardin</td>
</tr>
<tr>
<td>Green River Valley Water District</td>
<td>Mile 240.5[237.0] of Green River</td>
<td>Hart</td>
</tr>
<tr>
<td>Scottsville Municipal Water Works</td>
<td>Mile 88.5[91.7] of Barren River (Barren River Lake)</td>
<td>Allen</td>
</tr>
<tr>
<td>Butler County Water System</td>
<td>Mile 143.6[143.8] of Green River</td>
<td>Butler</td>
</tr>
<tr>
<td>Edmonson County Water District</td>
<td>Mile 23.6[28.0] of Nolin River (Nolin Lake [Reservoir])</td>
<td>Grayson</td>
</tr>
<tr>
<td>[Henderson Water Utilities/South]</td>
<td>Mile 41.3 of Green River</td>
<td>Webster</td>
</tr>
<tr>
<td>Henderson Water &amp; Sewer Department</td>
<td>Raw Storage Lake</td>
<td>Henderson</td>
</tr>
<tr>
<td>Webster Cnty Water District</td>
<td>Mile 47.3[47.5] of Green River</td>
<td>Webster</td>
</tr>
<tr>
<td>Hodgenville Water Works</td>
<td>Mile 0.3 of UT at mile 116.9 of North Fork Nolin River (Salem Lake)</td>
<td>Larue</td>
</tr>
<tr>
<td>Grayson County Water District</td>
<td>Mile 97.7 of Rough River (Rough River Reservoir)</td>
<td>Grayson</td>
</tr>
<tr>
<td>Lower Cumberland River Basin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kentucky State Penitentiary</td>
<td>Mile 40.1[43.65] of Cumberland River (Lake Barkley)</td>
<td>Lyon</td>
</tr>
<tr>
<td>Hopkinsville Water Environmental Authority</td>
<td>Mile 74.83 of North Fork Little River</td>
<td>Christian</td>
</tr>
<tr>
<td>Princeton Water Department</td>
<td>Mile 41.8[46.0] of Cumberland River (Lake Barkley)</td>
<td>Lyon</td>
</tr>
<tr>
<td>Kuttawa Municipal Water Plant</td>
<td>Mile 37.5[41.0] of Cumberland River (Lake Barkley)</td>
<td>Lyon</td>
</tr>
</tbody>
</table>
Table C: SURFACE WATER USE DESIGNATIONS

<table>
<thead>
<tr>
<th>Stream</th>
<th>Zone (Descriptive and water body or segment river miles)</th>
<th>County</th>
<th>Use Designation</th>
<th>Exceptions to Specific Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BIG SANDY RIVER BASIN</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hobbs Fork of Pigeonroost Fork of Wolf Creek</td>
<td>Mouth to Headwaters (0.0-3.9)</td>
<td>Martin</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Lower Pigeon Branch of Elkorn Creek</td>
<td>Left Fork to Headwaters (0.6-1.9)</td>
<td>Pike</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Paint Creek of Levisa Fork</td>
<td>Levisa Fork to Paintsville Dam (0.0-8.3)</td>
<td>Johnson</td>
<td>CAH, PCR, SCR</td>
<td></td>
</tr>
<tr>
<td>Russell Fork of Levisa Fork of Big Sandy River</td>
<td>Clinch Field RR Yard off HWY 80 to Virginia State Line (15.0-16.5)</td>
<td>Pike</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Thompson Fork of Sounds Branch</td>
<td>Mouth to Headwaters (0.0-1.0)</td>
<td>Floyd</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Toms Branch of Elkorn Creek</td>
<td>Mouth to Headwaters (0.0-1.6)</td>
<td>Pike</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Unidentified Tributary of Hobbs Fork</td>
<td>Hobbs Fork of Pigeonroost Fork to Headwaters (0.0-0.55)</td>
<td>Martin</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Unidentified Tributary of Open Fork Paint Creek</td>
<td>Mouth to Headwaters (0.0-0.8)</td>
<td>Morgan</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td><strong>LAKES AND RESERVoirS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paintsville</td>
<td>Entire reservoir</td>
<td>Johnson</td>
<td>WAH, CAH, PCR, SCR</td>
<td></td>
</tr>
<tr>
<td><strong>LITTLE SANDY RIVER BASIN</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arabs Fork of Big Sinking Creek</td>
<td>Clay Fork to Headwaters (0.0-5.1)</td>
<td>Elliott</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Notes</td>
<td>VA</td>
<td>CAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>-------</td>
<td>---</td>
<td>---------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Big Caney Creek</strong></td>
<td>Grayson Lake to source (1.8-15.3)</td>
<td>Elliott/ Rowan</td>
<td>CAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td><strong>Big Sinking Creek of Little Sandy River</strong></td>
<td>SR 986 to Clay Fork and Arab Fork (11.0-15.9)</td>
<td>Carter/ Elliott</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td><strong>Laurel Creek of Little Sandy River</strong></td>
<td>Little Sandy River to Carter School Rd (0.0-7.6)</td>
<td>Elliott/ Rowan</td>
<td>CAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td><strong>Laurel Creek of Little Sandy River</strong></td>
<td>Carter School Rd Bridge to Headwaters (7.6-14.7)</td>
<td>Elliott/ Rowan</td>
<td>CAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td><strong>Meadow Branch of Little Fork of Little Sandy River</strong></td>
<td>Mouth to Headwaters (0.0-1.4)</td>
<td>Elliott</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td><strong>Middle Fork of Little Sandy River</strong></td>
<td>Mouth to Sheepskin Branch (0.0-3.4)</td>
<td>Elliott</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td><strong>Nichols Fork of Little Fork of Little Sandy River</strong></td>
<td>Green Branch to Headwaters (0.0-2.0)</td>
<td>Elliott</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
</tbody>
</table>

**LAKES AND RESERVOIRS**

<table>
<thead>
<tr>
<th>Location</th>
<th>Notes</th>
<th>VA</th>
<th>CAH, PCR, SCR, OSRW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greenbo</td>
<td>Entire Reservoir</td>
<td>Greenup</td>
<td>WAH, CAH, PCR, SCR</td>
</tr>
</tbody>
</table>

**LICKING RIVER BASIN**

<table>
<thead>
<tr>
<th>Location</th>
<th>Notes</th>
<th>VA</th>
<th>CAH, PCR, SCR, OSRW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blackwater Creek of Licking River</td>
<td>Eaton Creek to Greasy Fork (3.8-11.7)</td>
<td>Morgan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Blanket Creek of Licking River</td>
<td>Mouth to Unidentified Tributary (0.0-1.9)</td>
<td>Pendleton</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Botts Fork of Brushy Fork of Licking River</td>
<td>Mouth to Landuse Change (0.0-2.1)</td>
<td>Menifee</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bowman Creek</td>
<td>Mouth to Unidentified Tributary (0.0-6.0)</td>
<td>Kenton</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Brushy Fork of Meyers Creek</td>
<td>Cave Run Lake Backwaters to Headwaters (0.7-15.6)</td>
<td>Menifee</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bucket Branch of North Fork of Licking River</td>
<td>Mouth to Headwaters (0.0-1.9)</td>
<td>Morgan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cedar Creek of Licking River</td>
<td>Mouth to North Branch of Cedar Creek (0.0-1.7)</td>
<td>Robertson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Craney Creek</td>
<td>Source to North Fork of Licking River (0.0-11.2)</td>
<td>Rowan/ Morgan</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Devils Fork of North Fork of Licking River</td>
<td>Mouth to Headwaters (0.0-8.5)</td>
<td>Elliott/ Morgan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Flour Creek of Licking River</td>
<td>Mouth to Unidentified Tributary (0.0-2.2)</td>
<td>Pendleton</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Grovers Creek of Kincaid Creek</td>
<td>Kincaid Lake Backwaters to Unidentified Tributary (0.5-3.4)</td>
<td>Bracken/ Pendleton</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Licking River</td>
<td>Mouth of UT entering on the right descending bank to 0.1 mile upstream of Turkey Run (River mile 138.3-140.3)</td>
<td>Bath/ Fleming</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Licking River</td>
<td>River Mile 144.0 (38.25141-83.6932) to River Mile 146.1 (0.75 mile downstream of Haven Branch)</td>
<td>Bath/ Fleming</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Licking River</td>
<td>River Mile 175.6 (U.S. Highway 60 Bridge) to River Mile 180.8 (Cave Run Lake Dam (175.6-180.8)</td>
<td>Bath/ Rowan</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Licking River</td>
<td>River Mile 159.3 (SR 211) to River Mile 170.5 (Unnamed Road off Slate Point Road)</td>
<td>Bath/ Rowan/ Fleming</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Licking River</td>
<td>River Mile 19.3 (Hwy 536 Bridge) to River Mile 117.6 (1.3 [river] miles above Fishtrap Creek)</td>
<td>Kenton/ Campbell/ Pendleton/ Harrison/ Robertson/ Fleming</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Minor Creek of Craney Creek</td>
<td>Mouth to river mile 2.8 (0.0-2.8)</td>
<td>Morgan/ Rowan</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>North Fork of Licking River</td>
<td>Cave Run Lake Backwaters to Devils Fork (8.4-13.4)</td>
<td>Morgan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sawyers Fork of Cruises Creek</td>
<td>Mouth to Headwaters (0.0-3.3)</td>
<td>Kenton</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Slabcamp Creek of Craney Creek of Licking River</td>
<td>Mouth to Headwaters (0.0-3.7)</td>
<td>Rowan</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Slate Creek of Licking River</td>
<td>Mouth to Mill Creek (0.0-13.55)</td>
<td>Bath</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Name of Creek</td>
<td>Origin to Destination</td>
<td>Land Use Change/Attribute</td>
<td>County</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------------</td>
<td>---------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>South Fork Grassy Creek of Grassy Creek of Licking River</td>
<td>Mouth to Greasy Creek (0.0-19.8)</td>
<td>Kenton/ Pendleton</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Shannon Creek of North Fork of Licking River</td>
<td>Mouth to Headwaters 0.0-2.2)</td>
<td>Mason</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Welch Fork of Brushy Fork of Licking River</td>
<td>Mouth to First Unnamed Tributary (0.0-1.0)</td>
<td>Menifee</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>West Creek of Licking River</td>
<td>Mouth to Headwaters (0.0-9.8)</td>
<td>Harrison/ Robertson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>KENTUCKY RIVER BASIN</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Backbone Creek of Sixmile Creek of Kentucky River</td>
<td>Mouth to Scrabble Creek (0.0-1.65)</td>
<td>Franklin/ Henry/ Shelby</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bear Branch of North Fork of Kentucky River</td>
<td>Above Sediment Pond to Headwaters (0.3-1.2)</td>
<td>Perry</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Big Double Creek of Red Bird River</td>
<td>Mouth to Confluence of Left and Right Forks of Big Double Creek (0.0-4.4)</td>
<td>Clay</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bill Branch of Laurel Fork of Greasy Creek</td>
<td>Mouth to Right Fork and Left Fork Creek (0.0-0.3)</td>
<td>Leslie</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Billey Fork of Millers Creek</td>
<td>Land Use Change to Headwaters (2.6-8.8)</td>
<td>Lee/Elliott</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bill Oak Branch of Left Fork of Buffalo Creek</td>
<td>Mouth to Headwaters (0.0-0.3)</td>
<td>Owsley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Buffalo Creek of South Fork of Kentucky River</td>
<td>Mouth to Right Fork and Left Fork (0.0-1.6)</td>
<td>Owsley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bullskin Creek of South Fork Kentucky River</td>
<td>Mouth to Headwaters (0.0-14.55)</td>
<td>Clay</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cavanaugh Creek</td>
<td>South Fork of Station Camp Creek to Foxtown Rd (0.0-8.3)</td>
<td>Jackson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cherry Run of Boyd Run of North Elkhorn Creek</td>
<td>Mouth to Boyd Run (0.0-0.9)</td>
<td>Scott</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Chester Creek of Middle Fork of Red River</td>
<td>Mouth to Headwaters (0.0-2.8)</td>
<td>Wolfe</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Chimney Top Creek of Red River</td>
<td>Basin (0.0-4.6)</td>
<td>Wolfe</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Clear Creek of Kentucky River</td>
<td>Mouth to East Fork Clear Creek (0.0-9.0)</td>
<td>Woodford</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Clemens Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters (0.0-4.8)</td>
<td>Breathitt</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Coles Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters (0.0-6.2)</td>
<td>Breathitt</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Craig Creek of Kentucky River</td>
<td>Mouth (Kentucky River Backwaters) to Unidentified Tributary (0.0-2.7)</td>
<td>Woodford</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Deep Ford Branch of Cutshin Creek</td>
<td>Above Pond to Headwaters (0.3-1.35)</td>
<td>Leslie</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Dix River</td>
<td>Mouth (Kentucky River) to River Mile 3.1 (Herrington Lake Dam) (0.0-3.1)</td>
<td>Garrard/ Mercer</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Dog Fork of Swift Camp Creek</td>
<td>Basin</td>
<td>Wolfe</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Drennon Creek of Kentucky River</td>
<td>Fivemile Creek to Town Branch (8.7-12.2)</td>
<td>Henry</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>East Fork of Indian Creek of Indian Creek of Red River</td>
<td>Headwaters East Fork of Indian Creek to Indian Creek (0.0-9.0)</td>
<td>Menifee</td>
<td>CAH, PCR, SCR OSRW</td>
</tr>
<tr>
<td>Elisha Creek of Red Bird River</td>
<td>Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek (0.8-1.8)</td>
<td>Leslie</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Emily Run of Drennon Creek</td>
<td>Mouth to Unidentified Tributary (0.0-4.0)</td>
<td>Henry</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Evans Fork of Billey Fork of Millers Creek</td>
<td>Mouth to Headwaters (0.0-3.0)</td>
<td>Estill</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Falling Rock Branch of Clemons Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters (0.0-0.7)</td>
<td>Breathitt</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>River Name</td>
<td>Location Description</td>
<td>Mouth to</td>
<td>Basin</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>----------</td>
<td>--------</td>
</tr>
<tr>
<td>Gilberts Creek of Kentucky River</td>
<td>Mouth to Unidentified Tributary (0.0–2.6)</td>
<td>Anderson</td>
<td></td>
</tr>
<tr>
<td>Gladie Creek of Red River</td>
<td>Basin</td>
<td>Menifee</td>
<td></td>
</tr>
<tr>
<td>Gladie Creek of Red River</td>
<td>Land Use Change to Long Branch (0.5–7.25)</td>
<td>Menifee</td>
<td></td>
</tr>
<tr>
<td>Goose Creek of South Fork of Kentucky River</td>
<td>Mouth to Laurel Creek (0.0–9.1)</td>
<td>Clay/Leslie</td>
<td></td>
</tr>
<tr>
<td>Griers Creek of Kentucky River</td>
<td>Kentucky River Backwaters to Unidentified Tributary (0.1–3.5)</td>
<td>Woodford</td>
<td></td>
</tr>
<tr>
<td>Grindstone Creek of Kentucky River</td>
<td>Kentucky River Backwaters to Headwaters (0.1–1.9)</td>
<td>Franklin</td>
<td></td>
</tr>
<tr>
<td>Hardwick Creek of Red River</td>
<td>Mouth to Little Hardwick Creek (0.0–3.25)</td>
<td>Powell</td>
<td></td>
</tr>
<tr>
<td>Hell For Certain of Middle Fork of Red River</td>
<td>Mouth to Big Fork (0.0–2.1)</td>
<td>Leslie</td>
<td></td>
</tr>
<tr>
<td>Hines Creek of Kentucky River</td>
<td>Kentucky River Backwaters to confluence with Unidentified Tributary (0.1–1.9)</td>
<td>Madison</td>
<td></td>
</tr>
<tr>
<td>Honey Branch of Greasy Creek of Middle Fork of</td>
<td>Mouth to Headwaters (0.0–1.35)</td>
<td>Leslie</td>
<td></td>
</tr>
<tr>
<td>Kentucky River</td>
<td>Hopper Cave Branch of Cavanaugh Creek</td>
<td>Mouth to Headwaters (0.0–1.8)</td>
<td>Jackson</td>
</tr>
<tr>
<td>Indian Creek of Eagle Creek</td>
<td>Mouth to Headwaters (0.0–5.4)</td>
<td>Carroll</td>
<td></td>
</tr>
<tr>
<td>Indian Creek of Red River</td>
<td>River Mile 1.25 (East Fork of Indian Creek) to River Mile 5.2 (0.3 [up] miles below Bear Branch)</td>
<td>Mouth to Headwaters (0.0–4.0)</td>
<td>Letcher</td>
</tr>
<tr>
<td>Indian Fork of Sixmile Creek of Kentucky River</td>
<td>Mouth to Headwaters (0.0–3.3)</td>
<td>Shelby</td>
<td></td>
</tr>
<tr>
<td>Jessamine Creek of Kentucky River</td>
<td>Stream segment within the R.J. Corman Natural Area (12.3–13.55)</td>
<td>Jessamine</td>
<td></td>
</tr>
<tr>
<td>John Carpenter Fork of Clemons Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters (0.0–1.2)</td>
<td>Breathitt</td>
<td></td>
</tr>
<tr>
<td>Joyce Fork of Cortland Fork</td>
<td>Mouth to Headwaters (0.0–1.2)</td>
<td>Owsley</td>
<td></td>
</tr>
<tr>
<td>Katies Creek of Red Bird River</td>
<td>Mouth to Headwaters (0.0–4.0)</td>
<td>Clay</td>
<td></td>
</tr>
<tr>
<td>Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek</td>
<td>Cortland Fork to Big Branch (0.0–3.75)</td>
<td>Mouth to Headwaters (0.0–1.5)</td>
<td>Owsley</td>
</tr>
<tr>
<td>Left Fork of Big Double Creek of Kentucky River</td>
<td>Mouth to Headwaters (0.0–1.5)</td>
<td>Clay</td>
<td></td>
</tr>
<tr>
<td>Line Fork of North Fork of Kentucky River</td>
<td>Defeated Creek to Headwaters (12.2–28.6)</td>
<td>Letcher</td>
<td></td>
</tr>
<tr>
<td>Little Middle Fork of Elisha Creek of Red Bird River</td>
<td>Mouth to Headwaters (0.0–0.75)</td>
<td>Mouth to Headwaters (0.0–0.75)</td>
<td>Leslie</td>
</tr>
<tr>
<td>Little Millisest Branch of Clemons Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters (0.0–1.2)</td>
<td>Mouth to Headwaters (0.0–1.2)</td>
<td>Breathitt</td>
</tr>
<tr>
<td>Little Sixmile Creek of Sixmile Creek of Kentucky River</td>
<td>Mouth to Headwaters (0.0–5.3)</td>
<td>Mouth to Headwaters (0.0–5.3)</td>
<td>Henry</td>
</tr>
<tr>
<td>Little Sturgeon Creek of Sturgeon Creek</td>
<td>Mouth to Warren Chapel Branch (0.0–3.0)</td>
<td>Owsley</td>
<td></td>
</tr>
<tr>
<td>Low Gap Branch of Elk Creek</td>
<td>Mouth to Headwaters (0.0–0.8)</td>
<td>Letcher</td>
<td></td>
</tr>
<tr>
<td>Lower Devil Creek of North Fork of Kentucky River</td>
<td>Mouth to Middle Fork Lower Devil Creek (0.0–4.65)</td>
<td>Mouth to Headwaters (0.0–0.8)</td>
<td>Lee</td>
</tr>
<tr>
<td>Lower Howard Creek of Kentucky River</td>
<td>Mouth to West Fork (0.5–6.6)</td>
<td>Clark</td>
<td></td>
</tr>
<tr>
<td>Lulbegrud Creek of Red River</td>
<td>Mouth to Falls Branch (0.0–7.3)</td>
<td>Clark/Powell</td>
<td></td>
</tr>
<tr>
<td>Source</td>
<td>Destination</td>
<td>Length</td>
<td>Watercourses</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------------------------------------</td>
<td>--------</td>
<td>--------------</td>
</tr>
<tr>
<td>Middle Fork of Kentucky River</td>
<td>Mouth to Upper Twin Creek (0.0-12.7)</td>
<td>Lee/O</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Middle Fork of Kentucky River</td>
<td>Hurts Creek to Greasy Creek (75.2-85.5)</td>
<td>Leslie</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Middle Fork of Red River</td>
<td>River Mile 10.7 (0.7 [river]miles below Sinking Fork) to Headwaters (15.3)</td>
<td>Powell</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Middle Fork of Red River</td>
<td>South Fork of Red River to Natural Bridge State Park Lake (1.8-7.2)</td>
<td>Powell</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek</td>
<td>Mouth to Headwaters (0.0-0.7)</td>
<td>Owsley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mill Creek of Kentucky River</td>
<td>Near Mouth to Headwaters (0.0-1.85)</td>
<td>Owen</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Millisit Branch of Clemsons Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters (0.0-1.85)</td>
<td>Breathitt</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Muddy Creek of Kentucky River</td>
<td>Elliston, Kentucky to Viney Fork (13.8-20.65)</td>
<td>Madison</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Musselman Creek of Eagle Creek</td>
<td>Mouth to Headwaters (0.0-9.0)</td>
<td>Grant</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Parched Corn Creek</td>
<td>Source to Red River (0.0-2.25)</td>
<td>Wolfe</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Red River</td>
<td>River Mile 70.4 (SR 746) to River Mile 50.3 (0.1 miles[Miles] below Auxier Branch)</td>
<td>Menifee/Wolf</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Red Bird River of South Fork of Kentucky River</td>
<td>Mouth to Big Creek (0.0-15.3)</td>
<td>Clay</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Right Fork of Buffalo Creek of Kentucky River</td>
<td>Mouth to Headwaters (0.0-2.1)</td>
<td>Owosley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Right Fork of Elisha Creek of Redbird River</td>
<td>Mouth to Headwaters (0.0-3.3)</td>
<td>Leslie</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Roaring Fork of Lewis Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters (0.0-0.9)</td>
<td>Breathitt</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Rock Lick Creek</td>
<td>Mouth to Headwaters (0.0-9.6)</td>
<td>Jackson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sand Ripple Creek of Kentucky River</td>
<td>Kentucky River Backwaters to Headwaters (0.1-3.9)</td>
<td>Henry</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Severn Creek of Kentucky River</td>
<td>Kentucky River Backwaters to North Fork of Severn Creek (1.35-3.0)</td>
<td>Owen</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Shaker Creek of Kentucky River</td>
<td>Near Mouth to Shawnee Run (0.1-1.4)</td>
<td>Mercer</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Shelly Rock Fork of Millisit Branch of Clemsons Fork</td>
<td>Mouth to Headwaters (0.0-0.6)</td>
<td>Breathitt</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sixmile Creek of Kentucky River</td>
<td>Little Sixmile Creek to Dam (7.1-15.3)</td>
<td>Henry</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>South Fork of Kentucky River</td>
<td>Mouth to Sexton Creek (0.0-27.8)</td>
<td>Owosley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>South Fork of Red River</td>
<td>Mouth to Sandlick Fork (0.0-4.2)</td>
<td>Powell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>South Fork of Station Camp Creek of Kentucky River</td>
<td>Mouth to Rock Lick Creek (0.0-9.7)</td>
<td>Jackson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Spruce Branch of Redbird River</td>
<td>Mouth to Headwaters (0.0-1.0)</td>
<td>Clay</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Station Camp Creek of Kentucky River</td>
<td>Landuse Change (Crooked Cr.) to South Fork of Station Camp Creek (3.3-22.7)</td>
<td>Estill</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Steeles Run of Elkhorn Creek</td>
<td>Mouth to Unidentified Tributary (0.0-4.2)</td>
<td>Fayette</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Steer Fork of War Fork of Station Camp Creek</td>
<td>Mouth to Headwaters (0.0-2.7)</td>
<td>Jackson</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sturgeon Creek of Kentucky River</td>
<td>Duck Fork to Little Sturgeon Creek (1.3-13.7)</td>
<td>Lee/Owsley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sugar Creek of Redbird River</td>
<td>Landuse Change to Headwaters (0.6-5.4)</td>
<td>Leslie</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sulphur Lick Creek of Elkhorn Creek</td>
<td>Mouth to Headwaters (0.0-5.2)</td>
<td>Franklin</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>River Name</td>
<td>Location Details</td>
<td>County</td>
<td>Associations</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>-------------------------------------------</td>
<td>--------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Swift Camp Creek</td>
<td>Red River to Source (0.0-13.9)</td>
<td>Wolfe</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Unidentified Tributary of Cawood Branch of Beech Fork</td>
<td>Mouth to Headwaters (0.0-2.1)</td>
<td>Leslie</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Cedar Creek of Kentucky River</td>
<td>Mouth to Headwaters (0.0-1.4)</td>
<td>Owen</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Genns Creek of Kentucky River</td>
<td>Mouth to Headwaters (0.0-1.9)</td>
<td>Woodford</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Jacks Creek of Kentucky River</td>
<td>Mouth to Headwaters (0.0-1.15)</td>
<td>Madison</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Kentucky River</td>
<td>Mouth at Kentucky River Backwaters to Land Use Change (0.1-1.4)</td>
<td>Franklin</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Line Fork of North Fork of Kentucky River (LCW)</td>
<td>Mouth to Headwaters (0.0-0.6)</td>
<td>Letcher</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>War Fork of Station Camp Creek</td>
<td>Mouth to Headwaters (0.0-13.8)</td>
<td>Jackson</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>War Fork of Station Camp Creek</td>
<td>Basin above River Mile 1.9 (0.3 miles below Tarpin Lick Branch (2.5))</td>
<td>Jackson</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Watches Fork of Laurel Fork of Left Fork of Buffalo Creek</td>
<td>Mouth to Headwaters (0.0-1.0)</td>
<td>Owsley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Wolfpen Creek of Red River</td>
<td>Mouth to Headwaters (0.0-3.6)</td>
<td>Menifee</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
</tbody>
</table>

**LAKES AND RESERVOIRS**

<table>
<thead>
<tr>
<th>Reservoir Name</th>
<th>Location</th>
<th>County</th>
<th>Associations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bert Combs</td>
<td>Entire Reservoir</td>
<td>Clay</td>
<td>WAH, CAH, PCR, SCR</td>
</tr>
<tr>
<td>Fishpond</td>
<td>Entire Reservoir</td>
<td>Letcher</td>
<td>WAH, CAH, PCR, SCR</td>
</tr>
<tr>
<td>Mill Creek</td>
<td>Entire Reservoir</td>
<td>Wolfe</td>
<td>WAH, CAH, PCR, SCR</td>
</tr>
</tbody>
</table>

**SALT RIVER BASIN**

<table>
<thead>
<tr>
<th>River Name</th>
<th>Location Details</th>
<th>County</th>
<th>Associations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brashears Creek of Salt River</td>
<td>Guist Creek to Bullskin and Clear Creek (13.0-25.9)</td>
<td>Shelby/ Spencer</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cedar Creek of Salt River</td>
<td>Mouth to Greens Branch (0.0-5.2)</td>
<td>Bullitt</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Chaplin River of Salt River</td>
<td>Thompson Creek to Cornishville, Kentucky (40.9-54.2)</td>
<td>Washington</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Doctors Fork of Chaplin River</td>
<td>Mouth to Begley Branch (0.0-3.8)</td>
<td>Boyle</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Guist Creek of Brashears Creek</td>
<td>Mouth to Jeptha Creek (0.0-15.7)</td>
<td>Spencer</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Harts Run of Wilson Creek</td>
<td>Mouth to Headwaters (0.0-1.8)</td>
<td>Bullitt</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Indian Creek of Thompson Creek of Chaplin River of Salt River</td>
<td>Mouth to Unidentified Tributary (0.0-2.9)</td>
<td>Mercer</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Lick Creek of Long Lick Creek of Beech Fork of Salt River</td>
<td>Mouth to 0.1miles below Dam (0.0-4.1)</td>
<td>Washington</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Otter Creek of Rolling Fork of Salt River</td>
<td>Landuse Change to confluence of East Fork and Middle Fork Otter Creek (1.7-2.9)</td>
<td>Larue</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Overallis Creek of Wilson Creek of Rolling Fork of Salt River</td>
<td>Mouth to Headwaters of Middle Fork of Overallis Creek (0.0-3.2)</td>
<td>Bullitt</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Paddy’s Run</td>
<td>Mouth (Ohio River) to headwaters</td>
<td>Jefferson</td>
<td>PCR, SCR</td>
</tr>
</tbody>
</table>

401 KAR 10:031, Section 2(1)(d) and 2(2) do not apply.
<table>
<thead>
<tr>
<th>Location Description</th>
<th>Location Details</th>
<th>Author</th>
<th>Basin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rolling Fork of Salt River</td>
<td>River Mile 53.6 (0.8 mi upstream of Stiles Rd Bridge) to River Mile 62.5 (0.5 mi upstream of Otter Cr)</td>
<td>Larue/ Nelson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Salt Lick Creek of Rolling Fork of Salt River</td>
<td>Mouth to Headwaters (0.0-8.6)</td>
<td>Larue, Marion</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sulphur Creek of Chaplin River</td>
<td>Mouth to confluence of Cheese Lick and Brush Creek (0.0-10.0)</td>
<td>Anderson/ Mercer/ Washington</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Glenns Creek of Chaplin River</td>
<td>Mouth to Headwaters (0.0-2.3)</td>
<td>Washington</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>West Fork of Otter Creek of Rolling Fork of Salt River</td>
<td>Mouth to Headwaters (0.0-5.4)</td>
<td>Larue</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Wilson Creek of Rolling Fork of Salt River</td>
<td>Mouth to Headwaters (0.0-18.4)</td>
<td>Bullitt/ Nelson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>GREEN RIVER BASIN</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Barren River</td>
<td>Green River to River Mile Lock and Dam #1 to Green River (0.0-15.1)</td>
<td>Butler/ Warren</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Beaverdam Creek</td>
<td>Source to Green River (14.5-0.0)</td>
<td>Edmonson</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Big Brush Creek</td>
<td>Brush Creek to Poplar Grove Branch (13.0-17.3)</td>
<td>Green</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cane Run of Nolin River</td>
<td>Nolin River Lake Backwaters to Headwaters (0.8-6.5)</td>
<td>Hart</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Caney Fork of Peter Creek</td>
<td>Mouth to Headwaters (0.0-6.7)</td>
<td>Barren</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Clifty Creek of Rough River</td>
<td>Barton Run to Western Kentucky Parkway (7.5-17.3)</td>
<td>Grayson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Clifty Creek of Wolf Lick Creek</td>
<td>Little Clifty Creek to Sulphur Lick (0.0-13.4)</td>
<td>Todd</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Double Sink Spring</td>
<td>Basin Outside Mammoth Cave National Park Boundary</td>
<td>Edmonson/ Barren</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>East Fork of Little Barren River</td>
<td>Red Lick Creek to Flat Creek (18.9-20.6)</td>
<td>Metcalfe</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Echo River</td>
<td>Basin Outside Mammoth Cave National Park Boundary (underground system)</td>
<td>Edmonson</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Elk Lick Creek</td>
<td>0.1 mile Downstream of Mouth of Duck Lick Creek to Barren Fork Creek and Edger Creek (3.6-11.8)</td>
<td>Logan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ellis Fork of Damron Creek</td>
<td>Mouth to Headwaters (0.0-2.2)</td>
<td>Adair/ Russell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Falling Timber Creek of Skaggs Creek</td>
<td>Landuse Change to Headwaters (10.8-15.2)</td>
<td>Barren/ Metcalfe</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Fiddlers Creek of North Fork of Rough River</td>
<td>Mouth to Headwaters (0.0-5.9)</td>
<td>Breckinridge</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Forbes Creek of Buck Creek of East Fork of Pond River</td>
<td>Mouth to Unidentified Tributary (0.0-4.1)</td>
<td>Christian</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ganter Spring</td>
<td>Basin Outside Mammoth Cave National Park Boundary</td>
<td>Edmonson</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Gasper River of Barren River</td>
<td>Clear Fork to Wiggington Creek (17.2-35.6)</td>
<td>Logan/ Warren</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Goose Creek of Green River</td>
<td>Mouth to Little Goose Creek (0.0-8.5)</td>
<td>Casey/ Russell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Green River</td>
<td>0.5 miles upstream of Davenport Landing to 0.75 miles downstream of Lock &amp; Dam #3 (105.9-108.4)</td>
<td>Muhlenburg/Ohio</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Green River</td>
<td>0.9 miles upstream of William Natcher Parkway to 0.1 miles upstream of Unidentified Tributary on right descending bank (139.7-140.7)</td>
<td>Butler</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Green River</td>
<td>River Mile 210.6 (eastern Mammoth Cave National Park Boundary to River Mile 309.1 (Green River Lake Dam)</td>
<td>Hart/Taylor/ Green</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Stream Name</td>
<td>Distance</td>
<td>Location</td>
<td>Authors</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>----------</td>
<td>----------</td>
<td>------------------</td>
</tr>
<tr>
<td>Green River</td>
<td>River Mile 185.0 (western Mammoth Cave National Park Boundary) to River Mile 210.6 (eastern Mammoth Cave National Park Boundary)</td>
<td>Edmonson/ Hart</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Green River</td>
<td>Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek (185.0-250.3)</td>
<td>Edmonson/ Hart</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Green River</td>
<td>River Mile 148.5 (1.0 river mile below Lock and Dam #4) to River Mile 170.0 (Lock and Dam #5)</td>
<td>Butler/ Warren</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Halls Creek of Rough River</td>
<td>Unidentified Tributary to Headwaters (4.8-9.6)</td>
<td>Ohio</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Lick Creek of West Fork of Drakes Creek</td>
<td>Mouth to Headwaters (0.0-10.2)</td>
<td>Simpson</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Linders Creek of Rough River</td>
<td>Mouth to Sutzer Creek (0.0-7.9)</td>
<td>Hardin</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Little Beaverdam Creek of Green River</td>
<td>Mouth to SR 743 (0.0-11.4)</td>
<td>Edmonson/ Warren</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Little Short Creek of Rough River</td>
<td>Mouth to Headwaters (0.0-3.1)</td>
<td>Grayson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Lynn Camp Creek</td>
<td>Green River to Source (0.0-8.3)</td>
<td>Hart</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Lynn Camp Creek of Green River</td>
<td>Mouth to Lindy Creek (0.0-8.5)</td>
<td>Hart</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>McFarland Creek of West Fork of Pond River</td>
<td>Grays Branch to Unidentified Tributary (1.5-5.0)</td>
<td>Christian</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>McCoy Spring</td>
<td>Basin Outside Mammoth Cave National Park Boundary</td>
<td>Hart</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Meeting Creek of Rough River</td>
<td>Little Meeting Creek to Petty Branch (5.2-14.0)</td>
<td>Grayson/ Hardin</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mile 205.7 Spring</td>
<td>Basin Outside Mammoth Cave National Park Boundary</td>
<td>Hart</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Muddy Creek of Caney Creek of Rough River</td>
<td>Landuse Change to Headwaters (13.5-15.5)</td>
<td>Ohio</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Nolin River</td>
<td>River Mile 7.7 (Nolin Lake Dam) to Green River (0.0-7.7)</td>
<td>Edmonson</td>
<td>CAH, WAH, PCR, SCR</td>
</tr>
<tr>
<td>North Fork of Rough River</td>
<td>Buffalo Creek to Reservoir Dam (22.1-26.9)</td>
<td>Breckinridge</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Peter Creek of Barren River</td>
<td>Caney Fork to Dry Fork (11.6-18.5)</td>
<td>Barren</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Pike Spring</td>
<td>Basin Outside Mammoth Cave National Park Boundary</td>
<td>Edmonson</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Pond Run of Rough River</td>
<td>Landuse Change to Headwaters (1.4-6.8)</td>
<td>Breckinridge/Ohio</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Puncheon Creek</td>
<td>Mouth to state line</td>
<td>Allen</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Rough River</td>
<td>Linders Creek to Vertrees Creek (138.0-149.4)</td>
<td>Hardin</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Rough River</td>
<td>River Mile 89.6 to Rough River Lake Dam to 90.4</td>
<td>Ohio/ Grayson</td>
<td>CAH, WAH, PCR, SCR</td>
</tr>
<tr>
<td>Rough River</td>
<td>River Mile 74.5 to River Mile 74.2 (Hwy 54 Bridge)</td>
<td>McLean/ Ohio</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Roundstone Creek of Nolin River</td>
<td>Hwy 1140 (River Mile 3.8) to Headwaters (River Mile 10.25)</td>
<td>Hart</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Running Spring</td>
<td>Basin Outside Mammoth Cave National Park Boundary</td>
<td>Edmonson</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Russell Creek of Green River</td>
<td>Mouth to Columbia WWTP (0.0-40.0)</td>
<td>Green/ Adair</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Russell Creek of Green River</td>
<td>Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek (56.9-66.3)</td>
<td>Adair, Russell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sixes Creek of Indian Camp Creek</td>
<td>Wild Branch to Headwaters (2.0-7.5)</td>
<td>Ohio</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Suds Spring</td>
<td>Basin Outside Mammoth Cave National Park Boundary</td>
<td>Hart/ Barren</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sulphur Branch of Alexander Creek</td>
<td>Mouth to Headwaters (0.0-3.0)</td>
<td>Edmonson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Thompson Branch</td>
<td>Webb Branch to Tennessee State Line (0.3-1.5)</td>
<td>Simpson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Location</td>
<td>River Mile</td>
<td>Description</td>
<td>終わり</td>
</tr>
<tr>
<td>----------</td>
<td>------------</td>
<td>-------------</td>
<td>---</td>
</tr>
<tr>
<td>Trammel Fork of West Fork of Drakes Creek</td>
<td>30.6</td>
<td>to Hwy 31E (River Mile 23.8)</td>
<td>Allen</td>
</tr>
<tr>
<td>Trammel Fork of West Fork of Drakes Creek</td>
<td>0.0-30.6</td>
<td>Mouth to Tennessee State Line</td>
<td>Allen/Warren</td>
</tr>
<tr>
<td>Turnhole Spring</td>
<td></td>
<td>Basin Outside Mammoth Cave National Park Boundary</td>
<td>Edmonson/Barren</td>
</tr>
<tr>
<td>Underground River System</td>
<td>Mammoth Cave National Park</td>
<td>Edmonson/Hart/Barren</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Green River</td>
<td>1.7-3.2</td>
<td>Landuse Change to Headwaters</td>
<td>Adair</td>
</tr>
<tr>
<td>Unidentified Tributary of White Oak Creek</td>
<td>0.0-2.1</td>
<td>Turnhole Spring Basin Outside Mammoth Cave National Park Boundary</td>
<td>Edmonson/Barren</td>
</tr>
<tr>
<td>West Fork of Pond River</td>
<td>12.45-22.5</td>
<td>Unidentified Tributary to East Branch of Pond River</td>
<td>Christian</td>
</tr>
<tr>
<td>TRADEWATER RIVER BASIN</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>East Fork of Flynn Fork of Tradewater River</td>
<td>Landuse Change (US Hwy 62) to Headwaters (2.15-4.6)</td>
<td>Caldwell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Piney Creek of Tradewater River</td>
<td>Lake Beshear Backwaters to Headwaters (4.5-10.2)</td>
<td>Caldwell, Christian</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sandlick Creek of Tradewater River</td>
<td>Camp Creek to Headwaters (4.5-8.6)</td>
<td>Christian</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Tradewater River</td>
<td>Dripping Springs Branch to Buntin Lake Dam (126.2-133.9)</td>
<td>Christian</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Piney Creek of Tradewater River</td>
<td>Mouth to Headwaters (0.0-2.9)</td>
<td>Caldwell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Sandlick Creek of Tradewater River</td>
<td>Mouth to Headwaters (0.0-1.4)</td>
<td>Christian</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>LOWER CUMBERLAND RIVER BASIN</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Casey Creek</td>
<td>Mouth to headwaters (0.0-10.5)</td>
<td>Trigg</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Crooked Creek of Cumberland River</td>
<td>Energy Lake Backwaters to Headwaters (3.0-9.1)</td>
<td>Trigg</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cumberland River</td>
<td>0.2 Mile Downstream of Hickory Creek to 0.6 mile Upstream of Sugar Creek (10.2-11.9)</td>
<td>Livingston</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Donaldson Creek of Cumberland River</td>
<td>Barkley Lake Backwaters to Unnamed Tributary (4.0-7.2)</td>
<td>Trigg</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Elk Fork of Red River of Cumberland River</td>
<td>Tennessee State Line to Dry Branch (7.5-23.1)</td>
<td>Todd</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Skinframe Creek</td>
<td>Livingston Creek to Headwaters (0.0-7.8)</td>
<td>Lyon</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Sugar Creek of Cumberland River</td>
<td>Lick Creek to Unidentified Tributary (2.2-6.8)</td>
<td>Livingston</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sulphur Spring Creek</td>
<td>Red River to Headwaters (0.0-9.1)</td>
<td>Simpson</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>West Fork [d]Red River</td>
<td>State Line to River Mile 32.2 (14.75-32.2)</td>
<td>Christian</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>West Fork Red River</td>
<td>State Line to mouth of Montgomery Creek (14.75-26.85)</td>
<td>Christian</td>
<td>CAH, FC, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Whipporwill Creek</td>
<td>Red River to Headwaters (0.0-45.4)</td>
<td>Logan/Todd</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>UPPER CUMBERLAND RIVER BASIN</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acorn Fork of Stinking Creek</td>
<td>Basin above River Mile 1.0</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Adams Branch of Pigeon Roost Creek</td>
<td>Basin</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Archers Creek of Cumberland River</td>
<td>Basin (above RM 0.05 mi backwater at mouth)</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bad Branch of Poor Fork of Cumberland River</td>
<td>Basin</td>
<td>Letcher</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bain Branch</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bark Camp Creek of Cumberland River</td>
<td>Basin (above RM 0.1 backwater at mouth)</td>
<td>Whitley</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Barren Fork of Indian Creek</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-------</td>
<td>----------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Beaver Creek of Cumberland River</td>
<td>Basin</td>
<td>McCreary</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bee Lick Creek of Brushy Creek of Buck Creek</td>
<td>Mouth to Warren Branch (0.0-5.7)</td>
<td>Pulaski</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bens Fork of Little Clear Creek</td>
<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Big Branch of Marsh Creek</td>
<td>Basin above River Mile 0.8</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Big Lick Branch of Cumberland River</td>
<td>Basin (above 1.1, Cumberland River backwaters)</td>
<td>Pulaski</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Blacksnake Branch of Brownies Creek</td>
<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Breedens Creek of Clover Fork of Cumberland River</td>
<td>Basin</td>
<td>Harlan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Brices Creek of Road Fork of Sinking Creek</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Brownies Creek of Cumberland River</td>
<td>Basin above Blacksnake Branch (river mile[RM] 10.3)</td>
<td>Harlan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Brush Creek of Roundstone Creek</td>
<td>Wolf Creek to Reemergence of Sinking Creek (1.1-7.6)</td>
<td>Rockcastle</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Brushy Creek of Buck Creek</td>
<td>Mouth to Headwaters (0.0-16.5)</td>
<td>Pulaski</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Buck Creek of Cumberland River</td>
<td>River Mile 11.7 (Backwaters of Lake Cumberland to RM 55.0 (0.8 mile[RM] upstream of confluence of Hurricane Creek)</td>
<td>Pulaski</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Buck Creek of Clear Fork of Cumberland River</td>
<td>Basin</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bucks Branch of Jellico Creek</td>
<td>Basin</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Buffalo Creek of Laurel Fork of Clear Fork of Cumberland River</td>
<td>Basin (including the unidentified tributary to the west) above Kentucky/Tennessee State Line</td>
<td>Whitey</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Bunches Creek of Cumberland River</td>
<td>Basin</td>
<td>Whitey</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Campbell Branch of Jellico Creek</td>
<td>Basin</td>
<td>Whitey</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cane Creek of Rockcastle River</td>
<td>Mouth to Dam (0.0-11.85)</td>
<td>Laurel</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Caney Creek of Left Fork of Straight Creek</td>
<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cannon Creek of Yellow Creek</td>
<td>Basin above Cannon Creek Lake (RM 5.1)</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Capuchin Creek of Jellico Creek</td>
<td>Basin from Mouth to Kentucky/Tennessee State Line (0.0-1.25)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Clear Creek of Roundstone Creek</td>
<td>Scaffold Cane Branch to Davis Branch (3.45-7.8)</td>
<td>Rockcastle</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Clifty Creek of Brushy Creek of Buck Creek</td>
<td>Mouth to Rocky Branch (0.0-2.7)</td>
<td>Pulaski</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Clover Bottom Creek</td>
<td>Horse Lick Creek to River Mile 1.4</td>
<td>Jackson</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Cogur Fork of Indian Creek</td>
<td>Basin</td>
<td>McCreary</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Coles Branch of Road Fork of Stinking Creek</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Colliers Creek of Poor Fork of Cumberland River</td>
<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Criscilliis Branch of Jellico Creek</td>
<td>Basin</td>
<td>Whitey</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cumberland River</td>
<td>River Mile 549.65 (Backwaters Lake Cumberland) to River Mile 566.1 (0.2 mile below Summer Shoals)</td>
<td>McCreary/Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cumberland River</td>
<td>Kentucky/Tennessee state line (River Mile 379.8) to River Mile 456.7 (Lake Cumberland Dam)</td>
<td>Clinton, Cumberland, Russell, Monroe</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Davis Branch of Little Yellow Creek</td>
<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Dog Slaughter Creek of Cumberland River</td>
<td>Basin</td>
<td>Whitley</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Dolin Branch of Rock Creek</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Eagle Creek of Cumberland River</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Elisha Branch of Laurel Creek</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>FishTrap Branch</td>
<td>Basin above River Mile 0.5 (Lake Cumberland backwaters)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Four Mile Creek of Cumberland River</td>
<td>Basin above River Mile 2.5</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Four Mile Run of Yellow Creek Bypass</td>
<td>Basin above River Mile 1.0</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Fugitt Creek of Clover Fork of Cumberland River</td>
<td>Basin</td>
<td>Harlan</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Hale Fork of Road Fork of Stinking Creek</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Hawk Creek of Rockcastle River</td>
<td>Basin</td>
<td>Laurel</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Hinkle Branch of Road Fork of Stinking Creek</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Honeycutt Branch of Turkey Creek of Stinking Creek</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Horse Lick Creek</td>
<td>Mouth (0.0) at Middle Fork of Rockcastle River to River Mile 12.3 (Clover Bottom Creek)</td>
<td>Jackson/ Rockcastle</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Howards Creek of Illwill Creek of Wolf River</td>
<td>Dale Hollow Reservoir Backwaters to Headwaters</td>
<td>Clinton</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Hunting Shirt Branch of Richland Creek</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Indian Creek of Cumberland River</td>
<td>Kilburn Fork to Barren Fork (2.4-6.8)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Indian Creek of Cumberland River</td>
<td>Basin above and including Barren Fork</td>
<td>McCreary</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Jackie Branch of Bark Camp Creek</td>
<td>Mouth to Headwaters (0.0-1.65)</td>
<td>Whitley</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Jellico Creek of Cumberland River</td>
<td>River Mile 22.5 (confluence with Capuchin Creek) to River Mile 25.25 (Kentucky/Tennessee State Line)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Jellico Creek of Cumberland River</td>
<td>Basin From and Including Capuchin Creek to the Kentucky/Tennessee State Line (22.5 to 25.25)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Jennys Branch of Laurel Creek of Marsh Creek</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Kelly Branch of Clover Fork of Cumberland River</td>
<td>Basin</td>
<td>Harlan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Kennedy Creek of Little South Fork of Cumberland River</td>
<td>Little South Fork of Cumberland River to River Mile 1.0</td>
<td>Wayne</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Kettle Creek</td>
<td>Kentucky/Tennessee State Line to Wells Creek (1.75-6.1)</td>
<td>Monro</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Kilburn Fork of Indian Creek</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Laurel Creek of Marsh Creek</td>
<td>River Mile 3.1 (Jennys Branch) to River Mile 9.0 (Dam)</td>
<td>McCreary</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Laurel Creek of Marsh Creek</td>
<td>Basin above Mouth of Jennys Branch to Laurel Creek Lake Dam (3.2-9.0)</td>
<td>McCreary</td>
<td>WAH, CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Stream Name</td>
<td>Section Details</td>
<td>County</td>
<td>Notes</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------</td>
<td>--------</td>
<td>-------</td>
</tr>
<tr>
<td>Laurel Fork of Clear Fork of Cumberland River</td>
<td>Basin above River Mile 4.3 (Kentucky/Tennessee state line) to River Mile 16.0 (John Partin Road off Hwy 90)</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Laurel Fork of Kilburn Fork</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Laurel Fork of Middle Fork Rockcastle River</td>
<td>Middle Fork of Rockcastle River to Headwaters (0.0-12.3)</td>
<td>Jackson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Laurel River</td>
<td>River Mile 0.9 to Laurel River Lake Dam (0.9-2.4)</td>
<td>Laurel, Whitley</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Lick Fork of Yellow Creek By-Pass of Yellow Creek</td>
<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Little Popular Creek of Cumberland River</td>
<td>Basin above Hubbs Creek (4.4)</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Little South Fork of Cumberland River</td>
<td>River Mile 4.4 (backwaters of Lake Cumberland) to River Mile 35.5 (Confluence with Langham Branch)</td>
<td>Wayne, McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Little White Oak Creek</td>
<td>Mouth to Headwaters (0.0-2.6)</td>
<td>Laurel</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Long Branch of Left Fork of Straight Creek</td>
<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Looney Creek of Poor Fork of Cumberland River</td>
<td>Basin above River Mile 5.9 (Lynch City Limits)</td>
<td>Harlan</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Marsh Creek</td>
<td>Basin above River Mile 24.6 (Confluence with Murphy Creek) to River Mile 26.5 (within Kentucky)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Marsh Creek</td>
<td>River Mile 0.05 (confluence with Cumberland River) to River Mile 24.6 (confluence with Murphy Creek)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Martins Fork</td>
<td>Basin above River Mile 32.7 (Cumberland Gap National Historical Park Boundary)</td>
<td>Bell</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Martins Fork</td>
<td>River Mile 27.2 to River Mile 32.7 (Cumberland Gap National Historical Park Boundary)</td>
<td>Bell, Harlan</td>
<td>CAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>McFarland Creek of Cumberland River</td>
<td>Little McFarland Creek to Spring Branch (0.8-6.2)</td>
<td>Monroe</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Meadow Branch of Poor Fork of Cumberland River</td>
<td>Mouth to River Mile 1.95 and Basin above the East-Southeast Unnamed Tributary</td>
<td>Harlan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Meadow Fork of Franks Creek</td>
<td>Basin</td>
<td>Letcher</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Meshack Creek of Cumberland River</td>
<td>Mouth to Pitcock Branch (0.0-2.8)</td>
<td>Monroe</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Middle Fork of Rockcastle River</td>
<td>Confluence of Middle and South Forks of Rockcastle River (River Mile 0.0) to River Mile 7.9 (confluence of Indian Creek and Laurel Fork)</td>
<td>Jackson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mill Branch of Stinking Creek</td>
<td>Basin above reservoir backwaters (0.8)</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mill Creek of Straight Creek</td>
<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mill Creek of Cumberland River</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Moore Creek of Stinking Creek</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mud Creek of Clear Fork of Cumberland River</td>
<td>Basin above River Mile 6.5 (0.3 miles above Siler Cemetery Road Bridge)</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mud Camp Creek of Cumberland River</td>
<td>Mouth to Collins Branch (0.0-1.2)</td>
<td>Cumberland</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mud Camp Creek of Cumberland River</td>
<td>Unidentified Tributary to Headwaters (3.8-8.8)</td>
<td>Cumberland/ Monroe</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Mud Lick of Stinking Creek Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Ned Branch of Rockcastle River Basin above backwaters (RM 0.45)</td>
<td>Laurel</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Otter Creek of Cumberland River Lake Cumberland Backwaters to Carpenter Fork (14.0-22.1)</td>
<td>Wayne</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Paint Gap Branch of Sinking Creek Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Patterson Creek of Cumberland River Basin above River Mile 7.3 (confluence with Rose Creek)</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Poor Fork of Cumberland River Franks Creek to Headwaters (41.4-51.7)</td>
<td>Letcher</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Poor Fork of Cumberland River Basin above River Mile 48.1 (at Joseph Road off of Hwy 932)</td>
<td>Letcher</td>
<td>CAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Presley House Branch of Poor Fork of Cumberland River Mouth to Headwaters (0.0-1.5)</td>
<td>Letcher</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River Mouth to Headwaters (0.0-1.85)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Richland Creek of Cumberland River Basin above River Mile 15.8 (0.5 [stream]miles above Hubbard Branch) to River Mile 21.4</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Roaring Fork of Stinking Creek Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Rock Creek of South Fork of Cumberland River Kentucky/Tennessee State Line (River Mile 21.5) to White Oak Creek</td>
<td>McCreary</td>
<td>CAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Rock Creek of Jellico Creek Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Rockcastle River River Mile 8.95 (backwaters of Lake Cumberland) to River Mile 54.7 (confluence of Middle Fork and South Fork Rockcastle River)</td>
<td>Laurel/Pulaski</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Ross Branch of Jellico Creek Basin</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Roundstone Creek of Rockcastle River River Mile 13.5 (confluence of Renfro Creek) to River Mile 26.4 (Interstate 75)</td>
<td>Rockcastle</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Ryans Creek of Jellico Creek Basin</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Sanders Creek of Cumberland River Basin</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Seng Branch Basin</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Shillalah Creek of Clear Fork of Yellow Creek Cumberland Gap National Historical Park Boundary to Headwaters (1.5-5.5)</td>
<td>Bell</td>
<td>CAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Shillalah Creek of Clear Fork of Yellow Creek Mouth to Cumberland Gap National Historical Park Boundary (0.0-1.5)</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Shut-in Branch of Jellico Creek Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Sinking Creek Headwaters to Rockcastle River (0.0-20.3)</td>
<td>Laurel</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Sims Fork of Left Fork of Straight Creek Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Smith Creek of Franks Creek Basin</td>
<td>Letcher</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>South Fork of Cumberland River River Mile 44.3 (Blue Heron) to River Mile 54.8 (Kentucky/Tennessee State Line)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>South Fork of Rockcastle River River Mile 2.1 to White Oak Creek (River Mile 5.8)</td>
<td>Laurel</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>South Fork of Rockcastle River Rockcastle River (River Mile 0.0) to River Mile 2.1</td>
<td>Rockcastle</td>
<td>WAH, PCR, SCR, OSRW</td>
<td></td>
</tr>
<tr>
<td>Stevenson Branch of Bennetts Fork of Yellow Creek</td>
<td>Basin</td>
<td>Bell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>-------</td>
<td>-----</td>
<td>---------------------</td>
</tr>
<tr>
<td>Sulphur Creek of Wolf River of Obey River</td>
<td>Dale Hollow Reservoir Backwaters to Headwaters (1.7-5.1)</td>
<td>Clinton</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Trace Branch of Stinking Creek</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Trammel Fork of Marsh Creek</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Turkey Creek of Stinking Creek</td>
<td>Basin</td>
<td>Knox</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Tyes Fork of Bennetts Fork of Patterson Creek</td>
<td>Basin</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Cane Creek of Rockcastle River</td>
<td>Mouth to Headwaters (0.0-1.2)</td>
<td>Laurel</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary (across from Hemlock Grove at river mile 9.3 of Rock Creek) of Rock Creek of South Fork of Cumberland River</td>
<td>Mouth to Headwaters (0.0-1.2)</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Watts Branch of Rock Creek</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Watts Creek of Cumberland River</td>
<td>Basin above Camp Blanton Lake (2.4)</td>
<td>Harlan</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>White Oak Creek of Rock Creek</td>
<td>Basin</td>
<td>McCreary</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>White Oak Creek of Sinking Creek</td>
<td>Basin above River Mile 0.9 (includes Little White Oak Creek)</td>
<td>Laurel</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Wolf Creek of Clear Fork</td>
<td>Basin above Little Wolf Creek (2.0-5.9)</td>
<td>Whitley</td>
<td>WAH, PCR, PSCR, OSRW</td>
</tr>
<tr>
<td>Wood Creek of Little Rockcastle River</td>
<td>Confluence with Hazel Patch Creek (0.0) to River Mile 1.9 (Wood Creek Lake Dam)</td>
<td>Laurel</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Youngs Creek of Cumberland River</td>
<td>Basin</td>
<td>Whitley</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
</tbody>
</table>

**LAKES AND RESERVOIRS**

| Beulah (=Tyner) | Entire Reservoir | Jackson | WAH, CAH, PCR, SCR |
| Cannon Creek     | Entire Reservoir | Bell    | WAH, CAH, PCR, SCR |
| Laurel River     | Entire Reservoir | Laurel/Whitley | WAH, CAH, PCR, SCR |
| Wood Creek       | Entire Reservoir | Laurel  | WAH, CAH, PCR, SCR |

**TENNESSEE RIVER BASIN**

<p>| Blood River of Kentucky Lake (Tennessee River) | McCullough Fork to Tennessee State Line (15.15-18.7) | Calloway | WAH, PCR, SCR, OSRW |
| Clarks River of Tennessee River               | Persimmon Slough to Middle Fork Creek (28.6-30.6) | Marshall | WAH, PCR, SCR, OSRW |
| Grindstone Creek of Kentucky Lake (Blood River of Tennessee River) | Kentucky Lake Backwaters to Headwaters (0.7-2.9) | Calloway | WAH, PCR, SCR, OSRW |
| Panther Creek of Kentucky Lake (Blood River of Tennessee River) | Kentucky Lake Backwaters to Headwaters (0.5-5.7) | Calloway | WAH, PCR, SCR, OSRW |
| Soldier Creek of West Fork of Clarks River    | Mouth to South Fork of Soldier Creek (0.0-5.7) | Marshall | WAH, PCR, SCR, OSRW |
| Sugar Creek of Kentucky Lake (Tennessee River) | Kentucky Lake Backwaters to Buzzard Roost Road (2.5-3.2) | Calloway | WAH, PCR, SCR, OSRW |</p>
<table>
<thead>
<tr>
<th>Sugar Creek of West Fork Clarks River</th>
<th>Mouth to Unnamed Reservoir (0.0-3.9)</th>
<th>Graves</th>
<th>WAH, PCR, SCR, OSRW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tennessee River</td>
<td>0.4 miles upstream of White Oak Creek to 12.0 (approximately 0.4 miles above Mud Creek) (4.2-2.0)</td>
<td>Livingston/Marshall</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Tennessee River</td>
<td>River 12.0 (approximately 0.4 miles above Mud Creek) to 22.8 (Kentucky Lake Dam)</td>
<td>Livingston/Marshall</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Tennessee River</td>
<td>River Mile 23.1 (Kentucky Lake Dam) to River Mile 12.4 (12.4-23.1)</td>
<td>Livingston/McCracken/Marshall</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Trace Creek of West Fork of Clarks River</td>
<td>Mouth to Neeley Branch (0.0-3.35)</td>
<td>Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork of Clarks River</td>
<td>Mouth to Headwaters (0.0-1.7)</td>
<td>Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>West Fork of Clarks River</td>
<td>Soldier Creek to Duncan Creek (20.1-23.5)</td>
<td>Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)</td>
<td>Ralph Wright Road Crossing to Headwaters (3.6-6.8)</td>
<td>Calloway</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>OHIO RIVER BASIN (Main Stem and Minor Tributaries)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ashbys Fork</td>
<td>Mouth to Petersburg Road (SR 20) (0.0-3.7)</td>
<td>Boone</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Crooked Creek</td>
<td>Rush Creek to City Lake Dam (17.9-26.2)</td>
<td>Crittenden</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Doe Run Creek</td>
<td>Hwy 1638 to Headwaters (5.2-8.3)</td>
<td>Meade</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Double Lick Creek of Woolper Creek</td>
<td>Mouth to Headwaters (0.0-3.5)</td>
<td>Boone</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Garrison Creek</td>
<td>Mouth to Headwaters (0.0-4.65)</td>
<td>Boone</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Kinniconick Creek</td>
<td>McDowell Creek to Headwaters (5.0-50.9)</td>
<td>Lewis</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Little South Fork of Big South Fork</td>
<td>Land Use Change to Headwaters (1.2-5.9)</td>
<td>Boone</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Middle Fork of Massac Creek</td>
<td>Hines Road to Headwaters (3.1-6.4)</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 341.3 to 343.3</td>
<td>Greenup</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 436.25 to 438.0</td>
<td>Bracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 459.6 to 461.7</td>
<td>Campbell</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 559.7 to 562.0</td>
<td>Trimble</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 725.2 to 727.1</td>
<td>Hancock</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 732.9 to 734.9</td>
<td>Hancock</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 758.7 to 760.7</td>
<td>Daviess</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 784.7 to 786.6</td>
<td>Henderson</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 848.0 to River Mile 850.0</td>
<td>Union</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 856.4-852.0</td>
<td>Union</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 859.0 to River Mile 861.0</td>
<td>Union</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 865.0 to River Mile 867.0</td>
<td>Union</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 923.5 to River Mile 926.0</td>
<td>Livingston</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 927.0 to River Mile 930.0</td>
<td>Livingston</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile</td>
<td>Management Authority</td>
<td>Note</td>
</tr>
<tr>
<td>------------</td>
<td>------------</td>
<td>----------------------</td>
<td>------</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 933.0 to 937.0</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 937.0 to River Mile 939.8</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 933.1 to 943.4</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 948.2 to River Mile 949.5</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 946.8 to 949.1</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 952.7 to 956.1</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 960.0 to River Mile 962.7 (above Lock and Dam 53)</td>
<td>Ballard</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 966.3 to River Mile 969.5</td>
<td>Ballard</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)</td>
<td>Livingston</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Ohio River</td>
<td>River Mile 956.1 to 974.1</td>
<td>Ballard/McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Otter Creek</td>
<td>Ohio River to River Mile 9.7</td>
<td>Meade</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Second Creek</td>
<td>Ohio River Backwaters to Headwaters (0.2-2.7)</td>
<td>Boone</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sinking Creek</td>
<td>Hwy 259 to Headwaters (includes Blue &amp; Stony Forks)</td>
<td>Breckinridge</td>
<td>CAH, PCR, SCR</td>
</tr>
<tr>
<td>Unidentified Tributary of Big Sugar Creek</td>
<td>I-71 to Headwaters (1.0-3.4)</td>
<td>Gallatin</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Corn Creek</td>
<td>Mouth to Headwaters (0.0-2.3)</td>
<td>Trimble</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Unidentified Tributary of Massac Creek</td>
<td>Mouth to Headwaters (0.0-1.7)</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>West Fork of Massac Creek</td>
<td>SR 724 to Little Massac Creek (1.0-6.2)</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>White Oak Creek</td>
<td>Mouth (Ohio River) to River Mile 1.08</td>
<td>Greenup</td>
<td>SCR, 401 KAR 10:031, Section 2(1)(d) and 2(2) do not apply</td>
</tr>
<tr>
<td>Yellowbank Creek</td>
<td>Ohio River Backwaters to Headwaters (1.5-11.8)</td>
<td>Breckinridge</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td><strong>LAKES AND RESERVOIRS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metropolis</td>
<td>Entire Lake</td>
<td>McCracken</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td><strong>MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bayou de Chien</td>
<td>River Mile 15.4 to Headwaters (River Mile 32.9)</td>
<td>Hickman/Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Cane Creek of Bayou de Chien</td>
<td>Basin</td>
<td>Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Jackson Creek of Bayou de Chien</td>
<td>Basin</td>
<td>Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Jackson Creek</td>
<td>Mouth to Headwaters</td>
<td>Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mississippi River</td>
<td>River Mile 947.0 to River Mile 942.3</td>
<td>Hickman</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Mississippi River</td>
<td>River Mile 959.1 to River Mile 957.1</td>
<td>Carlisle</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Obion Creek</td>
<td>Hurricane Creek to Little Creek (26.35-36.55)</td>
<td>Hickman</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Sand Creek of Bayou de Chien</td>
<td>Basin</td>
<td>Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>South Fork of Bayou de Chien</td>
<td>Basin</td>
<td>Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
<tr>
<td>Terrapin Creek</td>
<td>Tennessee State Line to Headwaters (2.7-6.0)</td>
<td>Graves</td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
</tbody>
</table>

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: August 6, 2015
FILED WITH LRC: August 10, 2015 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, September 24, 2015 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Room 301D, 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 29, 2015. Send written notification of intent to be heard at the public hearing or written comments to the proposed administrative regulation to the contact person.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Peter Goodmann
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation lists the types of designated uses for surface waters of the Commonwealth, provides and describes the process for redesignation of surface waters, and lists designated uses for specific surface waters of the Commonwealth that have been assigned.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the public of the types of, provide for redesignation of, and lists designated uses assigned to surface waters of the Commonwealth. The list of designated uses is a reference tool necessary for the public to identify which designated uses apply to specific surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the Energy and Environment Cabinet to develop and conduct a comprehensive program for the management of water resources, and to prevent, abate, and control water pollution. This administrative regulation, with 401 KAR 10:026, 10:030, and 10:031, establish procedures to protect the surface waters of the Commonwealth and thus manage water resources and prevent water pollution. This administrative regulation also makes all surface waters subject to the general criteria established in 401 KAR 10:031, section 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by providing for redesignation of surface waters and by listing those uses assigned to specific waters of the Commonwealth. This enables the public to know which regulatory criteria relate to specific waters and supports compliance with the administrative regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment corrects statutory references, brings language into compliance with current regulatory requirements, adjusts names and locations of surface water intakes for domestic water supply use, and adds designated uses for twenty (20) streams or stream segments. The latter changes are being made pursuant to Section 3(2) of this regulation, and the automatic inclusion clause of 401 KAR 10:031 Section 8(1)(a)(3), based on the presence of threatened or endangered species.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to protect the Commonwealth’s Outstanding State Resource Waters.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the Cabinet to develop and conduct a comprehensive program to manage water resources and provide for the prevention, abatement, and control of water pollution. This amendment and 401 KAR 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth and thus protect water resources. This amendment applies the standards to protect designated uses established in 401 KAR 10:031 to those waters.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by updating waters listed in specific designated uses based on the most recent scientific information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to designated uses of the Commonwealth’s surface waters of the Commonwealth. All individuals, businesses, organizations, and governments that use the Commonwealth’s surface waters for residential, commercial, industrial, or recreational purposes could be impacted 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 take to comply with this administrative regulation or amendment: If a regulated entity applies for a permit for a new or expanded discharge into an OSRW, the permit limits may result in additional or reduced treatment outlays, training costs, or operational changes. Those changes depend on the nature of the discharge.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Direct and indirect savings may be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There are no additional initial costs to implement

<table>
<thead>
<tr>
<th>LAKES AND RESERVOIRS</th>
<th>Murphy's Pond</th>
<th>Entire Pond and Preserve Area</th>
<th>Hickman</th>
<th>WAH, PCR, SCR, OSRW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Swan Pond</td>
<td>Entire Lake</td>
<td>Ballard</td>
<td></td>
<td>WAH, PCR, SCR, OSRW</td>
</tr>
</tbody>
</table>

VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

880
this administrative regulation.

(b) On a continuing basis: Costs of implementation will remain the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue is a combination of General Funds appropriated by the Kentucky General Assembly and federal funds from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an 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 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 fees.

(9) Tiering: Is tiering applied? Yes, tiering is applied in this administrative regulation. The discharge requirements of 401 KAR 10:031 into a water designated as a cold water aquatic habitat are more stringent than those designated for warm water aquatic habitats. 401 KAR 10:031 also establishes special requirements for any discharge into a designated OSRW under this regulation. Waters listed in Table B that have a surface water intake are subject to the Domestic Water Supply criteria of 401 KAR 10:031.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 applies to designated uses of the surface waters of the Commonwealth. All governments that use these waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation. This administrative regulation may affect the wastewater treatment operations of local governments if they discharge into surface waters of the Commonwealth that have been re-designated by this amended regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110.

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:

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not increase administration costs.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not increase administration 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: This amended administrative regulation establishes uses designated by the cabinet that, in combination with the criteria of 401 KAR 10:031, provide for protection of water quality of the waters of the Commonwealth.

Local governments will be required to discharge effluents that assure attainment of the receiving surface water’s designated uses. Criteria that apply to these re-designations will be implemented when a permit is issued. Local governments withdrawing drinking water from these waters may have lower treatment costs because of lower pollutant loads. Additional costs may be incurred where criteria are more stringent or when new criteria are established, and fewer costs may be incurred when criteria are less stringent or have been eliminated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the “Triennial Review”) and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.

2. State compliance standards: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110.


4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There are no stricter standards or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection
Division of Water

(Amendment)


RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.1-010(224.01-049), 224.1-100(224.10-049), 224.16-050, 224.16-060, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 40 C.F.R. 136, 33 U.S.C. 1251 et seq., GOV-2008-507, 2008-531.

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 131, 136, 16 U.S.C. 1531-1544, 33 U.S.C. 1311, 1312, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. [EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation establishes the commonwealth’s surface water antidegradation policy, provides for withdrawals of waters not meeting water quality standards, and addresses sample collection and analytical methodology and mixing zones.

Section 1. Antidegradation Policy. (1) The purpose of 401 KAR 10:026 through 401 KAR 10:031 is to safeguard the surface waters of the commonwealth for their designated uses, to prevent the creation of new pollution of these waters, and to abate [existing] pollution.
Where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet’s continuing planning process required by 33 U.S.C. 1313 and 40 C.F.R. 130.5, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

(a) For point source discharges, water quality shall be maintained and protected in these waters according to the procedures specified in 401 KAR 10:030, Section 1(2)(b) or (3)(b).

(b) In allowing degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully.

(c) The cabinet shall assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices.

(3) Water quality shall be maintained and protected in a water categorized as an outstanding national resource water according to the procedures specified in 401 KAR 10:030, Section 1(1)(b).

(4) Water quality shall be maintained and protected in those waters designated as outstanding state resource waters according to the procedures specified in 401 KAR 10:031, Section 8.

(5) If potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316(a) of the Clean Water Act, 33 U.S.C. Section 1326(a), shall constitute compliance with this section; and

(b) Concentrations of toxic substances shall not exceed the chronic criteria for the protection of aquatic life and criteria for the protection of aquatic life at the edge of their critical habitat;

(g) For thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act, 33 U.S.C. Section 1326(a), shall constitute compliance with this section; and

(h) Unless assigned by the cabinet on or before September 8, 2004, there shall not be mixing zones for bioaccumulative chemicals of concern.

1. A mixing zone that was assigned by the cabinet for a bioaccumulative chemical of concern shall not expire later than September 8, 2014.

2. a. A bioaccumulative chemical of concern is one that accumulates in one (1) or more aquatic organisms by a human health bioaccumulation factor of greater than 1,000.

b. For the purposes of this administrative regulation, bioaccumulative chemicals of concern shall consist of the following:

(i) alpha-Hexachlorocyclohexane;

(ii) beta-Hexachlorocyclohexane;

(iii) Chlordane;

(iv) DDD;

(v) DDE;

(vi) DDT;

(vii) delta-Hexachlorocyclohexane;

(viii) Dieldrin;

(ix) Hexachlorobenzene;

(x) Hexachlorobutadiene;

(xi) Hexachlorocyclohexane;

(xii) Lindane;

(xiii) Mercury;

(iv) Mirex;

(xv) Octachlorostyrene;

(xvi) PCBs;

(xvii) Pentachlorobenzene;

(xviii) Photomirex;

(xix) Toxaphene;

(xx) 1,2,3,4-Tetrachlorobenzene;

(xxi) 1,2,4,5-Tetrachlorobenzene; and

(xxii) 2,3,7,8-TCDD (Dioxin).

(2) Concentrations of toxic substances that exceed the acute criteria for protection of aquatic life in 401 KAR 10:031 shall not exist within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned,

(a) A zone of initial dilution shall be assigned pursuant to subsection (3) of this section.

(b) Chronic criteria for the protection of aquatic life and criteria for the protection of human health regarding[is] the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

(3) The following requirements shall apply to a zone of initial dilution:

(a) The cabinet shall require an applicant to provide a technical evaluation for a zone of initial dilution;

(b) Concentrations of toxic substances shall not exceed the acute criteria for the protection of aquatic life at the edge of the assigned zone of initial dilution, except numeric acute criteria may be exceeded within the zone if the frequency and duration of exposure of aquatic organisms are not sufficient to cause acute toxicity; and

(c) Unless assigned on or before December 8, 1999, a zone of initial dilution for a pollutant shall not be allowed in an exceptional water.
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(4) Unless assigned on or before July 6, 2009[the most recent effective date of this administrative regulation], a zone of initial dilution for a pollutant shall be available only to a submerged high-rate multiport outfall structure and shall be limited in size to the most restrictive of the acute criteria which shall be met[following]:

(a) The acute criteria shall be met. Within ten (10) percent of the distance from the edge of the outfall structure to the edge of the regulatory mixing zone in a spatial direction;

(b) The acute criteria shall be met. Within a distance of fifty (50) times the square root of the cross-sectional area of a discharge port, in a spatial direction; or

(c) The acute criteria shall be met. In a horizontal direction within a distance of five (5) times the natural water depth that prevails under mixing zone design conditions, and exists before the installation of a discharge outlet.

Leonard K. Peters, Secretary
APPROVED BY AGENCY: August 6, 2015
FILED WITH LRC: August 10, 2015 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, September 24, 2015 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Room 301D, 300 Fair Oaks Lane, 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 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 September 30, 2015. Send written notification of intent to be heard at this public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodmann

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes general operating provisions for water quality regulations that protect the surface waters of the Commonwealth. This administrative regulation provides for withdrawal of contaminated water, sample collection and methodology, and mixing zones. This administrative regulation is also used in conjunction with 401 KAR 10:030 to implement antidegradation requirements. The purpose of this administrative regulation is to address water quality protection issues not covered in 10:026, 10:030, or 10:031 to form a complete protection program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the protection of the surface waters of the Commonwealth.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10 requires the Energy and Environment Cabinet to develop and conduct a comprehensive program for the management of water resources, and to prevent, abate, and control water pollution. This administrative regulation, with 401 KAR 10:026, 10:030, and 10:031, establishes procedures to protect the surface waters of the Commonwealth and thus manage water resources and prevent water pollution. In conjunction with 401 KAR 10:030, this administrative regulation establishes the Commonwealth’s surface water antidegradation policy, provides for withdrawals of contaminated water, and exists before the installation of a discharge outlet.

883
increase in fees 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 fees.  

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Dischargers with mixing zones and zones of initial dilution must comply with 401 KAR 10:029, Section 4. Dischargers with mixing zones must comply with the Endangered Species Act and must limit discharges of bioaccumulative chemicals of concern in mixing zones. Dischargers with zones of initial dilution must meet specific criteria specified in Section 4 of this administrative regulation.  

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT  

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation may affect the wastewater treatment operations of local government if they have new or expanded discharges into surface waters of the Commonwealth.  

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation relates to local government wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.  

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not increase administration costs.  

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not increase administration 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: The amendments are to correct technical language only. There will be no additional fiscal impacts.  

FEDERAL MANDATE ANALYSIS COMPARISON  

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including implementing the antidegradation policy.  

2. State compliance standards: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, and 224.70-110.  


4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.  

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There are no stricter standards or additional or different responsibilities or requirements.  

ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Water  
(Amendment)  


RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 176.430, 224.1-010, 015, 020, 025, 030, 035, 040, 045, 050, 060, 065, 070, 075, 080, 085, 090, 095, 100, and 224.70-110.  


NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.70-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 authorizes[declares that] the policy of the commonwealth [a] to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy.  

Section 1. Categorization and Implementation. The[These] antidegradation procedures established in this administrative regulation shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through an antidegradation implementation for a discharge located within that local government's jurisdiction to a surface water of the commonwealth. The [following] procedures established in this section shall govern implementation of the antidegradation policy of 401 KAR 10:029, Section 1, for a point source discharge. Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have a corresponding implementation procedure as follows:  

1. Outstanding national resource water. Surface waters of the commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.
### Table 1
SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER

<table>
<thead>
<tr>
<th>Stream</th>
<th>Segment</th>
<th>River Miles</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red River</td>
<td>Upstream to Island off SR 1067 to Downstream Wild River Boundary at SR 746</td>
<td>49.2 to 68.6</td>
<td>Menifee/Wolfe</td>
</tr>
<tr>
<td>Underground River System</td>
<td>Within Mammoth Cave National Park Boundary</td>
<td></td>
<td>Edmonson/Hart/Barren</td>
</tr>
<tr>
<td>Big South Fork of Cumberland River</td>
<td>Downstream Wild River Boundary to Tennessee State line</td>
<td>44.3 to 54.8</td>
<td>McCreary</td>
</tr>
<tr>
<td>Surface Waters within Reelfoot Lake National Wildlife Refuge</td>
<td>Reelfoot Lake National Wildlife Refuge Proclamation Boundary in Kentucky</td>
<td>2040 Acres</td>
<td>Fulton</td>
</tr>
<tr>
<td>War Fork Camp Creek</td>
<td>Basin above South Fork of Station Camp Creek to Steer Fork</td>
<td>0.0 to 13.8</td>
<td>Jackson</td>
</tr>
<tr>
<td>Marsh Creek</td>
<td>Mouth to 1.9 miles upstream of Kentucky 478</td>
<td>0.0 to 15.0</td>
<td>McCreary</td>
</tr>
<tr>
<td>Rock Creek</td>
<td>State border to White Oak Creek</td>
<td>4.1 to 21.9</td>
<td>McCreary</td>
</tr>
<tr>
<td>Rockcastle River</td>
<td>Lower end of Narrows to 0.2 miles downstream of Kentucky 80 bridge</td>
<td>8.95 to 22.4</td>
<td>Laurel/Pulaski</td>
</tr>
</tbody>
</table>

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:
1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10:031, Section 8; and
2. The surface water demonstrates national ecological or recreational significance.
(b) Implementation procedure.
1. Water quality shall be maintained and protected in an outstanding national resource water.
2. A new discharger or expanded discharge that may result in permanent or long-term changes in water quality shall be prohibited.
3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth categorized as an exceptional water are listed in Table 2 of this subsection.

### Table 2
SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER

<table>
<thead>
<tr>
<th>Stream</th>
<th>Segment</th>
<th>River Miles</th>
<th>County</th>
</tr>
</thead>
</table>
| BIG SANDY RIVER BASIN
| Hobbs Fork of Pigeonroost Fork of Wolf Creek | Mouth to Headwaters | 0.0-3.9 | Martin |
| Lower Pigeon Branch of Elkhorn Creek | Left Fork to Headwaters | 0.6-1.9 | Pike |
| Russell Fork of Levisa Fork of Big Sandy River | Clinch Field RR Yard off HWY 80 to Virginia State Line | 15.0-16.5 | Pike |
| Thompson Fork of Souders Branch | Mouth to Headwaters | 0.0-1.0 | Floyd |
| Toms Branch of Elkhorn Creek | Mouth to Headwaters | 0.0-1.6 | Pike |
| Unidentified Tributary of Hobbs Fork | Hobbs Fork of Pigeonroost Fork to Headwaters | 0.0-0.6 | Martin |
| Unidentified Tributary of Open Fork Paint Creek | Mouth to Headwaters | 0.0-0.8 | Morgan |
| LITTLE SANDY RIVER BASIN
<p>| Arabs Fork of Big Sinking Creek | Clay Fork to Headwaters | 0.0-5.1 | Elliott |
| Big Caney Creek | Grayson Lake to Headwaters | 1.8-15.3 | Elliott, Rowan |
| Big Sinking Creek of Little Sandy River | SR 986 to Clay Fork and Arab Fork | 6.1-15.8 | Carter, Elliott |
| Meadow Branch of Little [Fork of Little Sandy River] | Mouth to Headwaters | 0.0-1.4 | Elliott |
| Middle Fork of Little Sandy River | Mouth to Sheepskin Branch | 0.0-3.4 | Elliott |
| Nichols Fork of Little [Fork of Little] Sandy River | Green Branch to Headwaters | 0.0-2.0 | Elliott |</p>
<table>
<thead>
<tr>
<th>LICKING RIVER BASIN</th>
<th>Mileage</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laurel Creek of Little Sandy River*</td>
<td>7.6-14.7</td>
<td>Elliott, Rowan</td>
</tr>
<tr>
<td>Blackburn Creek of Licking River</td>
<td>3.8-11.7</td>
<td>Morgan</td>
</tr>
<tr>
<td>Blanket Creek of Licking River</td>
<td>0.0-1.9</td>
<td>Pendleton</td>
</tr>
<tr>
<td>Botts Fork of Brushy Fork of Licking River</td>
<td>0.0-2.1</td>
<td>Menifee</td>
</tr>
<tr>
<td>Bowman Creek of Licking River</td>
<td>0.0-6.0</td>
<td>Kenton</td>
</tr>
<tr>
<td>Brushy Fork of Meyers Creek</td>
<td>0.7-5.6</td>
<td>Menifee</td>
</tr>
<tr>
<td>Brushy Fork of South Fork of Grassy Creek</td>
<td>0.0-5.8</td>
<td>Pendleton</td>
</tr>
<tr>
<td>Bucket Branch of North Fork of Licking River</td>
<td>0.0-1.9</td>
<td>Morgan</td>
</tr>
<tr>
<td>Cedar Creek of Licking River</td>
<td>0.0-1.7</td>
<td>Robertson</td>
</tr>
<tr>
<td>Craney Creek of Licking River</td>
<td>0.0-11.2</td>
<td>Morgan, Rowan</td>
</tr>
<tr>
<td>Devils Fork of North Fork of Licking River</td>
<td>0.0-8.5</td>
<td>Elliott, Morgan</td>
</tr>
<tr>
<td>Flour Creek of Licking River</td>
<td>0.0-2.2</td>
<td>Pendleton</td>
</tr>
<tr>
<td>Grovers Creek of Kincaid Creek</td>
<td>0.5-3.4</td>
<td>Bracken, Pendleton</td>
</tr>
<tr>
<td>Licking River</td>
<td>159.5-170.6</td>
<td>Bath, Rowan</td>
</tr>
<tr>
<td>North Fork of Licking River</td>
<td>8.4-13.4</td>
<td>Morgan</td>
</tr>
<tr>
<td>Sawyers Fork of Cruises Creek</td>
<td>0.0-3.3</td>
<td>Kenton</td>
</tr>
<tr>
<td>Slabcamp Creek of Craney Creek of Licking River</td>
<td>0.0-3.7</td>
<td>Rowan</td>
</tr>
<tr>
<td>Slate Creek of Licking River</td>
<td>0.0-13.6</td>
<td>Bath</td>
</tr>
<tr>
<td>South Fork of Grass Creek of Licking River</td>
<td>0.0-19.8</td>
<td>Kenton, Pendleton</td>
</tr>
<tr>
<td>Unidentified Tributary of Shannon Creek of North Fork of Licking River</td>
<td>0.0-2.2</td>
<td>Mason</td>
</tr>
<tr>
<td>Welch Fork of Brushy Fork of Licking River</td>
<td>0.0-1.0</td>
<td>Menifee</td>
</tr>
<tr>
<td>West Creek of Licking River</td>
<td>0.0-9.8</td>
<td>Harrison, Robertson</td>
</tr>
<tr>
<td>KENTUCKY RIVER BASIN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Backbone Creek of Sixmile Creek of Kentucky River*</td>
<td>0.0-1.65</td>
<td>Franklin, Henry, Shelby</td>
</tr>
<tr>
<td>Bear Branch of North Fork of Kentucky River</td>
<td>0.3-1.2</td>
<td>Perry</td>
</tr>
<tr>
<td>Big Double Creek of Red Bird River</td>
<td>0.0-4.4</td>
<td>Clay</td>
</tr>
<tr>
<td>Bill Branch of Laurel Fork of Greasy</td>
<td>0.0-0.3</td>
<td>Leslie</td>
</tr>
<tr>
<td>Creek</td>
<td>Land Use Change (Residential) to</td>
<td>Area (sq mi)</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>----------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Billie Fork of Millers Creek</td>
<td>Mouth to Headwaters</td>
<td>2.6-8.8</td>
</tr>
<tr>
<td>Boyd Run of North Elkhorn Creek</td>
<td>Mouth to Cherry Run</td>
<td>0.0-0.9</td>
</tr>
<tr>
<td>Bill Oak Branch of Left Fork [dq]Buffalo Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-0.6</td>
</tr>
<tr>
<td>Buffalo Creek of South Fork [dq]Kentucky River</td>
<td>Mouth to Right Fork and Left Fork</td>
<td>0.0-1.6</td>
</tr>
<tr>
<td>Billskin Creek of Redbird River</td>
<td>Mouth to Headwaters</td>
<td>0.0-14.6</td>
</tr>
<tr>
<td>Cavanaugh Creek</td>
<td>South Fork [dq]Station Camp Creek to Foxtown Rd</td>
<td>0.0-8.3</td>
</tr>
<tr>
<td>Clear Creek of Kentucky River</td>
<td>Mouth to East Fork Clear Creek</td>
<td>0.0-9.0</td>
</tr>
<tr>
<td>Clemens Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-4.8</td>
</tr>
<tr>
<td>Coles Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-6.2</td>
</tr>
<tr>
<td>Craig Creek of Kentucky River</td>
<td>Mouth to Unidentified Tributary</td>
<td>0.5-2.7</td>
</tr>
<tr>
<td>Deep Ford Branch of Cutshin Creek</td>
<td>Above Pond to Headwaters</td>
<td>0.3-1.3</td>
</tr>
<tr>
<td>Drennon Creek of Kentucky River</td>
<td>Fivemile Creek to Town Branch</td>
<td>8.7-12.2</td>
</tr>
<tr>
<td>East Fork [dq]Indian Creek of Indian Creek of Red Bird River</td>
<td>West Fork [dq]Indian Creek to Headwaters</td>
<td>0.0-9.0</td>
</tr>
<tr>
<td>Elisha Creek of Red Bird River</td>
<td>Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek</td>
<td>0.8-1.8</td>
</tr>
<tr>
<td>Emily Run of Drennon Creek</td>
<td>Mouth to Unidentified Tributary</td>
<td>0.0-4.0</td>
</tr>
<tr>
<td>Evans Fork of Billey Fork of Millers Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.0</td>
</tr>
<tr>
<td>Falling Rock Branch of Clemons Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-0.7</td>
</tr>
<tr>
<td>Gilber's Creek of Kentucky River</td>
<td>Mouth to Unidentified Tributary</td>
<td>0.0 to 2.6</td>
</tr>
<tr>
<td>Gladie Creek of Red River</td>
<td>Land Use Change to Long Branch</td>
<td>0.35 to 7.3</td>
</tr>
<tr>
<td>Goose Creek of South Fork [dq]Kentucky River</td>
<td>Mouth to Laurel Creek</td>
<td>0.0-9.1</td>
</tr>
<tr>
<td>Griers Creek of Kentucky River</td>
<td>Kentucky River Backwaters to Unidentified Tributary</td>
<td>0.1 to 3.5</td>
</tr>
<tr>
<td>Grindstone Creek of Kentucky River</td>
<td>Kentucky River Backwaters to Headwaters</td>
<td>0.1 to 1.9</td>
</tr>
<tr>
<td>Hardwick Creek of Red River</td>
<td>Mouth to Little Hardwick Creek</td>
<td>0.0-3.25</td>
</tr>
<tr>
<td>Hell For Certain of Middle Fork [dq] Red River</td>
<td>Mouth to Big Fork</td>
<td>0.0-2.1</td>
</tr>
<tr>
<td>Hines Creek of Kentucky River</td>
<td>Kentucky River Backwaters to Unidentified Tributary</td>
<td>0.1 to 1.9</td>
</tr>
<tr>
<td>Honey Branch of Greasy Creek of Middle Fork [dq]Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.35</td>
</tr>
<tr>
<td>River Name</td>
<td>Reach</td>
<td>Mileage Range</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>--------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Hopper Cave Branch of Cavanaugh Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.8</td>
</tr>
<tr>
<td>Indian Creek of Eagle Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0 to 5.4</td>
</tr>
<tr>
<td>Indian Fork of Sixmile Creek of Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.3</td>
</tr>
<tr>
<td>John Carpenter Fork of Clemons Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.2</td>
</tr>
<tr>
<td>Joyce Fork of Cortland Fork</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.2</td>
</tr>
<tr>
<td>Katies Creek of Red Bird River</td>
<td>Mouth to Headwaters</td>
<td>0.0-4.0</td>
</tr>
<tr>
<td>Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek*</td>
<td>Cortland Fork to Big Branch</td>
<td>0.0-3.75</td>
</tr>
<tr>
<td>Left Fork of Big Double Creek of Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.5</td>
</tr>
<tr>
<td>Line Fork of North Fork of Kentucky River</td>
<td>Defeated Creek to Headwaters</td>
<td>12.2-28.6</td>
</tr>
<tr>
<td>Little Middle Fork of Elisha Creek of Red Bird River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-0.75</td>
</tr>
<tr>
<td>Little Millseat Branch of Clemons Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.2</td>
</tr>
<tr>
<td>Little Sixmile Creek of Sixmile Creek of Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>0.0-5.3</td>
</tr>
<tr>
<td>Little Sturgeon Creek of Sturgeon Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.0</td>
</tr>
<tr>
<td>Low Gap Branch of Elk Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-0.8</td>
</tr>
<tr>
<td>Lower Devil Creek of North Fork of Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>0.0-4.65</td>
</tr>
<tr>
<td>Lower Howard Creek of Kentucky River</td>
<td>Mouth to West Fork</td>
<td>0.0-2.7</td>
</tr>
<tr>
<td>Lulbegrud Creek of Red River</td>
<td>Mouth to Falls Branch</td>
<td>0.0-7.3</td>
</tr>
<tr>
<td>Middle Fork of Kentucky River</td>
<td>Mouth to Upper Twin Creek</td>
<td>0.0-12.7</td>
</tr>
<tr>
<td>Middle Fork of Kentucky River</td>
<td>Hurts Creek to Greasy Creek</td>
<td>75.6-85.8</td>
</tr>
<tr>
<td>Middle Fork of Red River</td>
<td>South Fork of Red River to Natural Bridge State Park Lake</td>
<td>1.8-8.5 (2.2)</td>
</tr>
<tr>
<td>Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek [a]</td>
<td>Mouth to Headwaters</td>
<td>0.0-0.7</td>
</tr>
<tr>
<td>Mill Creek of Kentucky River</td>
<td>Upstream of Mouth to Headwaters</td>
<td>0.5-8.3</td>
</tr>
<tr>
<td>Millseat Branch of Clemons Fork of Buckhorn Creek [a]</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.85</td>
</tr>
<tr>
<td>Muddy Creek of Kentucky River</td>
<td>Elliston, Kentucky to Viney Creek</td>
<td>13.8-20.65</td>
</tr>
<tr>
<td>Musselman Creek of Eagle Creek [a]</td>
<td>Mouth to Headwaters</td>
<td>0.0-9.0</td>
</tr>
<tr>
<td>Red Bird River of South Fork [a]</td>
<td>Mouth to Big Creek</td>
<td>0.0-15.3</td>
</tr>
<tr>
<td>Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>Length (miles)</td>
</tr>
<tr>
<td>---------------------------------------------------------</td>
<td>---------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Right Fork of Buffalo Creek of Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>0.0-11.75 Owosley</td>
</tr>
<tr>
<td>Right Fork of Elisha Creek of Redbird River</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.3 Leslie</td>
</tr>
<tr>
<td>Roaring Fork of Lewis Fork of Buckhorn Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-0.9 Breathitt</td>
</tr>
<tr>
<td>Rock Lick Creek of South Fork of Station Camp Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-9.6 Jackson</td>
</tr>
<tr>
<td>Sand Ripple Creek of Kentucky River</td>
<td>Kentucky River Backwaters to Headwaters</td>
<td>0.1-3.9 Henry</td>
</tr>
<tr>
<td>Severn Creek of Kentucky River</td>
<td>Kentucky River Backwaters to North Fork Severn Creek</td>
<td>1.35-3.0 Owen</td>
</tr>
<tr>
<td>Shaker Creek of Kentucky River</td>
<td>Near Mouth to Shawnee Run</td>
<td>0.1-1.4 Mercer</td>
</tr>
<tr>
<td>Shelly Rock Fork of Millseat Branch of Clemens Fork</td>
<td>Mouth to Headwaters</td>
<td>0.0-0.6 Breathitt</td>
</tr>
<tr>
<td>Sixmile Creek of Kentucky River</td>
<td>Little Sixmile Creek to Dam</td>
<td>7.1-15.3 Henry</td>
</tr>
<tr>
<td>South Fork of Kentucky River</td>
<td>Mouth to Sexton Creek</td>
<td>0.0-27.8 Owosley</td>
</tr>
<tr>
<td>South Fork of Red River</td>
<td>Mouth to Sandlick Fork</td>
<td>0.0-4.2 Powell</td>
</tr>
<tr>
<td>South Fork of Station Camp Creek of Kentucky River</td>
<td>Mouth to Rock Lick Creek</td>
<td>0.0-9.7 Jackson</td>
</tr>
<tr>
<td>Spruce Branch of Redbird River</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.0 Clay</td>
</tr>
<tr>
<td>Station Camp Creek of Kentucky River</td>
<td>Landuse Change to South Fork Station Camp Creek</td>
<td>18.0-22.8 Estill</td>
</tr>
<tr>
<td>Steeles Run of Elkhorn Creek</td>
<td>Mouth to Unidentified Tributary</td>
<td>0.0-4.2 Fayette</td>
</tr>
<tr>
<td>Steer Fork of War Fork of Station Camp Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-2.7 Jackson</td>
</tr>
<tr>
<td>Sturgeon Creek of Kentucky River</td>
<td>Duck Fork to Little Sturgeon Creek</td>
<td>1.3-13.7 Lee, Owosley</td>
</tr>
<tr>
<td>Sugar Creek of Redbird River</td>
<td>Landuse Change to Headwaters</td>
<td>0.6-5.4 Leslie</td>
</tr>
<tr>
<td>Sulphur Lick Creek of Elkhorn Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-5.2 Franklin</td>
</tr>
<tr>
<td>Unidentified Tributary of Cawood Branch of Beech Fork</td>
<td>Mouth to Headwaters</td>
<td>0.0-2.1 Leslie</td>
</tr>
<tr>
<td>Unidentified Tributary of Cedar Creek of Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.4 Owen</td>
</tr>
<tr>
<td>Unidentified Tributary of Glens Creek of Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.9 Woodford</td>
</tr>
<tr>
<td>Unidentified Tributary of Jacks Creek of Kentucky River</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.5 Madison</td>
</tr>
<tr>
<td>Unidentified Tributary of Kentucky River</td>
<td>Land Use Change to Headwaters</td>
<td>0.1-1.4 Franklin</td>
</tr>
<tr>
<td>Unidentified</td>
<td>Mouth to Headwaters</td>
<td>0.0-0.6 Letcher</td>
</tr>
<tr>
<td>Tributary of Line Fork of North Fork [of] Kentucky River* (LCW)</td>
<td>Mouth to Headwaters</td>
<td>Length</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>---------------------</td>
<td>--------</td>
</tr>
<tr>
<td>War Fork of Station Camp Creek*</td>
<td>Mouth to Headwaters</td>
<td>0.0-13.8</td>
</tr>
<tr>
<td>Watches Fork of Laurel Fork of Left Fork [of] Buffalo Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.0</td>
</tr>
<tr>
<td>Wolfpen Creek of Red River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.6</td>
</tr>
</tbody>
</table>

### SALT RIVER BASIN

<table>
<thead>
<tr>
<th>Tributary of Salt River</th>
<th>Mouth to Headwaters</th>
<th>Length</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brashears Creek of Salt River</td>
<td>Guist Creek to Bullskin and Clear Creek</td>
<td>13.0-25.9</td>
<td>Shelby, Spencer</td>
</tr>
<tr>
<td>Cedar Creek of Salt River</td>
<td>Mouth to Greens Branch</td>
<td>0.0-5.2</td>
<td>Bullitt</td>
</tr>
<tr>
<td>Chaplin River of Salt River</td>
<td>Thompson Creek to Cornishville, KY</td>
<td>40.9-54.2</td>
<td>Washington</td>
</tr>
<tr>
<td>Doctors Fork of Chaplin River</td>
<td>Mouth to Begley Branch</td>
<td>0.0-3.8</td>
<td>Boyle</td>
</tr>
<tr>
<td>Guist Creek of Brashears Creek</td>
<td>Mouth to Jeptha Creek</td>
<td>0.0-15.7</td>
<td>Spencer</td>
</tr>
<tr>
<td>Harts Run of Wilson Creek of Rolling Fork [of] Salt River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.8</td>
<td>Bullitt</td>
</tr>
<tr>
<td>Indian Creek of Thompson Creek of Chaplin River of Salt River</td>
<td>Mouth to Unidentified Tributary</td>
<td>0.0-0.9</td>
<td>Mercer</td>
</tr>
<tr>
<td>Lick Creek of Long Lick Creek of Salt River*</td>
<td>Mouth to 0.1miles below Dam</td>
<td>0.0-4.0</td>
<td>[0.0-4.1] Washington</td>
</tr>
<tr>
<td>Otter Creek of Rolling Fork of Salt River*</td>
<td>Landuse Change to confluence of East Fork and Middle Fork Otter Creek</td>
<td>1.7-2.9</td>
<td>Larue</td>
</tr>
<tr>
<td>Overalls Creek of Wilson Creek of Rolling Fork of Salt River*</td>
<td>Mouth to Headwaters of Middle Fork [of] Overalls Creek</td>
<td>0.0-3.2</td>
<td>Bullitt</td>
</tr>
<tr>
<td>Salt Lick Creek of Rolling Fork of Salt River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-8.6</td>
<td>Larue, Marion</td>
</tr>
<tr>
<td>Sulphur Creek of Chaplin River</td>
<td>Mouth to confluence of Cheese Lick and Brush Creek</td>
<td>0.0-10.0</td>
<td>Anderson, Mercer, Washington</td>
</tr>
<tr>
<td>Unidentified Tributary of Glens Creek of Chaplin River</td>
<td>Mouth to Headwaters</td>
<td>0.0-2.3</td>
<td>Washington</td>
</tr>
<tr>
<td>West Fork [of] Otter Creek of Rolling Fork of Salt River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-5.1</td>
<td>Larue</td>
</tr>
<tr>
<td>Wilson Creek of Rolling Fork of Salt River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-18.4</td>
<td>Bullitt, Nelson</td>
</tr>
</tbody>
</table>

### GREEN RIVER BASIN

<table>
<thead>
<tr>
<th>Tributary of Green River*</th>
<th>Mouth to Headwaters</th>
<th>Length</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beaverdam Creek of Green River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-14.5</td>
<td>Edmonson</td>
</tr>
<tr>
<td>Big Brush Creek of Green River*</td>
<td>Brush Creek to Poplar Grove Branch</td>
<td>13.0-17.3</td>
<td>Green</td>
</tr>
<tr>
<td>Cane Run of Nolin River*</td>
<td>Nolin River Lake Backwaters to Headwaters</td>
<td>0.8-6.5</td>
<td>Hart</td>
</tr>
<tr>
<td>Caney Fork of Peter Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-6.7</td>
<td>Barren</td>
</tr>
<tr>
<td>Clifty Creek of Rough River*</td>
<td>Barton Run to Western Kentucky Parkway</td>
<td>7.3-17.2</td>
<td>Grayson</td>
</tr>
<tr>
<td>Clifty Creek of Wolf Lick Creek</td>
<td>Little Clifty Creek to Sulphur Lick</td>
<td>7.6-13.4</td>
<td>Todd</td>
</tr>
<tr>
<td>Stream Name</td>
<td>Begin Section</td>
<td>End Section</td>
<td>Length (in)</td>
</tr>
<tr>
<td>------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>East Fork of Little Barren River</td>
<td>Red Lick to Flat Creek</td>
<td></td>
<td>18.9-20.7</td>
</tr>
<tr>
<td>Elk Lick Creek</td>
<td>Duck Lick to Barren Fork Edger Creek</td>
<td></td>
<td>3.6 to 11.8</td>
</tr>
<tr>
<td>Ellis Fork of Damron Creek</td>
<td>Mouth to Headwaters</td>
<td></td>
<td>0.0-3.2</td>
</tr>
<tr>
<td>Failing Timber Creek of Skagg Creek</td>
<td>Landuse Change to Headwaters</td>
<td></td>
<td>10.8-15.2</td>
</tr>
<tr>
<td>Fiddlers Creek of North Fork</td>
<td>Mouth to Headwaters</td>
<td></td>
<td>0.0-5.9</td>
</tr>
<tr>
<td>Forbes Creek of Buck Creek</td>
<td>Mouth to Unidentified Tributary</td>
<td></td>
<td>0.0-4.1</td>
</tr>
<tr>
<td>Gasper River of Barren River</td>
<td>Clear Fork to Wiggingston Creek</td>
<td></td>
<td>17.2-35.6</td>
</tr>
<tr>
<td>Goose Creek of Green River</td>
<td>Mouth to Little Goose Creek</td>
<td></td>
<td>0.0-8.5</td>
</tr>
<tr>
<td>Green River</td>
<td>Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek</td>
<td>185.0-250.3</td>
<td>Edmonson, Hart</td>
</tr>
<tr>
<td>Halls Creek of Rough River</td>
<td>Unidentified Tributary to Headwaters</td>
<td></td>
<td>7.15-9.6</td>
</tr>
<tr>
<td>Lick Creek of West Fork</td>
<td>Mouth to Headwaters</td>
<td></td>
<td>0.0-10.2</td>
</tr>
<tr>
<td>Linders Creek of Rough River</td>
<td>Mouth to Sutzer Creek</td>
<td></td>
<td>0.0-7.9</td>
</tr>
<tr>
<td>Little Beaverdam Creek of Green River</td>
<td>Mouth to SR 743</td>
<td></td>
<td>0.0-11.65</td>
</tr>
<tr>
<td>Little Short Creek of Rough River</td>
<td>Mouth to Headwaters</td>
<td></td>
<td>0.0-3.1</td>
</tr>
<tr>
<td>Lynn Camp Creek of Green River</td>
<td>Mouth to Lindy Creek</td>
<td></td>
<td>0.0-8.5</td>
</tr>
<tr>
<td>McFarland Creek of West Fork [9] Pond River</td>
<td>Grays Branch to Unidentified Tributary</td>
<td></td>
<td>1.5-5.0</td>
</tr>
<tr>
<td>Meeting Creek of Rough River</td>
<td>Little Meeting Creek to Petty Branch</td>
<td></td>
<td>5.2-14.0</td>
</tr>
<tr>
<td>Muddy Creek of Caney Creek of Rough River</td>
<td>Landuse Change to Headwaters</td>
<td></td>
<td>13.0-15.5</td>
</tr>
<tr>
<td>North Fork of Rough River</td>
<td>Buffalo Creek to Reservoir Dam</td>
<td></td>
<td>22.1-26.9</td>
</tr>
<tr>
<td>Peter Creek of Barren River</td>
<td>Caney Fork to Dry Fork</td>
<td></td>
<td>11.6-18.5</td>
</tr>
<tr>
<td>Pond Run of Rough River</td>
<td>Landuse Change to Headwaters</td>
<td></td>
<td>1.4-6.8</td>
</tr>
<tr>
<td>Puncheon Creek</td>
<td>Mouth to Tennessee State Line</td>
<td></td>
<td>0.0-3.8</td>
</tr>
<tr>
<td>Rough River</td>
<td>Linders Creek to Vertrees Creek</td>
<td></td>
<td>138.0-149.4</td>
</tr>
<tr>
<td>Russell Creek of Green River</td>
<td>Mouth to Columbia WWTP</td>
<td></td>
<td>0.0-40.0</td>
</tr>
<tr>
<td>Russell Creek of Green River</td>
<td>Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek</td>
<td>56.9-66.3</td>
<td>Adair, Russell</td>
</tr>
<tr>
<td>Sixes Creek of Indian Camp Creek</td>
<td>Wild Branch to Headwaters</td>
<td></td>
<td>2.0-7.5</td>
</tr>
<tr>
<td>Sulphur Branch of Alexander Creek</td>
<td>Mouth to Headwaters</td>
<td></td>
<td>0.0-3.0</td>
</tr>
<tr>
<td>Thompson Branch of West Fork [9] Drakes Creek</td>
<td>Webb Branch to Tennessee State Line</td>
<td></td>
<td>0.3-1.5</td>
</tr>
<tr>
<td>Trammel Creek of Wills Creek</td>
<td>Mouth to Tennessee State</td>
<td></td>
<td>0.0-30.6</td>
</tr>
<tr>
<td>Drakes Creek</td>
<td>Line</td>
<td>Length</td>
<td>County</td>
</tr>
<tr>
<td>--------------</td>
<td>------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>Unidentified Tributary of Green River</td>
<td>Landuse Change to Headwaters</td>
<td>1.7-3.2</td>
<td>Adair</td>
</tr>
<tr>
<td>Unidentified Tributary of White Oak Creek</td>
<td>Hovious Rd Crossing to SR 76</td>
<td>0.4-2.9</td>
<td>Adair</td>
</tr>
<tr>
<td>West Fork [ad]Pond River</td>
<td>Unidentified Tributary to East Branch [ad]Pond River</td>
<td>12.45-22.5</td>
<td>Christian</td>
</tr>
</tbody>
</table>

**LOWER CUMBERLAND RIVER BASIN**

| Crooked Creek of Cumberland River | Energy Lake Backwaters to Headwaters | 3.0-9.4 | Trigg |
| Donaldson Creek of Cumberland River | Craig Branch to Unidentified Tributary | 3.2-7.2 | Trigg |
| Elk Fork [ad] Red River of Cumberland River | Tennessee State Line to Dry Branch | 7.5-23.1 | Todd |
| Sugar Creek of Cumberland River | Lick Creek to Unidentified Tributary | 2.2-6.9 | Livingston |
| West Fork Red River | Tennessee State Line to Montgomery Creek | 14.75-26.85 | Christian |
| Whippoorwill Creek of Red River of Cumberland River | Mouth to Vicks Branch | 0.0-13.2 | Logan |

**TENNESSEE RIVER BASIN**

| Blood River of Kentucky Lake (Tennessee River) | McCullough Fork to Tennessee State Line | 15.15-18.7 | Calloway |
| Clarks River of Tennessee River | Persimmon Slough to Middle Fork Creek | 28.7-30.7 | Marshall |
| Grindstone Creek of Kentucky Lake (Blood River of Tennessee River) | Kentucky Lake Backwaters to Headwaters | 0.7-2.9 | Calloway |
| Panther Creek of Kentucky Lake (Blood River of Tennessee River) | Kentucky Lake Backwaters to Headwaters | 0.5-5.7 | Calloway |
| Soldier Creek of West Fork [ad] Clarks River | Mouth to South Fork of Soldier Creek | 0.0-5.7 | Marshall |
| Sugar Creek of Kentucky Lake (Tennessee River) | Kentucky Lake Backwaters to Buzzard Roost Road | 2.5-3.2 | Calloway |
| Sugar Creek of West Fork Clarks River | Mouth to Unnamed Reservoir | 0.0-3.9 | Graves |
| Trace Creek of West Fork Clarks River | Mouth to Neeley Branch | 0.0-3.35 | Graves |
| Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork [ad]Clarks River | Mouth to Headwaters | 0.0-1.7 | Graves |
| West Fork [ad]Clarks River | Soldier Creek to Duncan Creek | 20.1-23.5 | Graves |
| Wildcat Creek of Kentucky Lake (Blood River of Tennessee River) | Ralph Wright Road Crossing to Headwaters | 2.8-6.8 | Calloway |

**TRADEWATER RIVER BASIN**

<p>| East Fork of Flynn Fork of Tradewater River | Landuse Change to Headwaters | 2.15-4.6 | Caldwell |</p>
<table>
<thead>
<tr>
<th>Stream Name</th>
<th>Location</th>
<th>Length (mi)</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Piney Creek of Tradewater River</td>
<td>Lake Beshear Backwaters to Headwaters</td>
<td>4.5-10.2</td>
<td>Caldwell</td>
</tr>
<tr>
<td>Sandlick Creek of Tradewater River</td>
<td>Camp Creek to Headwaters</td>
<td>4.5-8.6</td>
<td>Christian</td>
</tr>
<tr>
<td>Tradewater River</td>
<td>Dripping Springs Branch to Buntin Lake Dam</td>
<td>126.2-133.3</td>
<td>Christian</td>
</tr>
<tr>
<td>Unidentified Tributary of Piney Creek of Tradewater River</td>
<td>Mouth to Headwaters</td>
<td>0.0-2.9</td>
<td>Caldwell</td>
</tr>
<tr>
<td>Unidentified Tributary of Sandlick Creek of Tradewater River</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.4</td>
<td>Christian</td>
</tr>
<tr>
<td>OHIO RIVER BASIN (Minor Tributaries)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ashbys Fork of Woolper Creek</td>
<td>Mouth to SR 20</td>
<td>0.0-3.7</td>
<td>Boone</td>
</tr>
<tr>
<td>Crooked Creek*</td>
<td>Rush Creek to City Lake Dam</td>
<td>18.1-26.4</td>
<td>Crittenden</td>
</tr>
<tr>
<td>Double Lick Creek of Woolper Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.5</td>
<td>Boone</td>
</tr>
<tr>
<td>Garrison Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-4.85</td>
<td>Boone</td>
</tr>
<tr>
<td>Kinniconick Creek</td>
<td>McDowell Creek to Headwaters</td>
<td>5.2-50.9</td>
<td>Lewis</td>
</tr>
<tr>
<td>Little South Fork of Big South Fork</td>
<td>Land Use Change to Headwaters</td>
<td>1.2-5.8</td>
<td>Boone</td>
</tr>
<tr>
<td>Middle Fork of Massac Creek</td>
<td>Hines Road to Headwaters (Pond)</td>
<td>3.1-6.4</td>
<td>McCracken</td>
</tr>
<tr>
<td>Second Creek</td>
<td>Ohio River Backwaters to Headwaters</td>
<td>0.4-2.9</td>
<td>Boone</td>
</tr>
<tr>
<td>Unidentified Tributary of Big Sugar Creek</td>
<td>I-71 to Headwaters</td>
<td>1.0-1.8</td>
<td>Gallatin</td>
</tr>
<tr>
<td>Unidentified Tributary of Corn Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-2.3</td>
<td>Trimble</td>
</tr>
<tr>
<td>Unidentified Tributary of Massac Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.7</td>
<td>McCracken</td>
</tr>
<tr>
<td>West Fork [q]Massac Creek</td>
<td>SR 724 to Little Massac Creek</td>
<td>3.6-6.2</td>
<td>McCracken</td>
</tr>
<tr>
<td>Yellowbank Creek</td>
<td>Ohio River Backwaters to Headwaters</td>
<td>2.0-12.0</td>
<td>Breckinridge</td>
</tr>
<tr>
<td>LAKE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metropolis</td>
<td>Entire Lake</td>
<td></td>
<td>McCracken</td>
</tr>
<tr>
<td>MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jackson Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.0</td>
<td>Graves</td>
</tr>
<tr>
<td>Obion Creek</td>
<td>Hurricane Creek to Little Creek</td>
<td>26.7-37.1</td>
<td>Hickman</td>
</tr>
<tr>
<td>Terrapin Creek</td>
<td>Tennessee State Line to Confluence of East and West Forks</td>
<td>2.7-6.0</td>
<td>Graves</td>
</tr>
<tr>
<td>LAKES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Murphy's Pond</td>
<td>Entire Pond and Preserve Area</td>
<td></td>
<td>Hickman</td>
</tr>
<tr>
<td>Swan</td>
<td>Entire Lake</td>
<td></td>
<td>Ballard</td>
</tr>
<tr>
<td>UPPER CUMBERLAND RIVER BASIN</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bad Branch of Poor Fork [q]Cumberland River</td>
<td>Mouth to Headwaters</td>
<td>0.0-3.0</td>
<td>Letcher</td>
</tr>
<tr>
<td>Bark Camp Creek of Cumberland River</td>
<td>Mouth to Martins Fork</td>
<td>0.0-4.0</td>
<td>Whitley</td>
</tr>
<tr>
<td>Beaver Creek of Cumberland River</td>
<td>Lake Cumberland Backwaters to confluence of Freeman Fork and</td>
<td>2.4-7.1</td>
<td>McCreary</td>
</tr>
<tr>
<td>Creek Name</td>
<td>Location Details</td>
<td>Distance (mi)</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>---------------</td>
<td></td>
</tr>
<tr>
<td>Bee Lick Creek of Brushy Creek of Buck Creek</td>
<td>Mouth to Warren Branch</td>
<td>0.0-5.7</td>
<td></td>
</tr>
<tr>
<td>Brownies Creek of Cumberland River</td>
<td>Blacksnake Branch to Headwaters</td>
<td>9.3-16.75</td>
<td></td>
</tr>
<tr>
<td>Brush Creek of Roundstone Creek</td>
<td>Wolf Creek to Reemergence of Sinking Creek</td>
<td>1.1-7.6</td>
<td></td>
</tr>
<tr>
<td>Brushy Creek of Buck Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-16.5</td>
<td></td>
</tr>
<tr>
<td>Buck Creek of Cumberland River</td>
<td>0.8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters</td>
<td>11.7-55.0</td>
<td></td>
</tr>
<tr>
<td>Bunches Creek of Cumberland River</td>
<td>Mouth to confluence of Amos Falls Branch and Seminary Branch</td>
<td>0.0-3.3</td>
<td></td>
</tr>
<tr>
<td>Cane Creek of Rockcastle River</td>
<td>Mouth to Headwaters</td>
<td>0.0-11.85</td>
<td></td>
</tr>
<tr>
<td>Clear Creek of Roundstone Creek</td>
<td>Scaffold Cane Branch to Davis Branch</td>
<td>3.45-7.8</td>
<td></td>
</tr>
<tr>
<td>Clifty Creek of Brushy Creek of Buck Creek</td>
<td>Mouth to Rocky Branch</td>
<td>0.0-2.7</td>
<td></td>
</tr>
<tr>
<td>Cogur Fork of Indian Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-7.95</td>
<td></td>
</tr>
<tr>
<td>Cumberland River</td>
<td>Wild River Boundaries</td>
<td>549.65-566.1</td>
<td></td>
</tr>
<tr>
<td>Dog Slaughter Creek of Cumberland River</td>
<td>Mouth to confluence of North Fork and South Fork</td>
<td>0.05-1.15</td>
<td></td>
</tr>
<tr>
<td>Eagle Creek of Cumberland River</td>
<td>Mouth to Headwaters</td>
<td>0.05-6.75</td>
<td></td>
</tr>
<tr>
<td>Fugitt Creek of Clover Fork of Cumberland River</td>
<td>Landuse Change to Headwaters</td>
<td>0.5-4.6</td>
<td></td>
</tr>
<tr>
<td>Horse Lick Creek of Rockcastle River</td>
<td>Mouth to Clover Bottom</td>
<td>0.0-12.3</td>
<td></td>
</tr>
<tr>
<td>Howards Creek of Illwill Creek of Wolf River</td>
<td>Dale Hollow Reservoir Backwaters to Headwaters</td>
<td>0.6-4.6</td>
<td></td>
</tr>
<tr>
<td>Indian Creek of Cumberland River</td>
<td>Laurel Fork to Barren Fork</td>
<td>2.4-6.8</td>
<td></td>
</tr>
<tr>
<td>Jackie Branch of Bark Camp Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.65</td>
<td></td>
</tr>
<tr>
<td>Kettle Creek of Cumberland River</td>
<td>State line to Wells Creek</td>
<td>1.75-6.1</td>
<td></td>
</tr>
<tr>
<td>Kilburn Fork of Indian Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-7.2</td>
<td></td>
</tr>
<tr>
<td>Laurel Creek of Marsh Creek</td>
<td>Mouth to Laurel Creek Dam</td>
<td>0.0-9.0</td>
<td></td>
</tr>
<tr>
<td>Laurel Fork of Clear Fork of Cumberland River</td>
<td>Tennessee State Line to Tiny Branch</td>
<td>4.3-13.1</td>
<td></td>
</tr>
<tr>
<td>Laurel Fork of Middle Fork of Rockcastle River</td>
<td>Mouth to Headwaters</td>
<td>0.0-12.3</td>
<td></td>
</tr>
<tr>
<td>Left Fork of Fugitt Creek of Clover Fork of Cumberland River</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.5</td>
<td></td>
</tr>
<tr>
<td>Little South Fork of Cumberland River</td>
<td>Lake Cumberland Backwaters to Langham Branch</td>
<td>4.4-35.5</td>
<td></td>
</tr>
<tr>
<td>Little White Oak Creek of White Oak Creek</td>
<td>Mouth to Headwaters</td>
<td>0.0-2.6</td>
<td></td>
</tr>
<tr>
<td>Creek Name</td>
<td>Headwaters</td>
<td>Length</td>
<td>County</td>
</tr>
<tr>
<td>------------</td>
<td>------------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>Marsh Creek of Cumberland River*</td>
<td>Laurel Creek to Kentucky/Tennessee State Line</td>
<td>8.8-26.5</td>
<td>McCreary</td>
</tr>
<tr>
<td>Martins Fork of Cumberland River</td>
<td>Rough Branch to Headwaters</td>
<td>27.2-32.7</td>
<td>Harlan</td>
</tr>
<tr>
<td>McFarland Creek of Cumberland River</td>
<td>Little McFarland Creek to Spring Branch</td>
<td>0.8-6.2</td>
<td>Monroe</td>
</tr>
<tr>
<td>Meshack Creek of Cumberland River</td>
<td>Mouth to Pitcock Branch</td>
<td>0.0-2.8</td>
<td>Monroe</td>
</tr>
<tr>
<td>Middle Fork of Rockcastle River*</td>
<td>Mouth to confluence of Indian Creek and Laurel Fork</td>
<td>0.0-7.9</td>
<td>Jackson</td>
</tr>
<tr>
<td>Mud Camp Creek of Cumberland River*</td>
<td>Mouth to Collins Branch</td>
<td>0.0-1.2</td>
<td>Cumberland</td>
</tr>
<tr>
<td>Mud Camp Creek of Cumberland River*</td>
<td>Unidentified Tributary to Headwaters</td>
<td>3.8-8.8</td>
<td>Cumberland, Monroe</td>
</tr>
<tr>
<td>Otter Creek of Cumberland River</td>
<td>Lake Cumberland Backwaters to Carpenter Fork</td>
<td>14.0-22.1</td>
<td>Wayne</td>
</tr>
<tr>
<td>Poor Fork of Cumberland River</td>
<td>Franks Creek to Headwaters</td>
<td>42.1-52.4</td>
<td>Letcher</td>
</tr>
<tr>
<td>Presley House Branch of Poor Fork of Cumberland River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.5</td>
<td>Letcher</td>
</tr>
<tr>
<td>Puncheon Camp Branch of Rock Creek of Big South Fork of Cumberland River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.85</td>
<td>McCreary</td>
</tr>
<tr>
<td>Rock Creek of Big South Fork of Cumberland River*</td>
<td>White Oak Creek to Tennessee State Line</td>
<td>4.0-21.5</td>
<td>McCreary</td>
</tr>
<tr>
<td>Rockcastle River</td>
<td>Wild River Boundaries</td>
<td>8.95-54.7</td>
<td>Laurel, Pulaski</td>
</tr>
<tr>
<td>Shillalah Creek of Clear Fork of Yellow Creek*</td>
<td>Mouth to Headwaters</td>
<td>0.0-5.5</td>
<td>Bell</td>
</tr>
<tr>
<td>Sinking Creek of Rockcastle River*</td>
<td>Mouth to White Oak Creek</td>
<td>0.0-9.9</td>
<td>Laurel</td>
</tr>
<tr>
<td>Sulphur Creek of Wolf River of Obey River*</td>
<td>Dale Hollow Reservoir Backwaters to Headwaters</td>
<td>1.7-5.1</td>
<td>Clinton</td>
</tr>
<tr>
<td>South Fork of Dog Slaughter Creek of Cumberland River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-4.6</td>
<td>Whitley</td>
</tr>
<tr>
<td>South Fork of Rockcastle River*</td>
<td>Mouth to White Oak Creek</td>
<td>0.0-5.8</td>
<td>Laurel</td>
</tr>
<tr>
<td>Unidentified Tributary of Cane Creek of Rockcastle River</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.2</td>
<td>Laurel</td>
</tr>
<tr>
<td>Unidentified Tributary (across from Hemlock Grove) of Rock Creek of Big South Fork of Cumberland River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.3</td>
<td>McCreary</td>
</tr>
<tr>
<td>Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of Big South Fork of Cumberland River*</td>
<td>Mouth to Headwaters</td>
<td>0.0-1.2</td>
<td>McCreary</td>
</tr>
<tr>
<td>Watts Branch of Rock Creek of</td>
<td>Mouth to Headwaters</td>
<td>0.0-2.6</td>
<td>McCreary</td>
</tr>
</tbody>
</table>
"Waterbodies in the cabinet’s reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if the surface water (any of the following criteria are met):

1. [Surface water] is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;
2. [Surface water] is designated as an outstanding state resource water as established in 401 KAR 10:031, Section 8(1)(a1., and 2., and 3.) and Section 8(1)(b);
3. [Surface water] contains at least one of the following:
   a. [Fish community] that is rated "excellent" by the use of the Index of Biotic Integrity included in Development and Application of the Kentucky Index of Biotic Integrity (KIBI), 2003; or
   b. [Macroinvertebrate community] that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index," 2003; or
4. [Surface water] in the cabinet’s reference reach network.

(b) Implementation procedure. The implementation procedure for exceptional water shall be as established in subsection (3)(b) of this section.

(3) High quality water.

(a) Categorization criteria.

1. [Surface water] shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as established in paragraph 4(a) of this section.
2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026 and is not listed as an outstanding national resource water in Table 1 or an exceptional water in Table 2 of this section.

(b) Implementation procedure. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. A KPDES permit application for a new or expanded discharge into a high quality or exceptional water shall be subject to the provisions of the cabinet’s reference reach network. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

1. [The activities identified in this subparagraph shall not be subject to the antidegradation implementation procedures in paragraph (b) of this subsection.]; The renewal of a KPDES permit that does not authorize pollutant loading to the receiving stream in excess of that previously authorized;
2. [b.] An increase in pollutant loading within the limits previously approved by the KPDES permit; or
3. [c.] A new or expanded discharge that the applicant demonstrates:
   a. Shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution for each new or increased pollutant in the discharge; and
   b. The cumulative impact of this category of discharges shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution.

4. The activities identified in clauses a. through d. of this subparagraph shall constitute compliance with the alternatives and socioeconomic analysis requirements if addressed in the manner established in this subparagraph rather than as established in subparagraph 3. of this paragraph, unless the permittee chooses to satisfy applicable antidegradation requirements pursuant to subparagraph 3. of this paragraph.

a. The cabinet may, upon receipt of a notice of intent to be covered by a general permit, require additional analyses or other information if necessary to comply with antidegradation requirements. A general permit issued pursuant to 401 KAR 5:050 through 5:080 is compliant with the alternatives and socioeconomic analysis requirements if:
   i. The activity permitted by the general permit may result in a lowering of water quality, the cabinet describes in the Fact Sheet how the general permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph upon each general permit issuance.
   ii. The requirements and conditions in a general permit will prevent a lowering of water quality, the cabinet describes in the Fact Sheet how the general permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1. (i) The activity permitted by the general permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the general permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1. (ii) The general permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph upon each general permit issuance.

(b) Implementation procedure. The activities identified in clauses a. through d. of this subparagraph shall constitute compliance with the alternatives and socioeconomic analysis requirements if addressed in the manner established in this subparagraph rather than as established in subparagraph 3. of this paragraph, unless the permittee chooses to satisfy applicable antidegradation requirements pursuant to subparagraph 3. of this paragraph.

a. The cabinet may, upon receipt of a notice of intent to be covered by a general permit, require additional analyses or other information if necessary to comply with antidegradation requirements. A general permit issued pursuant to 401 KAR 5:050 through 5:080 is compliant with the alternatives and socioeconomic analysis requirements if:
   i. The activity permitted by the general permit may result in a lowering of water quality, the cabinet describes in the Fact Sheet how the general permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph upon each general permit issuance.
   ii. The requirements and conditions in a general permit will prevent a lowering of water quality, the cabinet describes in the Fact Sheet how the general permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1. (i) The activity permitted by the general permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the general permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1. (ii) The general permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph upon each general permit issuance.

(c) An antidegradation review shall not be required for maintenance of an existing highway facility. A new or expanded discharge associated with the activities identified in the Kentucky Transportation Cabinet's six (6) year road plan and evaluated pursuant to the provisions of KRS 176.430 shall satisfy the:
   i. [The Alternatives analysis for lowering water quality requirement shall be satisfied if the alternatives analysis for the project has been submitted; and]
   ii. [The Socioeconomic demonstration requirement shall be satisfied if the project has been approved by the General Assembly and included in the Kentucky Transportation Cabinet's six (6) year road plan and evaluated pursuant to the provisions of KRS 176.430(4)(i).] (iii) An antidegradation review shall not be required for maintenance of existing highway facilities.

(d) An individual MS4 permit issued pursuant to 401 KAR 5:050 through 5:080 shall be compliant with the alternatives and socioeconomic analysis requirements if:
   i. [If the activity permitted by the MS4 permit may result in a lowering of water quality, the cabinet describes in the Fact Sheet how the MS4 permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph.]
   ii. [If the activity permitted by the MS4 permit may result in a lowering of water quality, the cabinet describes in the Fact Sheet how the MS4 Permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1.]
Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10:026. (1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation.
(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.
(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.
(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.
(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section.
(b) The petitioner shall have the burden of proof that the recategorization is appropriate.
(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.
(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed water qualifies for recategorization.
(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.
(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.
(a) A permit issued after the date of publication shall be issued with limitations based on the new category.
(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, 33 U.S.C. 1313, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.
(4) The following information, documentation, and data shall support a petition for recategorization:
(a) A petition for outstanding national resource water shall include:
1. A USGS 7.5 minute topographic map or its equivalent showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge points;
2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;
3. Descriptions of general land uses and specific land uses adjacent to the surface water for which the recategorization is proposed.
4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;
5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;
6. The frequency of occasions when there is no natural flow in the surface water and the $Q_{0.95}$ harmonic mean flow values for the surface water and adjacent surface waters;
7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;
8. A documented rationale as to why the water qualify for the recategorization; and
9. The rationale used to support the national significance of the water.
(b) A petition for exceptional water shall include:
1. A United States Geological Survey 7.5 minute topographic map or its equivalent showing the surface water to be recategorized including a description consisting of a river mile...
Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;
   (b) "The Kentucky Macroinvertebrate Biotassesssment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;
   (c) "Socioeconomic Demonstration and Alternative Analysis", KPDES Form SDAA, April 2009.

(a) What this administrative regulation does: This administrative regulation implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to protect surface waters, manage water resources, and prevent pollution in waters of the Commonwealth. This administrative regulation establishes a methodology to implement the antidegradation policy of 401 KAR 10:029 by establishing procedures to control point source pollution in waters affected by that policy.

(b) The necessity of this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the antidegradation policy to protect surface waters of the Commonwealth required by the authorizing statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the Cabinet to develop and conduct a comprehensive program for the management of water resources and provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 establishes the policy of the Commonwealth to conserve its waters for legitimate uses, to safeguard uncontaminated waters from pollution, prevent the creation of any new water pollution, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters, manage water resources, and prevent pollution in waters of the Commonwealth. This administrative regulation establishes a methodology to implement the antidegradation policy of 401 KAR 10:029 by establishing procedures to control point source pollution in waters affected by that policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the antidegradation policy to protect surface waters of the Commonwealth required by the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amendment includes twelve (12) additional streams or stream segments comprising approximately forty-one (41) miles of surface waters newly categorized as Exceptional Waters, as a result of routine watershed monitoring and investigations of potential waters affected by permitted activities since the previous revisions to the regulation in 2012. One amendment corrects the segment reach of a previously categorized Exceptional Water. Other proposed amendments make technical corrections to recodified statutes and stream segment identifications.
   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add waters that meet the criteria for Exceptional Waters since the 2012 revisions. Other proposed amendments make technical corrections to recodified statutes and stream segment identifications.
   (c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the Cabinet to develop and conduct a comprehensive program to manage water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 establishes the policy of the Commonwealth to conserve its waters for legitimate uses, to safeguard uncontaminated waters from pollution, prevent the creation of any new water pollution, and abate any existing pollution.
   (d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by listing surface waters newly categorized as Exceptional.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation designates twelve (12) additional streams or stream segments, of approximately forty-one (41) miles, as Exceptional Waters, and corrects the segment reach of a previously categorized Exceptional Water. Individuals, businesses, organizations, and governments that will have new or expanded wastewater discharges into streams categorized as Exceptional Waters could be affected by either stricter discharges limits or the requirement to perform an alternatives analysis and socioeconomic demonstration.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Potential permit limits imposed on new or expanded point source discharges into Exceptional Waters could result in additional treatment outlays, training costs, and operational changes. New or expanded point source dischargers

Contact Person: Peter Goodmann

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation provides categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: August 6, 2015
FILED WITH LRC: August 10, 2015 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, September 24, 2015 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Room 301D, 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodmann

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation provides categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.
covered under the KPDES permitting system may incur costs of alternatives, pollution prevention, and socioeconomic analyses. These requirements already exist in state and federal law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? The costs to comply with this administrative regulation will vary considerably depending on the location, type of activity, and other factors. Costs cannot be determined until an applicant applies for a permit for a new or expanded discharge which is regulated under 401 KAR Chapter 5.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

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

(a) Initially: There are no additional initial costs to implement these amendments.

(b) On a continuing basis: Costs of implementation will remain the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Revenue sources are a combination of General Funds appropriated by the Kentucky General Assembly, and federal funds from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an 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 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 or increase fees directly or indirectly.

(9) TIERING: Is tiering applied? Yes, tiering is applied, however, the amendment does not change how the regulation is tiered. This tiering requires the proposed or amended antidegradation policy to apply based on the water quality of the applicant proposes to discharge. There are three tiers of the antidegradation policy.

Section 1(1)(b) of this administrative regulation establishes the requirements for Outstanding National Resource Waters which are the most protected. A discharger is prohibited from discharging into an Outstanding National Resource Water if it may result in permanent or long-term changes in water quality.

The majority of waters of the Commonwealth are Exceptional or High Quality Waters which comprise the second tier established in Section 1(3)(b) of this administrative regulation. Applicants proposing new or expanded discharges into second tier waters must demonstrate that the discharge will not exceed ten percent of the cumulative assimilative capacity of the receiving stream outside of a mixing zone, or demonstrate that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

Impaired Waters comprise the final tier of requirements, established in Section 1(4)(b) of this administrative regulation. The Kentucky Pollution Discharge Elimination System is established in 401 KAR 5:050 through 5:080 regulates discharges into Impaired Waters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may affect the wastewater treatment divisions of local government if they have new or expanded discharges into Exceptional Waters.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.645, 146.450, 146.10-100, 224.16-050, 224.16-060, 224.16-100, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313 – 1316, 1341, 1342, and 1344.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Wastewater treatment costs may increase for those local governments requesting new or expanded discharges into Exceptional Waters. Local governments withdrawing drinking water from these waters may have lower treatment costs because the waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (also called the “Triennial Review”) and comply with the programmatic requirements of 40 C.F.R. 131, including the adoption and implementation of an antidegradation policy for delegated states. The U.S. Environmental Protection Agency provides guidance to the states, but individual decisions regarding water quality programs are left to the states.

2. State compliance standards: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.16-100, 224.16-050, 224.16-060, 224.70-100, and 224.70-110.


4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There are no stricter standards or additional or different responsibilities or requirements.
401 KAR 10:031. Surface water standards.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.1-010[224.01- 010], 224.1-400[224.01-400], 224.16-050, 224.16-070, 224.70- 100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.16-070, 224.17-100, 224.70-110, 40. C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1341.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.24- 100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in use to maintain water quality for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224.

Section 1. Nutrients Criterion. Nutrients shall not be elevated in a surface water to a level that results in a eutrophication problem.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria established in this administrative regulation shall be applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 10:026, Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) Solute to form objectionable deposits;
(b) Float as debris, scum, oil, or other matter to form a nuisance;
(c) Produce objectionable color, odor, taste, or turbidity;
(d) Injure or[1] are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish, and other aquatic life;
(e) Produce unassimilable aquatic life or result in the dominance of nuisance species; or

(1)(4) Cause fish flesh tainting.

(2)[2] The concentration of phenol shall not exceed 300 μg/L as an instream value.

(3)[(2)] The water quality criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation shall apply[are applicable] to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use.

(a) The criteria are established to protect human health regarding [from] the consumption of fish tissue[1] and shall not be exceeded.
(b) For those substances associated with a cancer risk, an acceptable risk level of not more than one (1) additional cancer case in a population of 1,000,000 people, or 1 x 10⁻⁶ shall be utilized to establish the allowable concentration.

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legitimate uses established in 401 KAR 10:026 and associated criteria protective of those uses. [These uses are listed in 401 KAR 10:060.] Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters.

The criteria in Sections 2, 4, 6, and 7 of this administrative regulation represent minimum conditions necessary to:

(a) Protect surface waters for the indicated use; and
(b) Protect human health regarding [from] fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if treatment results in compliance with permit requirements.

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:

(a) Aquatic life protection shall be 7Q10;
(b) Water-based recreation protection shall be 7Q10;
(c) Domestic water supply protection shall be determined at points of withdrawal as:
   1. The harmonic mean for cancer-linked substances; and
   2. 7Q for noncancer-linked substances;
(d) Human health protection regarding [from] fish consumption and for changes in radionuclides shall be the harmonic mean; and
(e) Protection of aesthetics shall be 7Q10.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as CaCO₃ shall not be reduced by more than twenty-five (25) percent.
   1. If natural alkalinity is below twenty (20) mg/L CaCO₃, there shall not be a reduction below the natural level.
   2. Alkalinity shall not be reduced or increased to a degree that may adversely affect the aquatic community;
   (b) pH shall not be less than six and zero-tenths (6.0) nor more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours;
   (c) Flow shall not be altered to a degree that will adversely affect the aquatic community;
   (d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit);
   1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.
   2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data that shall be based on the effects of temperature on the aquatic biota that utilize specific surface waters of the Commonwealth and that may be affected by person-induced temperature changes.
   a. Effects on downstream uses shall also be considered in determining site-specific temperatures.
   b. Values in the following table are guidelines for surface water temperature.

<table>
<thead>
<tr>
<th>Month/Date</th>
<th>Period Average</th>
<th>Instantaneous Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(°F)</td>
<td>(°C)</td>
</tr>
<tr>
<td>January 1-31</td>
<td>45</td>
<td>7</td>
</tr>
<tr>
<td>February 1-29</td>
<td>45</td>
<td>7</td>
</tr>
<tr>
<td>March 1-15</td>
<td>51</td>
<td>11</td>
</tr>
<tr>
<td>March 16-31</td>
<td>54</td>
<td>12</td>
</tr>
<tr>
<td>April 1-15</td>
<td>58</td>
<td>14</td>
</tr>
<tr>
<td>April 16-30</td>
<td>64</td>
<td>18</td>
</tr>
<tr>
<td>May 1-15</td>
<td>68</td>
<td>20</td>
</tr>
<tr>
<td>May 16-31</td>
<td>75</td>
<td>24</td>
</tr>
<tr>
<td>June 1-15</td>
<td>80</td>
<td>27</td>
</tr>
<tr>
<td>June 16-30</td>
<td>83</td>
<td>28</td>
</tr>
<tr>
<td>July 1-31</td>
<td>84</td>
<td>29</td>
</tr>
<tr>
<td>August 1-31</td>
<td>84</td>
<td>29</td>
</tr>
<tr>
<td>September 1-15</td>
<td>84</td>
<td>29</td>
</tr>
</tbody>
</table>
### Table 1

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>CAS Number</th>
<th>Water Quality Criteria µg/L²</th>
<th>Human Quality Criteria</th>
<th>Warm Water Aquatic Habitat³:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>DWS¹</td>
<td>Fish²</td>
</tr>
<tr>
<td>Acenaphthene</td>
<td>83329</td>
<td>670</td>
<td>990</td>
<td>-</td>
</tr>
<tr>
<td>Acreolein</td>
<td>107028</td>
<td>190</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Acrylonitrile</td>
<td>107131</td>
<td>0.051</td>
<td>0.25</td>
<td>-</td>
</tr>
<tr>
<td>Aldrin</td>
<td>309002</td>
<td>0.000049</td>
<td>0.000505</td>
<td>3.0</td>
</tr>
<tr>
<td>alpha-BHC</td>
<td>319846</td>
<td>0.0026</td>
<td>0.0049</td>
<td>-</td>
</tr>
<tr>
<td>alpha-Endosulfan</td>
<td>959988</td>
<td>62</td>
<td>89</td>
<td>0.22</td>
</tr>
<tr>
<td>Anthracene</td>
<td>120127</td>
<td>8,300</td>
<td>40,000</td>
<td>-</td>
</tr>
<tr>
<td>Antimony</td>
<td>7440360</td>
<td>5.6</td>
<td>640</td>
<td>-</td>
</tr>
<tr>
<td>Arsenic</td>
<td>7440382</td>
<td>10.0</td>
<td>-</td>
<td>340</td>
</tr>
<tr>
<td>Asbestos</td>
<td>1332214</td>
<td>7 million fibers/L</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Barium</td>
<td>7440393</td>
<td>1,000</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

3. A successful demonstration concerning thermal discharge limits carried out pursuant to Section 316(a) of the Clean Water Act, 33 U.S.C. 1326, shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. a. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/L as a twenty-four (24) hour average in water with WAH use; and

The instantinous concentration shall not be less than four and zero-tenths (4.0) mg/L in water with WAH use.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(f) Total dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(g) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected;

(h) Settleable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic organisms; or exceed:

(i) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/L at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/L, pH and temperature, by means of the following equation:

\[ Y = 1.2 \left( \frac{\text{Total ammonia-N}(1 + 10^{0.0902 + 273.0/273.0 + T_{a}})\text{pK_a}}{\text{pK_a} = 0.0902 + (2730/273.2 + T_{a})} \right) \]

Where:

- \( T_a \) = temperature, degrees Celsius.
- \( Y \) = un-ionized ammonia (mg/L);

(j) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are noncumulative or nonpersistent with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC₉₆) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the \( LC_{90} \) of representative indigenous or indicator aquatic organisms.

2. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are bioaccumulative or persistent, including pesticides, if not specified elsewhere in this section, shall not exceed:

a. 0.01 of the ninety-six (96) hour median lethal concentration (LC₉₆) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the \( LC_{90} \).

3. In the absence of acute criteria for pollutants listed in Table 1 of Section 6 of this administrative regulation, for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents that are acutely toxic, the allowable instream concentration shall not exceed the LC, or one-third (1/3) \( LC_{90} \) concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0.3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, the specific application factors may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon demonstration by the applicant that the application factors are scientifically defensible.

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat are listed in Table 1 of Section 6 of this administrative regulation. These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded; and

(k) Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of seventeen (17) µg/L or a chronic criteria value of eleven (11) µg/L.

(2) Cold water aquatic habitat. The following parameters and criteria are for the protection of productive cold water aquatic communities and streams that support trout populations, whether self-sustaining or reproducing, on a year-round basis. The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and five and zero-tenths (5.0) mg/L as an instantaneous minimum shall be maintained.

2. In lakes and reservoirs that support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality; and

(b) Temperature. Water temperature shall not be increased through human activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable instream concentrations for specific substances, to be applicable at the point of withdrawal, as established in 401 KAR 10:026, Section 5(2)(b), Table B, for use for domestic water supply from surface water sources are specified in Table 1 of Section 6 of this administrative regulation and shall not be exceeded.

Section 6. Pollutants. (1) Allowable instream concentrations of pollutants are listed as water column values in Table 1 of this section unless otherwise indicated.
<table>
<thead>
<tr>
<th>Substance</th>
<th>VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzene</td>
<td>71432</td>
</tr>
<tr>
<td>Benzidine</td>
<td>92875 0.000086 0.00020</td>
</tr>
<tr>
<td>Benzo(a)anthracene</td>
<td>56553 0.0038 0.018</td>
</tr>
<tr>
<td>Benzo(a)pyrene</td>
<td>50328 0.0038 0.018</td>
</tr>
<tr>
<td>Benzo(b)fluoranthene</td>
<td>205992 0.0038 0.018</td>
</tr>
<tr>
<td>Benzo(k)fluoranthene</td>
<td>207089 0.0038 0.018</td>
</tr>
<tr>
<td>Beryllium</td>
<td>7440417 4</td>
</tr>
<tr>
<td>Beta-BHC</td>
<td>319857 0.0091 0.017</td>
</tr>
<tr>
<td>Beta-Endosulfan</td>
<td>33213659 62 89 0.22 0.056</td>
</tr>
<tr>
<td>bis(chloromethyl)ether</td>
<td>542881 0.00010 0.00029</td>
</tr>
<tr>
<td>bis(2-chloroethyl)ether</td>
<td>111444 0.030 0.53</td>
</tr>
<tr>
<td>bis(2-chloroisopropyl)ether</td>
<td>108601 1.400 65,000</td>
</tr>
<tr>
<td>bis(2-ethylhexyl)phthalate</td>
<td>117817 1.2 2.2</td>
</tr>
<tr>
<td>Bromoform</td>
<td>75252 4.3 140</td>
</tr>
<tr>
<td>Butylbenzyl phthalate</td>
<td>85687 1.500 1.900</td>
</tr>
<tr>
<td>Cadmium</td>
<td>7440439 5</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>56235 0.23 1.6</td>
</tr>
<tr>
<td>Chlordan</td>
<td>57749 0.00080 0.00081 2.4 0.0043</td>
</tr>
<tr>
<td>Chloride</td>
<td>16887006 250.000 - 1,200,000 600,000</td>
</tr>
<tr>
<td>Chlorobenzene</td>
<td>108907 130 1600</td>
</tr>
<tr>
<td>Chlorodibromomethane</td>
<td>124481 0.40 13</td>
</tr>
<tr>
<td>Chloroform</td>
<td>67663 5.7 470</td>
</tr>
<tr>
<td>Chloropyrifos</td>
<td>2921882 - -</td>
</tr>
<tr>
<td>Chromium</td>
<td>N/A 100</td>
</tr>
<tr>
<td>Chromium (III)</td>
<td>16065831 - -</td>
</tr>
<tr>
<td>Chromium (VI)</td>
<td>18840299 - -</td>
</tr>
<tr>
<td>Chrysene</td>
<td>218019 0.0038 0.018</td>
</tr>
<tr>
<td>Color</td>
<td>N/A 75 Platinum Cobalt Units</td>
</tr>
<tr>
<td>Copper</td>
<td>7440508 1.300 -</td>
</tr>
<tr>
<td>Cyanide, Free</td>
<td>57125 140 140 22 5.2</td>
</tr>
<tr>
<td>Demeton</td>
<td>8065483 - -</td>
</tr>
<tr>
<td>Diazinon</td>
<td>333415 0.17 0.17</td>
</tr>
<tr>
<td>Dibenz(a,h)anthracene</td>
<td>53703 0.0038 0.018</td>
</tr>
<tr>
<td>Dichlorobromomethane</td>
<td>75274 0.55 17</td>
</tr>
<tr>
<td>Dieldrin</td>
<td>60571 0.000052 0.000054 0.24 0.056</td>
</tr>
<tr>
<td>Di(ethyl phthalate</td>
<td>84662 17.000 44,000</td>
</tr>
<tr>
<td>Dimethyl phthalate</td>
<td>131113 270.000 1,100,000</td>
</tr>
<tr>
<td>Di-n-butyl phthalate</td>
<td>84742 2.000 4,500</td>
</tr>
<tr>
<td>Dinitrophenols</td>
<td>25550587 69 5300</td>
</tr>
<tr>
<td>Endosulfan sulfate</td>
<td>1031078 62 89</td>
</tr>
<tr>
<td>Endrin</td>
<td>72208 0.059 0.060 0.086 0.036</td>
</tr>
<tr>
<td>Endrin aldehyde</td>
<td>7421934 0.29 0.30</td>
</tr>
<tr>
<td>Ethylenebenzene</td>
<td>100414 530 2100</td>
</tr>
<tr>
<td>Fluoranthene</td>
<td>206440 130 140</td>
</tr>
<tr>
<td>Fluorene</td>
<td>86737 1.100 5,300</td>
</tr>
<tr>
<td>Fluoride</td>
<td>N/A 4.000 - -</td>
</tr>
<tr>
<td>Guthion</td>
<td>86500 - - 0.01</td>
</tr>
<tr>
<td>Heptachlor</td>
<td>76448 0.000079 0.000079 0.52 0.0038</td>
</tr>
<tr>
<td>Heptachlor epoxide</td>
<td>1024573 0.000039 0.000039 0.52 0.0038</td>
</tr>
<tr>
<td>Hexachlorobenzene</td>
<td>118741 0.00028 0.00029</td>
</tr>
<tr>
<td>Hexachlorobutadiene</td>
<td>87683 0.44 18</td>
</tr>
<tr>
<td>Hexachlorocyclo-hexane-Technical</td>
<td>319868 0.0123 0.0414</td>
</tr>
<tr>
<td>Hexachlorocyclopentadiene</td>
<td>77474 40 1100</td>
</tr>
<tr>
<td>Hexachloroethane</td>
<td>67721 1.4 3.3</td>
</tr>
<tr>
<td>Ideno(1,2,3-cd)pyrene</td>
<td>193395 0.0038 0.018</td>
</tr>
<tr>
<td>Iron(II)</td>
<td>7439896 300 - 4.000 1.000</td>
</tr>
<tr>
<td>Isophorone</td>
<td>78591 35.0 960</td>
</tr>
<tr>
<td>Lead</td>
<td>7439921 15 -</td>
</tr>
</tbody>
</table>

**Note:** Some values are represented in logarithmic form, e.g., \(10^{0.0123}\).
| Chemical Name                      | CAS Number | EC Number | Log Kow  | Toxicity
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2,3,7,8</strong>-TCDD (Dioxin)</td>
<td>127184</td>
<td>50320-87-4</td>
<td>7,400</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D</strong></td>
<td>94757</td>
<td>58-88-4</td>
<td>4.0</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>50-29-6</td>
<td>37</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>79875</td>
<td>108-86-1</td>
<td>15</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D,1,3,5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D,1,3,5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D,1,3,5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D,1,3,5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D,1,3,5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D,1,3,5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D,1,3,5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D,1,3,5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-D,1,3,5-Tetrachlorobenzene</strong></td>
<td>95943</td>
<td>95-36-6</td>
<td>1.1</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichloroethane</strong></td>
<td>107062</td>
<td>63-71-8</td>
<td>21</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorobenzene</strong></td>
<td>120821</td>
<td>104-48-7</td>
<td>70</td>
<td>0.884</td>
</tr>
<tr>
<td><strong>2,4-Dichlorophenol</strong></td>
<td>120832</td>
<td>104-48-7</td>
<td>290</td>
<td>0.884</td>
</tr>
</tbody>
</table>
(2) The following additional criteria for radionuclides shall apply for Domestic Water Supply use:

(a) The gross total alpha particle activity, including radium-226 but excluding radon and uranium, shall not exceed fifteen (15) pCi/L;

(b) Combined radium-226 and radium-228 shall not exceed five (5) pCi/L. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/L;

(c) The concentration of total gross beta particle activity shall not exceed fifty (50) pCi/L;

(d) The concentration of tritium shall not exceed 20,000 pCi/L;

(e) The concentration of total Strontium-90 shall not exceed eight (8) pCi/L; and

(f) The concentration of uranium shall not exceed thirty (30) µg/l.

Section 7. Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use during the primary contact recreation season of May 1 through October 31:

(a) Fecal coliform content or Escherichia coli content shall not exceed 200 colonies per 100 ml or 130 colonies per 100 ml respectively as a geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for fecal coliform or 240 colonies per 100 ml for Escherichia coli. Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year; and

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours; and

(c) Fecal coliform content criteria listed in paragraph (a) of this subsection shall no longer apply beginning November 1, 2019.

(2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1,000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples; nor exceed 2,000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period; and

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

Section 8. Outstanding State Resource Waters. This designation category includes certain unique waters of the commonwealth. (1) Water for inclusion:

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated pursuant to the Kentucky Wild Rivers Act, KRS 146.200-146.360;

2. Waters designated pursuant to the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287;


(b) Permissible consideration. Other surface waters shall be considered for inclusion in this category if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological, natural, or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics, or fulfill two (2) of the following criteria:

   a. Support a diverse or unique native aquatic flora or fauna;

   b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or

   c. Provide a unique aquatic environment within a physiographic...
region.

(2) Outstanding state resource waters protection. The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed. The cabinet shall determine water quality criteria for these waters as established in paragraphs (a) through (d) of this section follows:

(a) At a minimum, the criteria of Section 2 and Table 1 of Section 6 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 10:026, shall be applicable to these waters.

(b) Outstanding state resource waters that are listed as Exceptional Waters in 401 KAR 10:030, Section 1(2) shall have dissolved oxygen maintained at a minimum concentration of six and zero-tenths (6.0) mg/L as a twenty-four (24) hour average and an instantaneous minimum concentration of not less than five and zero-tenths (5.0) mg/L.

(c)1. If the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination.

2. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species that the water supports.

(d) Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 10:026.

(3) Determination of designation.

(a) A person may present a proposal to designate certain waters pursuant to this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 10:026, Section 3(3)(a) through (h).

(b)1. The cabinet shall review the proposal and supporting documentation to determine if the proposed waters qualify as outstanding state resource waters within the criteria established by this administrative regulation.

2. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 10:026.

Section 9. Water Quality Criteria for the Main Stem of the Ohio River. (1) The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded.

(2) These waters shall be subject to all applicable provisions of 401 KAR 10:001, 10:026, 10:029, 10:030, and this administrative regulation except for those criteria in paragraphs (a) and (b) of this subsection.

(a) Dissolved oxygen. Instream concentrations shall average at least five and zero-tenths (5.0) mg/L per calendar day and shall not be less than four and zero-tenths (4.0) mg/L except during the April 15 - June 15 spawning season when a minimum of five and one-tenth (5.1) mg/L shall be maintained.

(b) Maximum allowable instream concentrations for nitrite-nitrogen for the protection of human health shall be one and zero-tenths (1.0) mg/L and shall be met at the edge of the assigned mixing zone.

Section 10. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation for specific surface water upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved, either on a seasonal or year-round basis due to natural conditions or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation.

(a) Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that shall be consistent with those outlined in Chapter 3 of Water Quality Standards Handbook, EPA, 1994.

(b) In addition, an applicant shall supply the documentation listed in 401 KAR 10:026, Section 3.

(3) An exception to criteria listed in Table 1 of Section 6 of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it is demonstrated that natural, ephemeral, intermittent, or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters shall be attained and maintained.

(5) All exceptions to water quality criteria shall be subject to review at least every three (3) years.

(6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026.

Section 11. Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, that KPDES permit compliance with existing instream criteria cannot be attained because of factors specified in 401 KAR 10:026, Section 2(4)(a) through (f).

(2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met.

(3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters shall be attained and maintained.

(4) All exceptions shall be submitted to the cabinet for review at least every three (3) years. Upon review, the discharger shall demonstrate to the cabinet that the discharger made a reasonable effort to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: August 6, 2015
FILED WITH LRC: August 10, 2015 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, September 24, 2015 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Room 301D, 300 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.
Oaks Lane, 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 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 200 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter Goodmann

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes water quality standards for surface waters of the Commonwealth and the associated water quality criteria necessary to protect designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the protection of public health, aquatic habitat, and designated uses of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation describes the criteria applied in 401 KAR 10:026 to the surface waters of the Commonwealth and establishes water quality standards that protect of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing clear and current criteria for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment corrects statutory references and makes grammatical changes to comply with current requirements, updates water quality criteria for pentachlorophenol to correct an inadvertent error, and removes the acute selenium criterion which was not approved and an expiring fecal coliform standard for primary contact recreation beginning November 1, 2019.

(b) The necessity of the amendment to this administrative regulation: The amendment to water quality criteria is necessary to protect human health and meet federal recommendations. For Kentucky to maintain its delegation authority of the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. This administrative regulation is being amended as part of the Triennial Review.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program to manage water resources and provide for the prevention, abatement, and control of water pollution. This amendment updates water quality criteria for selenium and pentachlorophenol to protect designated uses of the surface waters of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by providing clear and current criteria and water administrative regulation for the protection of surface waters of the Commonwealth in accordance with the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to the surface waters of the Commonwealth. All individuals, businesses, organizations, and governments that use the Commonwealth’s surface waters may be impacted by this regulation if they apply for a new or expanded discharge permit.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List 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 revised water quality criteria will be implemented when the cabinet issues a new or expanded permit. Additional costs may be incurred when criteria are more stringent than before, or when new criteria are established. Fewer costs will be incurred when criteria have been lowered.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, type of activity, and other factors. Therefore, it is not possible to quantify costs to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Fewer costs may be incurred when criteria are less stringent. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There are no additional initial costs to implement this administrative regulation.

(b) On a continuing basis: Costs of implementation will remain the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue is a combination of General Funds appropriated by the Kentucky General Assembly and federal funds from the U.S. Environmental Protection Agency.

(7) Provide an analysis of whether an 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 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 fees.

(9) TIERING: Is tiering applied in this administrative regulation, if new, or by the change if it is an amendment? Yes, tiering is applied in this administrative regulation. Fewer costs may be incurred when criteria are more stringent than before, or when new criteria are established. Fewer costs will be incurred when criteria have been lowered.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the wastewater treatment operations of local government if they have new or expanded discharges into surface waters of the Commonwealth.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 146.220, 146.241, 146.270, 146.410, 146.450,

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 revenue.

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not increase administration costs.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not increase administration 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 Explanations: Wastewater treatment costs may increase for those local governments that have new or expanded discharges into Exceptional Waters and High Quality Waters. Local governments withdrawing drinking water from these waters may have lower treatment costs because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate to implement a water pollution control program. For Kentucky to maintain its delegation authority over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years (known as the "Triennial Review") and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.

2. State compliance standards: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, and 224.70-110.


4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There are no stricter standards or additional or different responsibilities or requirements.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

(Adventure)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Luther Luckett Correctional Complex.

Section 1. Incorporation by Reference. (1) "Luther Luckett Correctional Complex policies and procedures", August 7, 2015[November 14, 2014,] are incorporated by reference. Luther Luckett Correctional Complex Policies and Procedures include:

LLCC 02-05-03 Inmate Canteen Committee (Amended 5/15/12)
LLCC 02-05-05 Inmate Canteen (Amended 5/15/12)
LLCC 02-06-01 Inmate Control of Personal Funds (Amended 5/15/12)
LLCC 02-06-02 Storage and Disposition of Monies Received on Weekends, Holidays and between 8 p.m. and 8 a.m. Weekdays (Amended 5/15/12)
LLCC 05-02-02 Outside Consultation and Research (Amended 5/15/12)
LLCC 06-01-01 Offender Information (Amended 8/7/15/8/15/14[9/15/14])
LLCC 06-02-01 Open Records (Amended 5/15/12)
LLCC 08-04-01 Fire Safety (Amended 7/10/12)
LLCC 09-14-02 Guidelines for Contractors (Amended 7/10/12)
LLCC 09-18-01 Search Plan (Amended 5/15/12)
LLCC 09-18-03 Contraband Control: Collection, Preservation, Disposition of Contraband, and Identification of Physical Evidence (Amended 5/15/12)
LLCC 09-25-01 Procedure for Maintaining Current Inmate Photographs (Amended 11/14/14)
LLCC 09-29-01 Inmate Death (Amended 7/10/12)
LLCC 10-01-01 Special Management Inmates (Amended 8/7/15/8/15/14[11/14/14])
LLCC 11-01-01 Dining Room Guidelines (Amended 8/7/15/8/15/14[7/26/13])
LLCC 11-02-01 Food Services: Security (Amended 5/15/12)
LLCC 11-03-01 Food Services: General Guidelines (Amended 5/15/12)
LLCC 11-04-01 Food Service Meals (Amended 5/15/12)
LLCC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 5/15/12)
LLCC 11-05-02 Health Requirements of Food Handlers (Amended 5/15/12)
LLCC 11-06-01 Food Services: Inspections and Sanitation (Amended 8/7/15/8/7/15/12)
LLCC 11-07-01 Food Services: Purchasing, Storage and Farm Products (Amended 5/15/12)
LLCC 12-01-01 Sanitation, Living Condition Standards and Clothing Issues (Amended 11/14/14)
LLCC 12-02-01 Laundry Services (Amended 7/10/12)
LLCC 12-03-01 Vermin and Insect Control (Amended 5/15/12)
LLCC 12-04-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 5/15/12)
LLCC 13-02-01 Access to Healthcare (Amended 8/7/15/8/7/15/15/12[8/7/15])
LLCC 13-02-02 Specialized Health Services (Amended 8/7/15/8/7/15/15/12[5/4/12])
LLCC 13-02-03 Vision Care, Prostheses and Orthodontic Devices (Amended 8/7/15/8/7/15/12)
LLCC 13-02-05 Medical Services Co-pay (Amended 8/7/15/8/7/15/12[5/12])
LLCC 13-03-01 Mental Health Services (Amended 5/15/12)
LLCC 13-03-02 Use of Psychotropic Medications (Amended 5/15/12)
LLCC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 7/26/13)
LLCC 13-04-02 Health Education and Special Health Programs (Added 7/26/13)
LLCC 13-04-06 Psychological and Psychiatric Records (Added 5/15/12)
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

LLCC 13-05-02 Self-Administration of Medication (Inmate) (Amended 7/26/13)
LLCC 13-06-01 Health Records (Amended 7/26/13)
LLCC 13-06-03 Notification of Inmate Family of Serious Illness, Surgery or Inmate Death (Amended 7/26/13)
LLCC 13-07-01 Serious and Infectious Diseases (Amended 7/26/13)
LLCC 13-07-02 Medical Waste Management (Amended 8/7/15/14/15)
LLCC 13-08-01 Restraint Approval (Amended 5/15/12)
LLCC 13-09-01 Substance Abuse and Chemical Dependency Program (Amended 5/15/12)
LLCC 14-03-01 Inmate Legal Services (Amended 8/7/15/14/14)
LLCC 15-01-02 Inmate Housing Assignment (Amended 5/15/12)
LLCC 15-01-03 Operational Procedures of the Units (Amended 5/15/12)
LLCC 15-01-04 Rules of the Unit (Amended 11/14/14)
LLCC 15-01-08 Searches and Control of Excess Property (Amended 7/26/13)
LLCC 15-01-09 Laundry Unit Services (Amended 9/15/14)
LLCC 16-01-01 Inmate Correspondence (Amended 5/15/12)
LLCC 16-01-02 Inmate Privileged or Legal Mail (Amended 5/15/12)
LLCC 16-01-03 Inmate Packages (Amended 5/15/12)
LLCC 16-02-01 Inmate Visiting (Amended 7/26/13)
LLCC 16-02-02 Extended and Special Visits (Amended 5/15/12)
LLCC 16-02-03 Restricted Visitation Privileges (Amended 5/15/12)
LLCC 16-03-04 Parole Hearings: Media and Visitors (Amended 5/15/12)
LLCC 17-01-01 Inmate Transportation, Reception and Discharge Process (Amended 5/15/12)
LLCC 17-03-01 Assessment and Orientation (Amended 8/7/15/14/14)
LLCC 17-04-01 Personal Property Control (Amended 5/15/12)
LLCC 17-04-02 Missing or Stolen Inmate Personal Property (Amended 5/15/12)
LLCC 17-05-01 Appliances to Outside Dealers for Repair (Amended 7/10/12)
LLCC 18-01-01 Meritorious Housing (Amended 7/26/13)
LLCC 18-02-01 Minimum Security Unit Operations (Amended 7/26/13)
LLCC 19-01-02 Job Assignments and Dismissals (Amended 11/14/14)
LLCC 20-01-01 Educational Programs (Amended 7/26/13)
LLCC 21-01-01 Library Services (Amended 5/15/12)
LLCC 22-01-01 Recreation and Inmate Activities (Amended 5/15/12)
LLCC 22-02-01 Inmate Clubs and Organizations (Amended 8/7/15/15/15/16/12)
LLCC 22-02-02 Inmate Photographs Project (Amended 8/7/15/15/15/16/12)
LLCC 22-05-02 Arts and Crafts Program (Amended 5/15/16/12)
LLCC 23-01-01 Religious Program (Amended 11/14/14)
LLCC 23-01-03 Inmate Family Emergency Notification (Amended 11/14/14)
LLCC 24-01-01 Counseling and Social Services (Amended 7/26/13)
LLCC 25-01-01 Final Release (Amended 9/7/15/15/15/15)
LLCC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 9/15/14)
LLCC 26-02-01 Use of Students (Amended 5/15/12)
LLCC 26-02-02 Student and Volunteer Identification Badges (Amended 5/15/12)
LLCC 26-03-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Citizens, Volunteers (Amended 5/15/12)

This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: July 14, 2015
FILED WITH LRC: August 7, 2015 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2015 at 9:00 a.m. in the at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & 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 incorporates by reference the policies and procedures governing the operation of Luther Luckett Correctional Complex regarding the rights and responsibilities of Luther Luckett Correctional Complex employees and the inmate population.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA accreditation requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of Luther Luckett Correctional Complex.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Luther Luckett Correctional Complex employees and the inmate population as to employee duties, inmate responsibilities, and the procedures to govern operations of the institution.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment updates the policies and procedures to reflect changes in operations at the institution, clarify language, and make changes to conform to KRS Chapter 13A, and update ACA standards.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.
(c) How the amendment conforms to the content of the authorizing statutes: The statutes permit the Commissioner or her authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Luther Luckett Correctional Complex.
(d) How the amendment will assist in the effective administration of the statutes: It makes changes to conform to Chapter 13A, to allow a clearer understanding of the policies by the Luther Luckett Correctional Complex employees and inmate population, thereby impacting the safety and security of the institution.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: 229 employees of the Luther Luckett Correctional Complex, 1,101 inmates, volunteers, contract staff and all visitors to Luther Luckett Correctional Complex.

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

(a) List 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 institution, employees, and inmates will have to change their actions to comply with any operational changes made in the policies and procedures incorporated by reference in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated in implementing any of the policy changes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation establishes fees for medical and dental copays, copies of records, and personal property repair. The amendment does not change any of the fees.

(9) TIERING: Is tiering applied No. Tiering was not appropriate in this administrative regulation because the administrative regulations 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 amendment to this regulation impacts how the Luther Luckett Correctional Complex operates, but is not expected to increase costs from what will be budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how Luther Luckett Correctional Complex operates, but is not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.


STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.550 to 15.590, and 15.990 to 15.992. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency’s Validated Job Task Analysis and Associated Agency Testing. (1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q, and a copy of the proposed job task analysis. The agency shall supply:

(a) The name of the entity that completed the analysis;

(b) The date on which the analysis was completed;

(c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and

(d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.

1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

1. Reasonable, standardized format of the study and the report.

2. Relative reliability and validity of the study’s sampling techniques and practice.

3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application,
the KLEC office shall mail a notification to the agency that either:

1. The application has been received and is complete; or
2. The application is incomplete and the specific information which shall be supplemented in order to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency’s receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned, and the agency shall resubmit an application for consideration of their job task analysis and associated agency testing.

(b) The KLEC office Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests, and the specific reasons supporting a recommendation to reject.

(c) KLEC Review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward their recommendation to KLEC for final review. Within sixty (60) days of the receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:
1. The reasons for the finding; and
2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures. (1) The KLEC office shall receive completed KLEC Form Q or KLEC TeleForm Q from each agency participating in certification as of December 1, 1998 prior to any applicant testing. If an agency initiates participation in certification after December 1, 1998, KLEC Form Q shall be submitted to the KLEC office. The KLEC office shall be notified of any changes in the Form Q process within ten (10) days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall mail a notification to the agency that either:

(a) The form has been received and is complete; or
(b) The form is incomplete and the specific information which shall be supplemented in order to process the form. The KLEC office shall receive the necessary information within ten (10) business days of the agency’s receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall mail a notice to the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC, along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Peace Officer Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the form KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected, and the specific reasons supporting the rejection.

(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:
1. With the Secretary of the Justice and Public Safety Cabinet; and
2. Within thirty (30) days of receipt of the notice of rejection.
(b) The notice of appeal shall be submitted:
1. On KLEC Form S; and
2. With a copy of the notice of rejection of agency testing attached.
(c) A copy of the notice of appeal shall be mailed to the KLEC office by certified mail.
(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal...
(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of peace officers, telecommunicators, and court security officers. (1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

(5) An agency may request certification for a peace officer that has completed a non-DOCT law enforcement basic training by submitting KLEC Form B - Basic Training Completed (non-DOCT) to the KLEC Office.

Section 4. Suitability Minimum Requirements: The following minimum requirements and procedures are established for KLEC testing:

(1) The background investigation as specified in KRS 15.382(12) and 15.3971(k) shall consist of the following minimum requirements, utilizing the KLEC Form H-1 Background Investigation and Form H-2 Personal History Statement:

(a) Biographical history;
(b) Family history;
(c) Education;
(d) Employment history;
(e) Interview with the applicant’s references;
(f) Criminal history including domestic violence protective orders; and
(g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the following procedures:

(a) The agency shall submit one (1) completed FD 258 FBI Fingerprint Card to the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records checks to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d) shall consist of the following minimum requirements:

(a) Screening shall measure a broad spectrum of abilities which are relevant to job-related duties, including:
1. Cognitive abilities;
2. Personality characteristics; and
3. Related constructs, including:
   a. Integrity;
   b. Conscientiousness; and
Standards for an adequate fourteen (14) period, which shall be calculated from the first date of testing.

2. An applicant shall pass the physical ability test for overall suitability for employment as a peace officer, telecommunicator, or court security officer;

3. If an applicant is classified as borderline or not suitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency; and

(d) Screening shall be administered in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the following minimum requirements:

(a) Precertification status.
1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Testing Protocols:
   a. Bench press;
   b. Sit-ups;
   c. 300 meter run;
   d. Push-ups; and
   e. One and five-tenths (1.5) mile run.
2. An applicant shall pass the physical ability test for precertification status 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 subparagraph 1 of this paragraph:
   a. Bench press, based upon a percentage of the recruit's body weight:
      (i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
      (ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
      (iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;
      (iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
      (v) 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;
   b. Sit-ups:
      (i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
      (ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
      (iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
      (iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;
   c. 300 meter run:
      (i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;
      (ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less; and
      (iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and
      (iv) 11 points - Recruit shall complete in less than sixty-five (65) seconds;
   d. Push-ups:
      (i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
      (ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
      (iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
      (iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
      (v) 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and
   e. One and five-tenths (1.5) mile run:
      (i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
      (ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
      (iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
      (iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and
      (v) 11 points - Recruit shall complete in less than 975 (16:15) seconds.
3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.
4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve at least nine (9) points on each physical training event.
5. At the sole discretion of the hiring agency, an applicant 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, subject to the following:
   a. 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; and
   b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.
6. If an applicant obtains a point value for each event, but does not obtain an overall score of fifty (50), the examinee may attempt the test battery again, in its entirety. This shall be considered a second test administration and not be considered a retest.
7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.
8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status in its entirety.

(b) Certification status.
1. To obtain certification status under KRS 15.386(2), the applicant 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 precertification test score requirements, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:
   a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant’s body weight;
   b. Sit-ups. Eighteen (18) sit-ups in one (1) minute;
   c. 300 meter run in sixty-five (65) seconds;
   d. Push-ups. Twenty-five (25) push-ups; and
   e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.
2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.
3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status:
   a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;
   b. All failed events shall be retested on the same date; and
   c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.
(5) Medical screening as specified in KRS 15.382(10) shall consist of the following minimum requirements:
   (a) The applicant shall complete KLEC Form G-2, Medical History Statement, which along with KLEC Form G-3, Medical Guidelines Implementation Manual, shall be provided to the physician or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.
   (b) The agency shall provide the examining physician or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.
   (c) The physician or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.
   (d) Drug screening as specified in KRS 15.382(11), 15.397(1)(j), and 15.540(1)(f) shall consist of the following minimum requirements:
      (a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened using gas chromatography/mass spectrometry (G.C.M.S.) for the following drugs and thresholds for positive indications:
         1. THC (marijuana), 20 ng/ML, 5 GC/MS;
         2. Amphetamines, to include Methamphetamine and Methyleneoxyethylamphetamine, 300 ng/ML, 100 GC/MS;
         3. Cocaine, 150 ng/ML, 50 GC/MS;
         4. Opiates, 300 ng/ML, 150 GC/MS;
         5. Barbiturates, 200 ng/ML, 100 GC/MS;
         6. Phencyclidine (PCP), 25 ng/ML, 100 GC/MS;
         7. Methadone, 300 ng/ML, 100 GC/MS;
         8. Oxycodone (Oxycontin), 100 ng/ML, 100 GC/MS;
         9. Benzodiazepines, 200 ng/ML, 100 GC/MS;
        10. Propoxyphene, 300 ng/ML, 200 GC/MS;
      (b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening Chain of Custody.
      (c) Polygraph examination as specified in KRS 15.382(17), 15.397(1)(i), and 15.540(1)(e) shall consist of the following minimum requirements: The applicant shall complete KLEC Form I-1, Polygraph Waiver, and KLEC Form I-2, Polygraph Applicant Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant, utilizing the questions in the KLEC Form I-3, Polygraph Test Questions.
   (8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.
   (9) High school diploma.
      (a) The high school graduate requirement of KRS 15.382(3), 15.397(1)(c), or 15.540(1)(b) shall be met by:
         1. Submission of a copy of a diploma or transcript from a public high school; or
         2. Submission of a diploma or transcript from a private high school that:
            a. Is certified by or recognized by the Kentucky Department of Education; or
            b. Has complied with all provisions of Kentucky law relating to private secondary schools, including days and hours of attendance and course curriculum. The applicant shall submit documentary proof of compliance upon request of the KLEC.
      (b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.397(1)(c), or 15.540(1)(b).

Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including:
   (a) KLEC Form I-1 - Consent for Preemployment Polygraph Examination;
   (b) KLEC Form K-1 - Drug Screening Applicant Consent Form;
   (c) KLEC Form T-1 - Medical Release - Phase I Testing; and
   (d) KLEC Form T-2 - Health Confirmation - Phase I Testing.
   (2) Testing schedule.
      (a) The KLEC office shall mail to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.
      (b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.
      (c) Advance notice of the schedule shall be made public prior to the testing.
      (d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.
   (3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.
      (a) Applicants shall provide current photographic identification when the testing is administered.
      (b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

Section 6. Test Reporting by KLEC. (1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.
   (2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOCT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.
   (3) Length of test result validity.
      (a) Physical ability for precertification status: results shall be considered current and valid one (1) year from the passing date of the test.
      (b) Suitability screening: results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.
      (c) Polygraph examination: results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.
      (d) Drug screening: results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant that leaves and reenters the testing process for preselection screening shall submit to another drug screening.
   (4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.
   (5) Agency access to prior test results.
      (a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing which is still current and valid.
      (b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.
      (c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency. (1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a Form PT-1, Physical Ability Test Session Report, to the KLEC within ten (10) days of administering the test.
   (2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.
test.  
(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:
   (a) Passes or fails the test; or
   (b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency’s request as follows:
   (a) Sixty-five (65) dollars for each psychological screening;
   (b) $100 for each polygraph examination; and
   (c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.
   (a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:
      1. The actual approved budget of the governmental unit for the current and the preceding year;
      2. The number of certification applicants for the current and preceding year;
      3. The actual revenue receipts of the governmental unit for the current and the preceding year; and
      4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

   (b) Initial review. Within five (5) business days of receipt of the application the KLEC office shall mail a notification to the agency that either:
      1. The application has been received and is complete; or
      2. The application is incomplete and the specific information which shall be supplemented in order to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency’s receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

   (c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC, along with a recommendation to approve or reject the application for financial hardship, and the specific reasons supporting a recommendation to reject.

   (d) KLEC review.
      1. The KLEC Committee on Certification shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.
      2. Within sixty (60) days of their receipt of the application the KLEC office shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.

   (e) Appeal.
      1. An agency may appeal a decision made by KLEC to reject an agency’s application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.
      2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.
      3. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached.
      4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail, to the following address, Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.

      5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

   (f) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOCJT.

Section 9. Employment Changes. (1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment.

(3) Information from completed KLEC Forms F shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, military, and federal law enforcement and telecommunications basic training. (1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was a single, stand alone course; and

(b) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(c) Information from completed KLEC Forms F shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(2) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a) The basic training course or academy was a single, stand alone course; and

(b) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(c) The actual approved budget of the governmental unit for the current and the preceding year;

(d) The number of certification applicants for the current and preceding year;

(e) The actual revenue receipts of the governmental unit for the current and the preceding year; and

(f) A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(3) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(4) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

   1. The twenty-four (24) hour legal update Penal Code course;
   2. The sixteen (16) hour legal update constitutional procedure course;
   3. On-line Federal Emergency Management Agency ICS 100, ICS 200 and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement;[The forty (40) hour Homeland Security Course]; and

   4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:
      a. Basic officer skills;
      b. Orientation for new police chiefs; or
      c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a) The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky law enforcement officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the KLEC; and

(b) The basic training course or academy was a single, stand-alone course.

(3) An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

   (a) Federal Bureau of Investigation;
   (b) Bureau of Alcohol, Tobacco, and Firearms;
   (c) Drug Enforcement Administration; or
   (d) United States Secret Service.

(4) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together
to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(5) An agency may request certification for a peace officer that has completed an out-of-state law enforcement basic training by submitting KLEC Form B, Basic Training Completed (non-DOCJT), to the KLEC Office.

Section 11. Records. (1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. In order to properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall:

(a) Keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority; and

(b) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, indicating that the following testing procedures have been completed:

1. Polygraph;
2. Suitability screening;
3. Drug screening; and
4. Medical examination or history statement.

(3) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of whether the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(4) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12. Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

1. The applicant has taken:
   a. A controlled substance as prescribed by a physician; or
   b. Any other medication, whether prescribed or not; and

2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) A copy of KLEC Form R shall be mailed to the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing, the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 13. Compliance. (1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, in order to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, [1985 Edition];

(b) KLEC Form A - Testing Registration - Attesting to Minimum Standards, [May 2007 edition];

(c) KLEC Form B - Basic Training Completed (non-DOCJT), revised 1/1999;

(d) KLEC Form C - Grandfather Information, [July 2006 edition];

(e) KLEC Form D - All Standards Met, [May 2007 edition];

(f) KLEC Form E - Request for Certification for Exempt Officers, revised 1/1999;

(g) KLEC Form F - Status Update, [July 2008 edition];

(h) KLEC Form G-1 - Medical Examination Report, [June 19, 2001 edition];

(i) KLEC Form G-2 - Medical History Statement, [July 1, 2001 edition];

(j) KLEC Form G-3 - Medical Screening Guidelines Implementation Manual, [July 1, 2001 edition];

(k) KLEC Form H-1 - Background Investigation, [June 2001 edition];

(l) KLEC Form H-2 - Personal History Statement, revised 1/1999;

(m) KLEC Form I-1 - Consent for Preemployment Polygraph Examination, [July 2007 edition];

(n) KLEC Form I-2 - Preemployment Polygraph Questionnaire, [June 2007 edition];

(o) KLEC Form I-3 - Polygraph Test Questions, [July 2006 edition];

(p) KLEC Form J - JTA Submission, revised 1/1999;

(q) KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form, [July 2006 edition];

(r) KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form, [July 2006 edition];

(s) KLEC Form L-1 - Code of Ethics, [July 1, 2001 edition];

(t) KLEC Form L-2 - Canon of Ethics, [July 1, 2001 edition];

(u) KLEC Form Q - Agency Submission Form, [October 2006 edition];

(v) KLEC Form Q-3 - Drug Screening Approval, [July 2006 edition];

(w) KLEC Form Q-4 - Polygraph Approval, [July 2006 edition];

(x) KLEC Form Q-5 - Psychological Examination Approval, [July 2006 edition];

(y) KLEC Form Tele-Q - Agency Submission Form, [July 2006 edition];
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

2006 edition[];
(2) KLEC Form R - Removal from Testing, revised 1/19/99;
(aa) KLEC Form S - Notice of Appeal, revised 1/19/99;
(bb) KLEC Form T-1 - Medical Release - Phase I Testing,
[[July 2001 edition[];]
(cc) KLEC Form T-1a - Physician’s Medical Release Form, [-
[july 2001 edition[];]
(dd) KLEC Form T-2 - Liability Waiver - Phase I Testing, [july
2001 edition[];
(ee) POPS Form PT-1 - Physical Ability Test Session Report,
[[q/03 edition[];]
(ff) POPS Form P - Certification of Peace Officer Professional
Standards Testing Procedures, [[7/04 edition[];] and
(gg) KLEC Physical Fitness Testing Protocols, [[12/09
edition[];
(2) This material may be inspected, copied, or obtained,
subject to applicable copyright law, at Kentucky Law Enforcement
Council Office Funderburk Building, Eastern Kentucky University,
Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m.
to 4:30 p.m.

KEITH CAIN, Chair
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
September 21, 2015 at 10:00 a.m. in Room 211, Funderburk
Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.
Individuals interested in being heard at this hearing shall notify this
agency in writing five workdays prior to the hearing of their intent to
attend. If no notification of intent to attend the hearing is received
by that date, the hearing may be canceled. This hearing is open to
the public. Any person who wishes to be heard will be given an
opportunity to comment on the proposed administrative regulation.
A transcript of the public hearing will not be made unless a written
request for a transcript is made. If you do not wish to be heard at
the public hearing, you may submit written comments on the
proposed administrative regulation. Written comments shall be
accepted until September 30, 2015. Send written notification of
intention to be heard at the public hearing or written comments on
the proposed administrative regulation to the contact person.

CONTACT PERSON: Gerald Ross, General Counsel,
Department of Criminal Justice Training, Funderburk Building, 521
Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859)
622-2214, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald Ross
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes
professional standards to meet certification requirements for
law enforcement officers, telecommunicators, and other persons
employed by law enforcement agencies.
(b) The necessity of this administrative regulation: This
administrative regulation is necessary to allow the Kentucky Law
Enforcement Council to fulfill its responsibility established in
KRS 15.330, to approve law enforcement officers as having met
the requirements for and peace officer certification pursuant to
KRS 15.380 through 15.404; and for participation in the Kentucky
Law Enforcement Foundation Program Fund (KLEFPF).
(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 15.330(1)(h) authorizes the
Kentucky Law Enforcement Council to promulgate reasonable
rules and administrative regulations to accomplish the purposes
of KRS 15.310 to 15.404 and KRS 15.990 to 15.992. This
administrative regulation is required to establish standards for
peace officers who were originally employed and received training
outside the Commonwealth who now seek to be employed by
agencies within the Commonwealth; which is necessary for the
administration of the statutes:
(d) How this administrative regulation assists or will
assist in the effective administration of the statutes: This regulation
sets clear, reasonable and consistent rules and procedures for
peace officers who were employed in law enforcement agencies
outside the Commonwealth to be laterally employed by agencies
within the Commonwealth without having to repeat a basic training
course; provided the training they received outside the
Commonwealth was comparable to Kentucky’s basic training
requirements; to achieve active peace officer certification, or
participate in KLEFPF.

(2) If this is an amendment to an existing administrative
regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This amendment decreases mandated training for out-
of-state officers to qualify for certification and participation in
KLEFPF. This amendment removes a mandated forty (40)-hour
course and replaces it with a requirement that incoming officers
complete the federally and state required training that is provided
free and on-line by the Federal Emergency Management Agency
(FEMA); which currently is the ICS 100, ICS 200, and IS 700
training. Proof of this training is satisfied by production of
Certificates of Completion, or by transcripts, which are available
through FEMA.
(b) The necessity of the amendment to this administrative
regulation: This amendment is necessary due to changes made to
statutes and training standards; and to comply with existing
Executive Orders.
(c) How the amendment conforms to the content of the authorizing
statutes: This amendment amends KRS 15.330(1)(h) to authorize the
Kentucky Law Enforcement Council to approve law enforcement
officers, telecommunicators, and other persons as having met requirements
under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to
15.992; KRS 15.330(1)(h) authorizes the Kentucky Law
Enforcement Council to promulgate reasonable rules and
administrative regulations to accomplish the purposes of KRS
15.310 to 15.404 and KRS 15.990 to 15.992. This administrative
regulation is required to establish standards to review and accept
officers who received basic training outside the Commonwealth to
be employed by law enforcement agencies without having to
attend another basic training academy, so long as the training
received outside the Commonwealth was comparable with the
standards of training in the Commonwealth at the time those
officers graduated from their respective basic training academies.
This is necessary for the administration of KLEFPF (KRS 15.410
through 15.510), and peace officer certification (KRS 15.310 and
15.380 through 15.402).
(d) How the amendment will assist in the effective
administration of the statutes: This regulation sets clear,
reasonable and consistent rules and procedures for an officer to
receive credit for out-of-state training and qualify in the
Commonwealth for peace officer certification, and to participate in
KLEFPF.
(3) List the type and number of individuals, businesses,
organizations, or state and local governments affected by this
administrative regulation: All law enforcement agencies in the
Commonwealth that accept lateral transfers of peace officers who
received basic training outside the commonwealth.
(4) Provide an analysis of how the entities identified in question
(3) will be impacted by either the implementation of this
administrative regulation, if new, or by the change, if it is an
amendment, including:
(a) List the actions that each of the regulated entities identified in
question (3) will have to take to comply with this administrative
regulation or amendment: The agencies should not experience any
adverse impact. They will benefit because lateral hires will no
longer have to attend a forty (40)-hour course in Homeland
Security.
(b) In complying with this administrative regulation or
amendment, how much will it cost each of the entities identified in
question (3); Compliance with the amendments will result in
reduced training costs in terms of salary and benefits paid while
the officer would have been attending a forty (40) hour course.
(c) As a result of compliance, what benefits will accrue to the
entities identified in question (3): The agencies will be able to have

915
their officers compliant to professional standards with reduced training costs.

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

(a) Initially: No additional costs.
(b) On a continuing basis: No additional costs.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated; as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all divisions of state or local governments that employ peace officers who are required by KRS 15.350 to be certified, including city, county police departments, and county sheriffs' offices; but received their basic training through entities outside the Commonwealth.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), KRS 15.330(1)(f) and (h), and KRS 15.380.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. The economic effect on agencies is minimal to none – there will be a forty hour reduction of mandated training for lateral hires to be fully compliant as certified peace officers eligible for KLEFPF.

(a) How much 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 will be no additional costs to KLEC, DOCJT, or the agencies affected by this administrative regulation.
(d) How much will it cost to administer this program for subsequent years? None.

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

(6) What is the expected date of gaming.

(a) Form CG-Exempt, “Organization Grossing Under $25,000 Application for Exemption”, 09/15(1443); and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the forms to be filed and provides instructions for organizations seeking to be exempt from the usual licensing requirements for charitable gaming.

(b) The necessity of this administrative regulation: This regulation is necessary in order for the Department of Charitable Gaming to ensure that only those organizations that properly qualify be granted exempt status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.535(2) provides the requirements that an organization must comply with in order to notify the department, of its intention to be exempt from ordinary licensing requirements. KRS 238.535 requires an exempt organization to file an annual financial report.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. The department must be able to ensure that only those organizations that properly qualify be granted exempt status. This regulation sets out the requirement that those organizations file the proper form and report with the department.

(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 to the regulation updates the exemption application by fixing a statute reference and the date the annual financial report is due. This regulation is also changed to reflect the correct annual financial report date. The annual financial report is also updated.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to update the exemption application to fix a statute reference and to fix the date the annual financial report is due, pursuant to statute changes during the last legislative session. It is also necessary to update the annual financial report to add banking account information.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of KRS Chapter 238. In order to have an exemption the organization must have an accurate application form the annual report must provide all information the department needs to renew the exemption. This amendment therefore conforms to the content of the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The statutes require that organizations that are seeking exempt status notify the department on a form issued by the department. That form must be up to date based on the current statute. The statute was changed during the last legislative session and this amendment fixes the form and the regulation language to reflect those changes. The updated financial report will provide necessary banking information to the department without the department needing to contact the organization for clarification or additional information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments that will be affected by this administrative regulation: Organizations seeking to be granted exempt status from ordinary licensing requirements. Currently, there are 792 organizations that have been granted exempt status.

(4) Provide an analysis of how the entities identified in Question (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. Organizations will be required to use the updated application and annual financial report.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities involved in Question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): Exempt organizations will be granted an exemption and be allowed to game, up to $25,000 gross receipts, in the Commonwealth.

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

(a) Initially: There should be no cost to implement this amendment to the administrative regulation.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to 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 change, if it is an amendment: No increase in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? No. All organizations are being treated the same.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(3), (9) and KRS 238.535(2), (13).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 administrative cost.

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

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;
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)

820 KAR 1:015. Issuance of annual license for a charitable organization.

RELATES TO: KRS 238.515(3), 238.525, 238.535, 238.540(1)
STATUTORY AUTHORITY: KRS 238.515(1), (2), (3), (9), 238.525(1), 238.535(8), (11), (12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.525(1) requires the department to issue an annual or biennial license to a qualified applicant and to establish fees not to exceed the amounts established in KRS 238.535. KRS 238.535(9) requires applicants for licensure to complete a required application form and KRS 238.535(12) requires the department to establish licensure fees not to exceed $300. This administrative regulation establishes the fees and procedures for annual licensure of charitable organizations.

Section 1. Application for Licensure. (1) A charitable organization shall submit a complete, accurate, and verifiable application on Form CG-1, Charitable Organization License Application, at least sixty (60) days prior to the expiration of its license or expected date of gaming.

(2) An application shall not be considered complete until all deficiencies are resolved.

(3) If the applicant does not file a written response to a deficiency request within thirty (30) days or does not provide any requested documents, the application shall be deemed withdrawn.

(4) Once the department has received a complete application, it shall grant or deny the license within sixty (60) days.

(5) The department shall issue a license if the applicant has:

(a) Met the requirements for licensure set forth in KRS 238.535;

(b) Paid all fees and fines;

(c) Filed all reports required;

(d) Filed an acceptable financial plan if required; and

(e) Complied with all terms and conditions of any applicable settlement agreement or probationary terms.

(6) The following persons shall be required to submit a fingerprint card if the person resides out-of-state:

(a) The chief executive officer;

(b) The chief financial officer; or

(c) Each chairperson.

Section 2. Information Required on License. A license issued by the Department of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Physical address of the licensee;

(3) Effective date of the license;

(4) Expiration date of the license;

(5) Premises or location at which the charitable gaming will be conducted;

(6) Type of license issued (organization);

(7) Address of the Department of Charitable Gaming; and

(8) The day and time for each gaming occasion, and the type of gaming to be conducted under the license.

Section 3. Fees for Licensure. (1) The annual license fees for each organization license issued shall be as follows:

(a) $100 for:

1. A charitable organization upon initial application; and

2. A charitable gaming organization with gross receipts not in excess of $100,000;

(b) $200 for a charitable gaming organization with gross receipts over $100,000, but not in excess of $250,000; or

(c) $300 for a charitable gaming organization with gross receipts over $250,000.

(2) A nonrefundable processing fee of twenty-five (25) dollars shall:

(a) Accompany each application for licensure; and

(b) Be credited against the amount of the annual license fee.

(3) An annual license shall not be issued until the annual license fee is paid in full.

(4) The annual license term shall be for one (1) year from the effective date of the license.

Section 4. Change Request. (1) (a) If the organization wishes to change the date, time, or location of a gaming occasion to a new date, time, or location, the charitable organization shall submit a written request signed by an officer and a lease for the new gaming location to the department by U.S. postage prepaid mail, electronic mail, hand-delivery, or facsimile transmission at least ten (10) days prior to the date of the requested change.

(b) The department shall process this request and issue or deny a license within ten (10) days.

(c) The organization shall not engage in gaming at the requested date, time, or location change if the new license has not been received.

(d) The organization shall be invoiced a fee of twenty-five (25) dollars for the change.

(2) If the organization wishes to change any other information contained in the license application, the charitable organization shall submit those changes in writing no later than thirty (30) days after the change is made. The change request shall be signed by an officer.

(3) If an organization wishes to cancel a gaming occasion, the organization shall notify the department, in writing, at least twenty-four (24) hours prior to the scheduled start of the gaming occasion.

The organization is relieved of this notification requirement in the event the cancelation is caused by the occurrence of a force majeure. For purposes of this administrative regulation, a force majeure means a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the organization including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, and other like events that are beyond the reasonable anticipation and control of the organization, despite the organization’s reasonable efforts to prevent, avoid, delay, or mitigate the effect of the acts, events, or occurrences.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedure for organizations to apply for a charitable gaming license and specific requirements for the same to be granted. The application form is incorporated by reference.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a standardized procedure and application for organizations to apply for a charitable gaming license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(1), (2), (3), (9), KRS 238.525(1) and KRS 238.535(9), (11), and (12). KRS 238.515 (1)-(3) set forth the powers of the department to license charitable organizations, establish and enforce reasonable standards for the conduct of charitable gaming, and to provide reasonable licensure fees. KRS 238.515(9) authorizes the department to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.525(1) authorizes the department to issue licenses and to set a license term "in any manner it deems appropriate to facilitate efficient licensing." KRS 238.535 (9), (11), and (12) set forth the information an organization must submit to apply for a license, gives the authority to issue a license for a specified period of time based upon the type of gaming involved, and to set a license fee. This regulation is necessary for the department to uniformly and efficiently collect the information necessary to issue or deny a license to an organization.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates effective administration of the statutes by providing a standardized form and procedure for organizations to apply for licenses and for the department to collect the necessary information to determine if a license can be granted per the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the CG-1, Charitable Organization License Application. It clarifies that any change in gaming dates/times/locations must be reported to the department, including a cancellation, and sets forth the procedure for doing so.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the CG-1, Charitable Organization License Application. The amendment was further needed to clarify that not only changes to gaming dates/times/locations must be reported to the department, but also any cancellations other than due to an act of God. Pursuant to KRS 239.540, organizations are required to game at the date, time, and location stated on their license, and the organization has canceled the gaming occasion without informing the department. The organization has caused the department to waste valuable resources and compliance officers cover large areas of the state and must plan carefully. Clarifying language will help the organizations understand their obligation which will in turn assist department compliance officers, investigators, and auditors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will only affect organizations licensed by the department to conduct charitable gaming. Presently there are 134 licensees.

(4) Provide an analysis of how the entities identified in Question (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 charitable organizations will be required to use the amended CG-1 application when applying for a license or a renewal of a license and will be required to notify the department if they cancel a gaming session. The department will update the web site with the amended CG-1 and otherwise make the form available for applicants.

(b) In complying with this administrative regulation or amendment, how much time will each of the entities identified in Question (3) have to do so? The department in case of a gaming session cancellation will actually save organizations money as some organizations have been fined for not notifying the department. Clarifying language should assist in preventing those fines.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): The application is easier to understand and will be easier for an organization to fill out. Further, organizations will benefit by requiring less follow up and clarification from the department which should allow applications to be processed more quickly. Organizations will also benefit from clarifying language in the regulation regarding their duty to notify the department in case of cancelation of a gaming session which will result in fewer fines for violation of the statute.

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

(a) Initially: There will be no cost to implement this amendment an organization must submit to apply for a license, gives the authority to issue a license for a specified period of time based upon the type of gaming involved, and to set a license fee. This amendment makes changes to the CG-1, Charitable Organization License Application to clarify information requests and obtain additional needed information regarding cake wheels and electronic pulltabs. The amendment further clarifies that not only changes to gaming dates/times/locations must be reported to the department, but also any cancellations other than due to an act of God, pursuant to the requirements of KRS 238.540.

(d) How the amendment will assist in the effective administration of the statutes: The application changes will allow the department to more effectively gather the necessary information to grant or deny a license to an organization. Changes were specifically needed to determine what organizations will utilize electronic pulltabs and to determine what distributors and manufacturers will be providing those products. Organizations are statutorily required to notify the department if there is a change in their gaming date, time or location, however some organizations have not understood this requires notification to the department if they plan to not game. The changes to the regulation will facilitate efficient random gaming inspections. If a compliance officer shows up to a location expecting an organization to be gaming based upon what is stated on their license, and the organization has canceled the gaming occasion without informing the department, then the organization has caused the department to waste valuable resources and compliance officers cover large areas of the state and must plan carefully. Clarifying language will help the organizations understand their obligation which will in turn assist department compliance officers, investigators, and auditors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will only affect organizations licensed by the department to conduct charitable gaming. Presently there are 134 licensees.

(4) Provide an analysis of how the entities identified in Question (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 charitable organizations will be required to use the amended CG-1 application when applying for a license or a renewal of a license and will be required to notify the department if they cancel a gaming session. The department will update the web site with the amended CG-1 and otherwise make the form available for applicants.

(b) In complying with this administrative regulation or amendment, how much time will each of the entities identified in Question (3) have to do so? The department in case of a gaming session cancellation will actually save organizations money as some organizations have been fined for not notifying the department. Clarifying language should assist in preventing those fines.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): The application is easier to understand and will be easier for an organization to fill out. Further, organizations will benefit by requiring less follow up and clarification from the department which should allow applications to be processed more quickly. Organizations will also benefit from clarifying language in the regulation regarding their duty to notify the department in case of cancelation of a gaming session which will result in fewer fines for violation of the statute.

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

(a) Initially: There will be no cost to implement this amendment an organization must submit to apply for a license, gives the authority to issue a license for a specified period of time based upon the type of gaming involved, and to set a license fee. This amendment makes changes to the CG-1, Charitable Organization License Application to clarify information requests and obtain additional needed information regarding cake wheels and electronic pulltabs. The amendment further clarifies that not only changes to gaming dates/times/locations must be reported to the department, but also any cancellations other than due to an act of God, pursuant to the requirements of KRS 238.540.

(d) How the amendment will assist in the effective administration of the statutes: The application changes will allow the department to more effectively gather the necessary information to grant or deny a license to an organization. Changes were specifically needed to determine what organizations will utilize electronic pulltabs and to determine what distributors and manufacturers will be providing those products. Organizations are statutorily required to notify the department if there is a change in their gaming date, time or location, however some organizations have not understood this requires notification to the department if they plan to not game. The changes to the regulation will facilitate efficient random gaming inspections. If a compliance officer shows up to a location expecting an organization to be gaming based upon what is stated on their license, and the organization has canceled the gaming occasion without informing the department, then the organization has caused the department to waste valuable resources and compliance officers cover large areas of the state and must plan carefully. Clarifying language will help the organizations understand their obligation which will in turn assist department compliance officers, investigators, and auditors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will only affect organizations licensed by the department to conduct charitable gaming. Presently there are 134 licensees.

(4) Provide an analysis of how the entities identified in Question (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 charitable organizations will be required to use the amended CG-1 application when applying for a license or a renewal of a license and will be required to notify the department if they cancel a gaming session. The department will update the web site with the amended CG-1 and otherwise make the form available for applicants.

(b) In complying with this administrative regulation or amendment, how much time will each of the entities identified in Question (3) have to do so? The department in case of a gaming session cancellation will actually save organizations money as some organizations have been fined for not notifying the department. Clarifying language should assist in preventing those fines.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): The application is easier to understand and will be easier for an organization to fill out. Further, organizations will benefit by requiring less follow up and clarification from the department which should allow applications to be processed more quickly. Organizations will also benefit from clarifying language in the regulation regarding their duty to notify the department in case of cancelation of a gaming session which will result in fewer fines for violation of the statute.

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

(a) Initially: There will be no cost to implement this amendment
to the administrative regulation.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation. The licensing department is already processing applications.

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

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

(9) TIERING: Is tiering applied? No. Only charitable organizations are affected by this regulation and it applies equally to all.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(1) and (9); KRS 238.525(1); and KRS 238.535(9).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should be no effect on the expenditures or revenues of any government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to the regulation should not generate revenue in the first year or in subsequent years. There may be some limited gain if the new application is easier to understand and process which could lead to more organizations applying for licenses and more licenses being issued, but that is likely nominal. Thus, this regulation is essentially revenue neutral.

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program this program for the first year? It is not anticipated that that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues +/-: Not applicable; see response to (c) above.

Expenditures +/-: Not applicable; see response to (c) above.

Other explanation: There should be little to no fiscal impact as the amendment merely updates certain information and does not require any new or additional procedures or actions.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming

820 KAR 1:016. Distributor and manufacturer licensees.

RELATES TO: KRS 238.525, 238.530, 238.555(3)(h)
STATUTORY AUTHORITY: KRS 238.515(1), (2), (3), (4), (9), 238.530(1), (2), (4), (5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) requires the Department of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.525(1) requires the department to issue an annual or biennial license to a qualified applicant and to establish fees not to exceed the amounts established in KRS 238.530(1) and (2). KRS 238.530(4) requires applicants for licensure to complete a required application form and KRS 238.530(1) and (2) requires the department to establish licensure fees, not to exceed $1,000. This administrative regulation establishes the fees and procedures for annual licensure of distributors and manufacturers.

Section 1. Application for Licensure. (1) An applicant for a distributor’s or manufacturer’s license shall submit a complete, accurate, and verifiable application on either Form CG-2, Distributor License Application, or Form CG-3, Manufacturer License Application, at least sixty (60) days prior to the expiration of its license or expected date of operation.

(a) An application shall not be considered complete until all deficiencies are resolved.

(b) If the applicant does not file a written response to a deficiency request within thirty (30) days or does not provide a requested document, the application shall be deemed withdrawn.

(c) Once the department has received a complete application, it shall grant or deny the license within sixty (60) days.

(d) The department shall issue a license if the applicant has:

(a) Met the requirements for licensure set forth in KRS 238.530;

(b) Paid all fees and fines;

(c) Filed all reports required;

(d) Filed a financial plan if required; and

(e) Complied with all terms and conditions of any applicable settlement agreement or probationary terms.

(e) Fingerprint shall be required for the chief executive officer, the chief financial officer, and anyone with a ten (10) percent or greater financial interest in the licensee.

(f) If the licensee wishes to change any information printed on the license, the request shall be submitted prior to the date of the change being made along with a fee of twenty-five (25) dollars. The request shall be signed by an officer. The licensee shall receive the new license before making the requested change.

Section 2. Information Required on License. A license issued by the Department of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Physical address of the licensee;

(3) Date of issuance of the license;

(4) Expiration date of the license;

(5) Type of license issued (manufacturer or distributor); and

(6) Address of the Department of Charitable Gaming.

Section 3. Fees for Licensure. (1) The annual license fee for each distributor or manufacturer license issued shall be $1,000.

(2) A nonrefundable processing fee of twenty-five (25) dollars shall:

(a) Accompany each application for licensure; and

(b) Be credited against the amount of the annual license fee.

(3) An annual license shall not be issued until the annual license fee is paid in full.

(4) The annual license shall be effective for one (1) year from the date of issuance.

Section 4. Requirements of a Distributor. (1) Pulltabs or bingo papers that are damaged shall not be sold and shall be destroyed
by burning, shredding, or defacing in some manner to prevent their reuse.

(2) A distributor shall maintain a separate bank account for the operation of the distributorship that is not commingled with a personal account or another business account. If the licensee owns multiple distributorships, separate bank accounts shall be maintained for each distributorship.

(3) Any payments received from a licensed charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account.

Section 5. Requirements of a Manufacturer. A licensee who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the department of the delinquency in writing by letter stating the name and license number of the delinquent distributor.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form CG-2, "Distributor License Application" 5/15(1)(4)(3); and
(b) Form CG-3, "Manufacturer License Application" 5/15(1)(4)(3).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides the procedure for distributors and manufacturers to apply for a charitable gaming license and specific requirements for the same to be granted. The application forms are incorporated by reference.
(b) The necessity of this administrative regulation: This regulation is necessary to establish a standardized procedure and application for distributors and manufacturers to apply for a charitable gaming license.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 238.530(1), (2), (4), (5), and (6). KRS 238.515(2) requires the department to establish reasonable standards for the conduct of charitable gaming. KRS 238.515(1) requires the department to issue an annual or biennial license to a qualified applicant and to establish fees not to exceed the amounts established in KRS 238.530(1) and (2). KRS 238.530(4) requires applicants for licensure to complete a required application form and KRS 238.530(1) and (2) requires the department to establish licensure fees, not to exceed $1,000. This administrative regulation establishes the fees and procedures for annual licensure of distributors and manufacturers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates effective administration of the statutes by providing a standardized form and procedure for distributors and manufacturers to apply for licensure and for the department to collect the necessary information to determine if a license can be granted per the statutes.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will affect the existing administrative regulation: This amendment incorporates an amended CG-2, Distributor License Application 05/15, and amended CG-3, Manufacturer License Application 05/15. The purpose of the amendment is to add information regarding whether the manufacturer or distributor will provide electronic pulltabs and electronic pulltab devices to licensed organizations in Kentucky. It also adds a space for manufacturers to list what distributors they are distributing their product for to use in Kentucky.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate the amended CG-2 and CG-3 applications for a distributor's license and manufacturer's license. The amended applications were necessary due to the statutory change allowing for use of electronic pulltab devices.
(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for these regulations are KRS 238.515(1), (2), (3), (4), (5) and KRS 238.530(1), (2), (4), (5), and (6). KRS 238.515(2) requires the department to establish reasonable standards for the conduct of charitable gaming. KRS 238.515(1) requires the department to issue an annual or biennial license to a qualified applicant and to establish fees not to exceed the amounts established in KRS 238.530(1) and (2). KRS 238.530(4) requires applicants for licensure to complete a required application form and KRS 238.530(1) and (2) requires the department to establish licensure fees, not to exceed $1,000. This administrative regulation establishes the fees and procedures for annual licensure of distributors and manufacturers. This regulation amendment incorporates the amended CG-2, Distributor License Application 05/15, and amended CG-3, Manufacturer License Application 05/15, pursuant to changes to KRS 238.505, KRS 238.545, and proposed amendments to 820 KAR 1:001, 032, and 033.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the department to determine what manufacturers and distributors will be offering electronic pulltabs and electronic pulltab devices to licensed organizations in Kentucky. It will also enable the department to cross reference what distributors are receiving product from what manufacturers.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact manufacturers and distributors obtaining or renewing a license. Currently there are sixteen (16) licensed distributors and twenty-three (23) licensed manufacturers.
(4) Provide an analysis of how the entities identified in Question (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: Distributors will be required to use the amended CG-2 application, and manufacturers will be required to...
use the amended CG-3 application, when applying for a license or a renewal of a license. The department will need to update the web site with the new CG-2 and CG-3 applications and otherwise make the forms available for applicants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): The main function of this amendment is to incorporate the amended CG-2 and CG-3 applications. The distributors and manufacturers are already required to fill out an application form and the department is already required to process the applications and either grant or deny a license. As such, the amendment to this regulation will not cost any of the entities identified in Question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): Distributors and manufacturers wishing to offer electronic pulltabs and electronic pulltab devices to licensed organizations in Kentucky will benefit by obtaining a license to do so.

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

(a) Initially: There will be no cost to implement this amendment to the administrative regulation.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation. The licensing department is already processing a CG-2 and CG-3 application.

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

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

(9) TIERING: Is tiering applied? No. Only distributors and manufacturers are affected by this regulation and it applies equally to all.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(1) and (9); 238.525(1); and 238.535(9).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should be no effect on the expenditures or revenues of any government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to the regulation should not generate revenue in the first year or in subsequent years. See response to (a) above.

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program or the program for the first year? It is not anticipated that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.

Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be no fiscal impact as the amendment merely updates certain information and does not require any new or additional procedures or actions.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)

820 KAR 1:017. Licensing inspections.

RELATES TO: KRS 238.530, 238.535, 238.555
STATUTORY AUTHORITY: KRS 238.515(1), (2), (9), 238.530(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.530, 238.535, and 238.555 authorize the department[office] to license distributors, manufacturers, charitable organizations and facilities. KRS 238.530(5) requires that manufacturers and distributors maintain records that are available for inspection for three (3) years. KRS 238.535 requires organizations to establish that they have maintained an office or place of business in the county in which charitable gaming is to be conducted. This administrative regulation establishes the criteria to be used in verifying the information contained in an application.

Section 1. (1)(a) An applicant for a charitable organization license or exemption shall be able to demonstrate its establishment and reasonable progress by independent and verifiable information. This may include an inspection of its office including contracts or leases, utility bills, records maintained by the parent organization, bank records, and any other records that are appropriate.

(b) Upon inspection, an applicant for a charitable organization license or exemption shall be able to demonstrate its maintenance of an office by copies of the business records, including the articles of incorporation and by-laws, if any, the tax forms, the check book and bank statements, and any other records expected to be kept by that type of organization.

(2) An applicant for a facility license shall be able to demonstrate that it is the entity that is operating the facility and that they do not have any prohibited relationships with organizations, distributors, or manufacturers. This may include an inspection of its office including contracts, required reports, checkbook, bank accounts, and any other records regarding the operation of the facility.

(3) An applicant for a distributor’s or manufacturer’s license shall be able to demonstrate prior to licensing that it manufactures or distributes gaming supplies from the locations stated on the license application. This may include an inspection of those locations and a demonstration or explanation of its ability to track gaming supplies and maintain the appropriate records.

(4) These inspections shall be completed by appropriate department[office] personnel who shall file a report.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: The department is authorized to review license applications and issue licenses based upon information contained in the license and verified through office inspections of the business location of the license applicant for a charitable gaming organization by inspecting their office location. This amendment to the existing administrative regulation also conforms as pursuant to KRS 238.535 an organization is required to maintain an office or place of business in the county in which charitable gaming is to be conducted and the regulation permits the department to verify the same.

(b) The necessity of this administrative regulation: This amendment makes clear that the department can conduct office inspections of organizations applying for a license; a practice the department has always had in place but was not clear in the regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(1), (2), (9), 238.530(5). KRS 238.515 (1) and (2) set forth the powers of the department to license charitable organizations and establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.515(9) authorizes the department to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.530(5) requires manufacturers and distributors to maintain certain records and for those records to be available for inspection by the department. This regulation is necessary for the department to uniformly and efficiently collect the information necessary to issue or deny a license to an organization and to make sure the information contained in the application of an applicant must maintain an office in the Commonwealth and the department is obligated to verify the same.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the administration of the statutes requiring applicants for a license to demonstrate certain information that can be verified by office inspections. This amendment to the administrative regulation will clarify that the department has the right to verify information contained in the application of an organization by inspecting their office location.

(2) If 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 merely clarifies that the department has the right to verify information contained in the application of an organization by inspecting their office location.

(b) The necessity of the amendment to this administrative regulation: The department has always conducted office inspections of all license applicants, however the regulation was not clear that the department could perform an office inspection of a license applicant for a charitable gaming organization license even though they are statutorily required to have an office in the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: This statutory authorities for this regulation are KRS 238.515(1), (2), (9), 238.530(5). KRS 238.515 (1) and (2) set forth the powers of the department to license charitable organizations and establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.515(9) authorizes the department to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.530(5) requires manufacturers and distributors to maintain certain records and for those records to be available for inspection by the department. This amendment conforms to the statutes by assisting the department in uniformly and efficiently collecting the information necessary to issue or deny a license to an organization and to make sure the information reported on the application is accurate. The amendment also conforms as pursuant to KRS 238.535 an organization is required to maintain an office or place of business in the county in which charitable gaming is to be conducted and the regulation permits the department to verify the same.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the department to verify information contained in the organization application by conducting an office inspection in the office the organization is statutorily required to have.

(3) List the type and number of individuals, businesses, organizations, or state and local government agencies affected by this administrative regulation: This amendment will only impact charitable organizations attempting to obtain a charitable gaming license and current licensed organizations renewing their current licenses. Presently there are 603 licensed organizations. This will not be a change to department procedure, only a clarification of the same and thus will not change what organizations have already been required to do.

(4) Provide an analysis of how the entities identified in Question (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 charitable organizations will be required to submit to an office inspection, however the department policy has always been to conduct these inspections thus there will be no change to procedure, merely a clarification of regulation language.

(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 regulation will not cost anything to the entities identified in Question (3). Affected by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): The organization will prove it meets statutory requirements for licensure.

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

(a) Initially: There will be no cost to implement this amendment to the existing administrative regulation.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation. The licensing department is already processing applications and office inspections are already occurring.

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

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

(9) TIERING: Is tiering applied? No. Only charitable organizations are affected by this regulation and it applies equally to all.
FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(1), (2), (9) and KRS 238.535.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should be no effect on the expenditures or revenues of any government agency.

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

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program for the first year? It is not anticipated that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.

Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be no fiscal impact.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)

820 KAR 1:025. Financial reports of a licensed charitable organization.

RELATES TO: KRS 238.550(6), (7), (8), 238.570(1)
STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550(6), (7), (8), 238.570(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) requires the Department of Charitable Gaming to promulgate administrative regulations establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for. KRS 238.550(6), (7), and (8) require the department to promulgate administrative regulations concerning financial report forms. KRS 238.570(1) requires a licensed charitable organization to remit a percentage of the gross receipts derived from charitable gaming to the department. This administrative regulation establishes the method and time of filing the financial reports and remitting payment of the fees due.

Section 1. Reporting Period Defined. (1) For a licensed charitable organization that has gross receipts of $200,000 or less per calendar year and does not have a weekly bingo session, a complete, accurate, legible, and verifiable financial report, in accordance with Section 2 of this administrative regulation, shall be submitted by the licensed charitable organization along with the fee required by Section 3 of this administrative regulation for every quarter licensed to game on or before the following dates:

(a) April 30, for the quarter January 1 to March 31;
(b) July 31, for the quarter April 1 to June 30;
(c) October 31, for the quarter July 1 to September 30; and
(d) January 31, for the quarter October 1 to December 31.

(2) If the due date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(3) The financial report and fee shall be considered filed when due if it has been:

(a) Mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date;
(b) Received in the department by hand-delivery on or before the due date; or
(c) Received by the department electronically on or before the due date.

Section 2. Financial Reports. (1) A financial report shall:

(a) Be submitted on Form CG-FIN, Financial Report for a Licensed Charitable Organization, including all attachments;
(b) Be completed in ink or typed;
(c) Include the original signature and printed name or, if submitted electronically, the typewritten name of either the chief executive officer or the chief financial officer of the licensed charitable organization; and
(d) Include the original signature and printed name or, if submitted electronically, the typewritten name of the preparer if prepared by an individual other than the chief executive officer or chief financial officer.

(2) If an organization does not have any information to place on an attachment to the financial report, it shall indicate "not applicable" on the attachment.

(3) To complete the Bingo Paper Supplies Inventory page of Form CG-FIN, the product description shall be listed in the format "# ON # UP", with:

(a) The number "ON" being the number of bingo faces on a bingo paper sheet; and
(b) The number "UP" being the number of bingo paper sheets contained in a bingo paper pack.

(4) If multiple pages are used for inventory, each person completing the inventory shall sign one (1) page of the pages that person completed and initial the remaining pages.

Section 3. Fees Due. The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the financial report is due.

Section 4. Reporting Expenses. All expenses incurred by a licensee shall be reported on the financial report for the date on which payment was made, which shall be either the date a check was written or an electronic funds transfer was made, regardless of when the supplies were used or the services were rendered.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard,
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 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 calendar day on September 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation requires licensed charitable organizations to file quarterly or annual financial reports with the Department of Charitable Gaming in order to account for all revenues derived from charitable gaming.
(b) The necessity of this administrative regulation: This regulation is necessary in order for the Department of Charitable Gaming to ensure that licensed charitable organizations are meeting their charitable purposes and that all revenues derived from gaming are being spent on for legitimate and lawful purposes.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 238.515(4) authorizes the department to establish standards relating to accounting, recordkeeping and reporting in order to ensure that charitable gaming receipts are properly accounted for. KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.550(6),(7) and (8) require licensed charitable organizations to submit financial reports.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Charitable Gaming is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. In order to meet that responsibility, the department must have the means to monitor and verify the amount and uses of charitable gaming revenues by licensed organizations. This administrative regulation sets forth the requirements that organizations file regular and periodic reports and provides instructions on how those reports are to be filed.

(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 to the regulation updates confusing language regarding reporting cash and check payouts.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify confusing language in the report regarding cash and check payouts.
(c) How the amendment conforms to the content of the authorizing statute: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.550(6),(7) and (8) require licensed charitable organizations to submit financial reports. This amendment merely clarifies confusing language in that report therefore conforms to the content of the authorizing statute.
(d) How the amendment will assist in the effective administration of the statutes: All licensed charitable organizations are currently licensed to conduct charitable gaming in Kentucky and the department is charged with the responsibility of reviewing those reports for compliance with Kentucky law. This amendment to the regulation only clarifies confusing language in the report regarding cash and check payouts. Organizations had not been including check payouts in their cash payouts on the report and this was causing problems to the organizations and to the reviewers of these reports in the department. This should alleviate the need for the organizations to correct improperly filled out reports.

(3) List the type and number of individuals, businesses, organizations, or state and local governments that will be affected by this administrative regulation: The 603 organizations that are currently licensed to conduct charitable gaming 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: Organizations are required to submit financial reports. This amendment merely clarifies language in that report to assist those organizations with proper reporting.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities involved in Question (3): There should be no cost to the organizations.
(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): Licensed charitable organizations will benefit by having an easier to understand financial report.

(5) Provide an estimate of how much it will cost to implement this administrative regulation, if new, or by change, if it is an amendment:
(a) Initially: There will be no cost to implement this amendment to the administrative regulation.
(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to 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 change, if it is an amendment: There will be no increase in fees or funding necessary to implement this amendment to the administrative regulation.

(8) State whether or not the administrative regulation establishes any fees or direct or indirectly increases any fees: This administrative regulation does not establish any new fees.

(9) TIERING: Is tiering applied? No. All licensed charitable organizations are being treated the same.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(4); KRS 238,550(6). (7), (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 amendment to the administrative regulation will have no effect on expenditures and revenues of any state or local agency.

4. (a) How 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 to the regulation will not generate any new or additional revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment to the regulation will not generate any new or additional revenues.
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(c) How much will it cost to administer this program for the first year? No additional administrative cost.
(d) How much will it cost to administer this program in subsequent years? No additional administrative cost.
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: This amendment to the regulation simply clears up confusing language in the financial report.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming

(1) Be submitted on Form CG-DIS for a licensed distributor, or Form CG-MAN for a licensed manufacturer;
(2) Be submitted for each quarter that the distributor or manufacturer is licensed;
(3) Be completed in ink or typed;
(4) Include the original signature and printed name or, if submitted electronically, the typewritten name of the chief executive officer of the license holder; and
(5) Include the original signature and printed name or, if submitted electronically, the typewritten name of the preparer, if prepared by an individual other than the chief executive officer.

Section 2. Reporting Period Defined. (1) A complete, accurate, legible, and verifiable quarterly report, in accordance with Section 1 of this administrative regulation, shall be submitted by a licensed distributor or licensed manufacturer on or before the following dates:
1. April 30, for the quarter January 1 to March 31;
2. July 31, for the quarter April 1 to June 30;
3. October 31, for the quarter July 1 to September 30; and
4. January 31, for the quarter October 1 to December 31.
(b) If the due date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.
(2) The report shall be considered filed when due if it has been:
(a) Mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date;
(b) Received in the department by hand-delivery on or before the due date; or
(c) Received by the department electronically on or before the due date.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form CG-DIS, "Licensed Charitable Gaming Distributor Quarterly Report", 5/15; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation requires licensed charitable gaming distributors and manufacturers to file quarterly financial reports with the Department of Charitable Gaming in order for the department to be specifically apprised of all charitable gaming supplies being distributed in the state and which organizations they are going to.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to enable the department to be accurately and currently apprised of precisely what charitable gaming supplies are being distributed to distributors and licensed charitable organizations in Kentucky. Organizations are prohibited by law from purchasing charitable gaming supplies from non-licensed entities. All charitable gaming supplies are inventoried and contain identifying and tracking information. Quarterly reports by manufacturers and distributors enable the department to track charitable gaming supplies and ensure that all gaming supplies utilized in the state are legal.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.530(5) authorizes the department to require licensed manufacturers and distributors to report on their activities, with the frequency and content of those reports to be determined by administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The department is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. In order to meet that responsibility, the department must have the means to monitor and track what gaming supplies are being distributed and to whom.
(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 to the regulation requires manufacturers to file quarterly reports whereas previously only distributors were required to file. The new manufacturer’s quarterly report is incorporated by reference. The distributor report is also updated to include electronic pulltabs.
(b) The necessity of the amendment to this administrative regulation: This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation requires licensed charitable gaming distributors and manufacturers to file quarterly financial reports with the Department of Charitable Gaming in order for the department to be specifically apprised of all charitable gaming supplies being distributed in the state and which organizations they are going to.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to enable the department to be accurately and currently apprised of precisely what charitable gaming supplies are being distributed to distributors and licensed charitable organizations in Kentucky. Organizations are prohibited by law from purchasing charitable gaming supplies from non-licensed entities. All charitable gaming supplies are inventoried and contain identifying and tracking information. Quarterly reports by manufacturers and distributors enable the department to track charitable gaming supplies and ensure that all gaming supplies utilized in the state are legal.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in order to carry out and implement KRS Chapter 238. KRS 238.530(5) authorizes the department to require licensed manufacturers and distributors to report on their activities, with the frequency and content of those reports to be determined by administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The department is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. In order to meet that responsibility, the department must have the means to monitor and track what gaming supplies are being distributed and to whom.
(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 to the regulation requires manufacturers to file quarterly reports whereas previously only distributors were required to file. The new manufacturer’s quarterly report is incorporated by reference. The distributor report is also updated to include electronic pulltabs.
(b) The necessity of the amendment to this administrative regulation: This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
regulation: This amendment is necessary in order to fully monitor the gaming supplies coming into the Commonwealth and to update the reports to include electronic pulltabs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.530(5) authorizes the department to require licensed manufacturers and distributors to report on their activities, with the frequency and content of those reports to be determined by administrative regulation. This amendment therefore conforms to the content of the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the regulation will assist the department in knowing and tracking charitable gaming supplies and equipment being used in the Commonwealth in order to make sure the supplies and equipment being used in the state are from licensed manufacturers and distributors. Further, the statute clearly contemplated manufacturers reporting their activities to the department, but no form or guidelines provided for the manufacturer to do so. The amendment will also allow reporting on electronic pulltab distribution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments that will be affected by this administrative regulation: The twenty-three (23) licensed manufacturers and sixteen (16) licensed distributors of charitable gaming supplies that are currently licensed in Kentucky.

(4) Provide an analysis of how the entities identified in Question (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: Manufacturers will now have to file a quarterly financial report detailing the charitable gaming supplies and equipment they sell to distributors for use in Kentucky. Distributors will file the same report but will be required to report on electronic pulltabs as well.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3); Manufacturers should already maintain this information and the request to provide forms to other states, therefore it is not anticipated this will cost the manufacturers anything other than the cost of the time to compile the report. There should be no additional cost to distributors.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3); Licensed manufacturers will simply meet their obligations under the law. They will also be protected from illegal supplies and equipment coming into the state.

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

(a) Initially: There will be some cost to the department to implement this amendment to the administrative regulation as it will be required to review the manufacturer quarterly reports as they come in.

(b) On a continuing basis: The cost will be the same on a continuing basis.

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: Currently there is no additional funding requested to implement the amendment to the administrative regulation, however the department does believe an increase in manufacturer and distributor licensing fees is warranted based on the fees of other states and the disproportionate fee paid by organizations in comparison to manufacturers and distributors who, because of budgetary constraints, are not as monitored as they should be. A change in fees would need to be done by statute.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by change, if it is an amendment: See (6) above.

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

(9) TIERING: Is tiering applied? No. All licensed manufacturers are being treated the same.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: The Kentucky Department of Charitable Gaming as the agency responsible for implementing this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(9); KRS 238.550(6), (7); and KRS 238.530(5).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts for the first full year the administrative regulation is to be in effect. This amendment to the administrative regulation will have no effect on the expenditures or revenues of any 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 amendment to the regulation will not generate any new or additional revenues.

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

(c) How much will it cost to administer this program for the first year? There will be some cost associated with reviewing the information contained in the manufacturer report, but the exact cost is unknown.

(d) How much will it cost to administer this program in subsequent years? Same as (c) above.

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: This amendment requires licensed manufacturers to submit quarterly financial reports. Those reports will need to be reviewed by the department which will cost the department resources. The exact time and amount of resources is unknown.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)

820 KAR 1:029. Facility licensees.

RELATES TO: KRS 238.530(3), 238.555

STATUTORY AUTHORITY: KRS 238.515(2)(4), (9), 238.555(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) requires the Department of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. KRS 238.555(2) requires applicants for a charitable gaming facility license to complete a required application, and KRS 238.555(1) requires the department to establish a licensure fee not to exceed $2,500. This administrative regulation establishes the fees and procedures for the licensing of facilities.

Section 1. Application for License. (1) An applicant for a facility license shall submit a complete, accurate, and verifiable application on Form CG-4, Facility License Application, at least
sixty (60) days prior to the expiration of its license or expected date of the operation of the facility.

(2) An application shall not be considered complete until all deficiencies are resolved.

(3) If the applicant does not file a written response to a deficiency request within thirty (30) days or does not provide a requested document, the application shall be deemed withdrawn.

(4) Once the department has received a complete application, it shall grant or deny the license within sixty (60) days.

(5) The department shall issue a license if the applicant has:
   (a) Met the requirements for licensure set forth in KRS 238.555;
   (b) Paid all fees and fines;
   (c) Filed all reports required;
   (d) Filed an acceptable financial plan, if required; and
   (e) Complied with all terms and conditions of any applicable settlement agreement or probationary terms.

(6) Fingerprints shall be required for the chief executive officer, the chief financial officer, and anyone with a ten (10) percent or greater financial interest in the licensee.

Section 2. Information Required on License. A license issued by the Department of Charitable Gaming shall clearly state the:

(1) Name of the licensee;
(2) Physical address of the licensee;
(3) Address of the gaming facility, if different;
(4) Effective date of the license;
(5) Expiration date of the license;
(6) Type of license issued (facility); and
(7) Address of the Department of Charitable Gaming.

Section 3. Fees for Licensure. (1) The annual license fee for a charitable gaming facility conducting between nine (9) and eighteen (18) sessions per week shall be $2,500. The annual license fee for a charitable gaming facility conducting no more than eight (8) sessions per week shall be $1,250. (2) A nonrefundable processing fee of twenty-five (25) dollars shall:

(a) Accompany each application for licensure; and
(b) Be credited against the amount of the annual license fee.

(3) An annual license shall not be issued unless the annual license fee is paid in full.

(4) The annual license term shall be for one (1) year from the effective date of the license.

(5) A facility license shall be issued based on location of the gaming facility.

Section 4. Requirements of Licensee. (1) If there is no charge to the organizations for the listing, a facility shall be permitted to list:

(a) Names;
(b) License numbers;
(c) Gaming sessions; and
(d) Information regarding the:
   1. Organizations; and
   2. Gaming session of the organizations that game at that facility.

(2) If a licensed charitable gaming organization contracts with a licensed facility to operate the concession stand, the members of that organization that volunteer at the concession stand may volunteer to work for their own gaming session, but shall not volunteer for the game of any other organization that games at that facility.

(3) A facility shall maintain a separate bank account for the facility operation that is not commingled with a personal account or another business account. If the licensee owns multiple facilities, a separate bank account shall be maintained for each facility. If separate businesses are operated out of the facility, including a check cashing service or a concession stand, each business shall have a separate account.

(4) Any payments received from a licensed charitable organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account.

(5) The lease agreement executed between the charitable gaming facility and licensed charitable organization may contain the day and time of each gaming occasion an organization will conduct at the facility. If the day and time are included in the lease agreement, the day and time listed in the lease agreement shall be accurate and shall match the day and time listed on the organization’s charitable gaming license.

Section 5. Incorporation by Reference. (1) Form CG-4, "Facility License Application", 5/1344, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:
   (a) What this administrative regulation does:
      This administrative regulation provides the procedure for facility operators to apply for a charitable gaming license and specific requirements for the same to be granted. The application form is incorporated by reference.
   (b) The necessity of this administrative regulation:
      This regulation is necessary to establish a standardized procedure and application for facility operators to apply for a charitable gaming license.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9) and 238.555(1) and (2). KRS 238.515 (2), (4), and (9) sets forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.555(1) and (2) state that persons operating a facility where charitable gaming will occur must be licensed under the provisions of this chapter and are required to pay a licensing fee. It further states the information an applicant must submit in the application. This regulation is necessary for the department to uniformly and efficiently collect the
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates effective administration of the statutes by providing a standardized form and procedure for persons operating charitable gaming facilities to apply for a license and for the department to collect the necessary information to determine if a license can be granted per the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that if a date and time for gaming is stated on the lease agreement between the facility and the organization, that the date and time must be correct and must match what is listed on the organization’s gaming license. It also updates the CG-4, Facility License Application, to allow applications to be sent by email or fax.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the lease agreements between facilities and organizations continuously have different gaming dates and times than listed on the application or license. This was causing confusion in the department.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9) and 238.555(1) and (2). KRS 238.515 (2), (4), and (9) sets forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities and to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to “promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238].” KRS 238.555(1) and (2) state that persons operating a facility where charitable gaming will occur must be licensed under the provisions of this chapter and are required to pay a licensing fee. Further it states that information an applicant must submit in the application.

This regulation is necessary for the department to uniformly and efficiently collect the information necessary to issue or deny a license to a facility. The amendment simply clarifies that certain information must match and provides other means of submitting the application.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the department to more effectively gather the necessary information to grant or deny a license to a facility and will clarify any confusion about gaming dates and times differing on the application and on the lease agreement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact facilities applying for charitable gaming facility licenses. Currently there are thirty-six (36).

(4) Provide an analysis of how the entities identified in Question (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 applicants for a charitable gaming facility license will be required to make sure any gaming date and time listed on a lease agreement are accurate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): Facilities should not incur any costs to make these changes unless they are required to draft new lease agreements. It should be noted they are not required to include the date and time of gaming in the lease.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): Charitable gaming facility operators will benefit by having corrected lease agreements with organizations. They are not required to include the date and time of gaming in the lease.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.
Expenditures (+/-): Not applicable; see response to (c) above.
Other explanation: There should be no fiscal impact.
620 KAR 1:034. Pulltab dispenser construction and use.

RELATES TO: KRS 238.505(5), 238.545(1), (2)

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Department[Office] of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(1)(e) requires the Department[Office] to establish standards for the use and control of pulltab dispensers. This administrative regulation establishes standards for the use and control of pulltab dispensers.

Section 1. Approval of an Automated Pulltab Dispenser. (1) An automated pulltab dispenser shall not be sold, leased, or otherwise furnished to any person in the state unless it has been approved by the Department[Office].

(2) Before approval by the Department[Office], a dispenser which is identical to the dispenser intended to be sold, leased, or otherwise furnished shall be certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements established in Section 2 of this administrative regulation.

(3) If granted, approval shall extend only to the specific dispenser model approved, and any modification shall first be approved by the Department[Office].

Section 2. Requirements for Automated Pulltab Dispensers. Each pulltab dispenser shall:
(1) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;
(2) Accommodate pulltabs of different sizes;
(3) Be constructed so that customers can see how many pulltabs remain within the dispenser, or have resettable counters visible to the customer indicating the number of pulltabs left in each column of the dispenser;
(4) Have an outlet or tray to catch dispensed pulltabs;
(5) Accurately dispense the correct number of pulltabs;
(6) Contain one (1) or more player buttons on the front of the dispenser to dispense pulltabs if pressed;
(7) Contain a luminated electronic display to display the value of money deposited;
(8) Be capable, if a malfunction occurs or the electrical power is interrupted after the money has been validated, of accurately redisplaying the value of the money after the malfunction or power is restored;
(9) Not dispense any credits, or validate, read, or redeem a winning pulltab;
(10) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;
(11) Not have a video screen or produce audio sounds except for security alarms;
(12) Not resemble a slot machine or other gambling device;
(13) Contain the manufacturer’s name, dispenser’s serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;
(14) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;
(15) Not record test sales of pulltabs or money acceptances on the dispenser’s accounting meters;
(16) Contain a nonresettable accounting meter for total money validated and for the total of pulltabs dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;
(17) Contain an EPROM microchip which holds the dispenser’s programming code and which is identical in all respects to the manufacturer’s EPROM microchip approved by the Department[Office];
(18) Contain a RAM, or an EPROM microchip equipped with a RAM microchip, which shall maintain the same information as required in subsection (17) of this section for six (6) months after power has been disconnected. The microchip shall be installed with a tamper-proof seal inside the dispenser;
(19) Automatically discontinue operation if any nonresettable accounting meter, RAM microchip, or an EPROM microchip is disconnected; and
(20) Contain at least one (1) electronic money validator which shall:
(a) Only validate United States money;
(b) Not validate money in denominations in excess of twenty (20) dollars;
(c) Transmit the value of validated money to the pulltab dispenser;
(d) Be equipped with mechanisms to ensure that pulltabs will not be dispensed unless the money is validated and retained;
(e) Be capable of preventing acceptance of known counterfeit money;
(f) Return any invalid money to the player;
(g) Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and
(h) Automatically discontinue accepting or validating money if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

Section 3. Automated Pulltab Dispensing Limitations. (1)(a) A charitable organization shall not use the dispenser until the charitable organization which previously used the dispenser has removed its pulltabs and money from the dispenser.

(2) Each charitable organization operating the dispenser shall place upon the dispenser an identification label which displays the organization’s name and license number.

(3) The keys to open the locked doors to the dispenser’s ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session.

(4) The entire deal of pulltabs shall be sold from the dispenser and shall not be sold on the floor.

(5) All pulltabs in any one column shall have the same serial number.

(6) A licensee shall not display, use, or otherwise furnish a dispenser which has in any manner been tampered with or which otherwise may deceive the public or affect a person’s chances of winning.

(7) A pulltab deal shall not be placed in the dispenser until the entire deal of pulltabs previously in the dispenser has been played out or permanently removed.

(8) After placement in the dispenser, a pulltab shall not be removed from the dispenser, except for those pulltabs:
(a) Actually played by consumers;
(b) Removed by Department[Office] representatives or law enforcement agencies;
(c) Temporarily removed during necessary repair, and maintenance; or
(d) Removed at the end of the gaming session.

(9) At least one (1) chairperson who is listed on the application for licensure shall be present at all times a pulltab dispenser is in use and shall be responsible for the administration and conduct of the pulltab dispenser.

(10) An organization utilizing a pulltab dispenser at its office location or owned premises shall only utilize the dispenser during business hours.

Section 4. Inspection. The Department[Office] or its authorized representatives may examine and inspect any automated pulltab dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

Section 5. Recordkeeping. (1) Each licensed charitable organization shall maintain the following information in connection with its use of an automated pulltab dispenser:
(a) Date of purchase or lease of each dispenser;
(b) Model and serial number of each dispenser;
(c) Purchase or lease price of each dispenser;
(d) Name, address, and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and
(e) A record of all maintenance and repairs relating to the dispenser.
(2) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:
(a) Date of sale or lease;
(b) Quantity sold or leased;
(c) Cost per dispenser;
(d) Model and serial number of each dispenser; and
(e) Name, address, and license number of the purchaser or lessee.
(3) All records, reports, and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the department.

Section 6. Defects. (1)(a) If the department detects or discovers any defect or malfunction with the dispenser, that is not temporary in nature or affects the integrity or security of the pulltab game, the department shall direct the manufacturer, distributor or organization to cease the sale, lease, or use of the dispenser, as applicable, and shall require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser immediately upon notification by the department to the manufacturer.
(b) If the manufacturer, distributor, or organization detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, the entity shall immediately remove the dispenser from use and notify the department of that action.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for the construction, use, and control of paper pulltab dispensers. The regulation determination of those dispensers and how they can be used.
(b) The necessity of this administrative regulation: This regulation determines the construction of those dispensers and how they can be used.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (9), and KRS 238.545(1), (2). KRS 238.515 (2) and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.545(1) and (2) allow for the use of paper pulltab dispensers. This regulation determines the construction of those dispensers and how they can be used.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates effective administration of the statutes by providing standards for the construction and use of paper pulltab dispensers.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: HB 91 passed during the last legislative session allows for use of paper pulltab dispensers at times other than during a gaming occasion. The regulation amendment clarifies that a chairperson must still be present at all times the dispenser is in use and clarifies that the pulltab dispensers should only be operated during the business hours of the organization’s office location.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as a result of HB 91 allowing for use of these dispensers outside of bingo sessions.
(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (9), and KRS 238.545(1), (2), KRS 238.515 (2) and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.545(1) and (2) allow for the use of paper pulltab dispensers. This regulation determines the construction of those dispensers and how they can be used. This regulation amendment sets forth use standards after the passage of HB 91 which changed KRS 238.545 to allow for the use of paper pulltab dispensers outside of bingo sessions.
(d) How the amendment will assist in the effective administration of the statutes: The amendment sets forth parameters and standards for the use of paper pulltab dispensers and reiterates charitable gaming law requiring the presence of a chairperson at all times the dispenser is in operation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact charitable organizations utilizing paper pulltab dispensers. The entity numbers of the 603 licensed organizations, but not all of those utilize paper dispensers. They are mainly used by Veteran’s organizations.
(4) Provide an analysis of how the entities identified in Question (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 organization will be required to have a chairperson there at all times the dispenser is in use.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): There should be no cost associated.
(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): The dispenser would likely replace use of a bartender or other chairperson handing out paper pulltabs. This will lead to better tracking and accountability of money and free up the chairperson to do other things.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost to implement this amendment to the administrative regulation.
(b) On a continuing basis: There should be no additional cost.
on a continuing basis.

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation.

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

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

(9) TIERING: Is tiering applied? No. This regulation applies equally to all organizations wishing to utilize pulltab dispensers at their office or owned premises.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515 and KRS 238.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should be no effect on the expenditures or revenues of any government agency.

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

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program for the first year? It is not anticipated that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.
Expenditures (+/-): Not applicable; see response to (c) above.
Other explanation: There should be no fiscal impact due to the amendment.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
( Amendment)


RELATES TO: KRS 238.505(5), (27), (28), 238.545(1), (2)
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Department[Office] of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(2) requires the department[Office] to establish standards for pulltab rules of play. This administrative regulation establishes standards for the play of pulltabs.

Section 1. General Provisions. (1) All individuals involved in the sale of pulltabs shall be trained in the proper conduct of the game and control of funds.

(2) The chairperson shall be in full charge of the licensed gaming occasion, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization, except for licensed charity fundraising events.

(4) Each organization's gaming supplies shall be maintained in a location separate from another organization’s gaming supplies. This location shall also be locked and access shall be controlled.

(5) Except for a charity fundraising event, a volunteer at any other charitable gaming occasion at which pulltabs are sold shall not purchase or play pulltabs at that occasion. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer did not work, and from a deal the volunteer did not sell.

(6) If the charitable organization has house rules concerning its gaming occasion, the house rules shall:

(a) Be listed on the program;
(b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;
(c) Be followed; and
(d) Include the organization's name and license number.

(7) An organization shall perform an inventory and obtain permission of the department[Office] before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper or any portion thereof. An organization may also donate gaming supplies to the department for demonstration and training purposes if the department so requests.

(8)(a) When an organization ceases to game, the organization shall:
1. Perform a final inventory; and
2. a. Return all unused product to a distributor;
b. Donate the product to another organization with the permission of the department or, if another organization does not want the gaming supplies, they may be donated to the department, upon request, for training and demonstration purposes; or
c. Destroy the product with the permission of the department[Office].
(b) Abandoned product shall be seized by the department[Office] and destroyed or kept for demonstration and training purposes.

Section 2. Playing. (1) The flare or seal card for paper pulltabs, including a progressive jackpot card relating to a carryover or progressive prize, or a prize board relating to a game with a cumulative prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play. Electronic pulltab games shall include an electronic flare or seal card, including a progressive jackpot card relating to a carryover or progressive prizes, that is available for view on the electronic pulltab device by players at all times while the game set is in play.

(2) Paper pulltabs shall not be sold to the public from the original packing box or container. Paper pulltabs shall be removed from the original box or container and mixed by shuffling together prior to sale.

(3) If a deal of paper pulltabs is packed in more than one (1) box or container, an individual container shall not designate a winner or contain a disproportionate number of winning or losing tickets. Each package, box, or container shall be placed out for play at the same time unless the deal is designed by the
manufacturer to be played in subsets. Those subsets may be placed out for play in succession.

(4) Paper pulltabs which have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner which tends to deceive the public, or affect the chances of winning or losing, shall not be placed into play. The organization shall notify the Department of Charitable Gaming of the existence of these tickets in writing within fifteen (15) days.

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the paper pulltabs within each deal matches the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The organization shall verify the serial number on an electronic pulltab matches the serial number on the electronic flare or seal card. If the charitable organization determines that serial numbers on tickets within a deal or game set do not match the serial number on the flare or seal card accompanying the deal or game set, the organization shall not place the deal or game set into play and shall notify that distributor. If the distributor does not correct the problem within thirty (30) days, the organization shall notify the Department of Charitable Gaming in writing.

(6) Any licensed charitable organization which sells pulltabs from its office location or from a pulltab dispenser shall comply with 820 KAR Chapter 1 regarding the play, proper recordkeeping, and reporting of those sales. The sales shall be reported on the financial report.

(7)(a) If a deal or game set is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities.

(b) If no future date is anticipated, the licensed charitable organization shall consider the deal or game set closed or completed, declare the winners, and post winning numbers for fifteen (15) days after the date of the closing. All unsold pulltabs shall be retained as required in subsection (15) of this section.

(c) If no winning pulltabs remain in the paper deal, the licensed charitable organization may consider the deal closed or completed, declare the winners, and retain unsold pulltabs as required in subsection (15)(4)(b) of this section.

(d) A licensed charitable organization shall not complete play of a deal or game set of a seal card it did not initiate.

(e) A pulltab shall not be sold to the public at a price different than that printed by the manufacturer of the pulltab upon the flare or seal card which accompanies the deal or game set.

(9) Only authorized representatives of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs redeemed.

(10) If playing pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive pulltab game, the serial number on the tickets shall be checked in accordance with Section 6 of this administrative regulation.

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal or game set of tickets as designed by the manufacturer. If multiple prize structures are indicated on the flare or seal card, the charitable organization shall announce to the patrons and circle on the paper flare or seal card the prize structure to be awarded before placing the deal or game set into play.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed within fifteen (15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be paid no later than five (5) days from the date of redemption.

(14) All winning paper pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15)(a) The charitable organization shall retain, in paper or electronic record form, for a period of twelve (12) months, to allow auditing by the staff of the Department, all of the following:

1. All winning pulltabs with a prize value of fifty (50) dollars and above;
2. The flare from all winning pulltabs with a prize value of fifty (50) dollars and above;
3. All seal cards with a prize value of fifty (50) dollars and above;
4. All prize boards in cumulative games with a prize value of fifty (50) dollars and above; and
5. All unsold pulltabs.

(b) These records may be maintained at the gaming location.

(c) The paper pulltabs, flares, prize boards in cumulative games, and seal cards shall be disposed of by burning in compliance with state and federal law, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab, flare, prize board, or seal card or any portion thereof.

(16) The fair market value of bingo paper, a card-minding device, or each pulltab, electronic pulltab device given away as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, or electronic pulltab device at that gaming occasion.

(17)(a) If bingo paper is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:
1. The name, address, and phone number of the patron redeeming the voucher;
2. The date on which it was awarded;
3. The date on which it was redeemed;
4. The amount of bingo paper given in exchange for the voucher; and
5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its session records.

(18)(a) If a card-minding device or electronic pulltab device is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:
1. The name, address, and phone number of the patron redeeming the voucher;
2. The date on which it was awarded;
3. The date on which it was redeemed; and
4. The number of card-minding devices and the number of faces loaded on each device, or the number of electronic pulltab devices and credits loaded on each device, if any, given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device or electronic pulltab device. No more than one card-minding device or one electronic pulltab device may be redeemed per player per session.

(d) The organization shall retain the voucher with its session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher involving a card-minding device and electronic pulltab device.

(19) If a paper pulltab or electronic pulltab device is awarded as a promotional item or a door prize, the amount and description of the pulltab or electronic pulltab device and credits loaded on each device, if any, given away shall be listed on the gaming occasion program.

(20) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded to the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales and it shall be recorded as a sale on the session records.

(21) Vouchers shall be redeemed on the same day as awarded.
Section 3. Jar Tickets. Jar tickets shall be played and prizes awarded as stated on the flare received with each deal.

Section 4. Seal Card Games. (1) The organization shall post the seal card for the deal in play at the location of the seal game while the deal is in play. An electronic seal for an electronic game set shall be viewable, upon player request, on the video screen of the electronic pulltab device while the game set is in play.

(2) If a deal or game set with a seal card is not completed during a gaming occasion, the organization shall require the patrons with holders to sign or enter their name electronically on the seal card and provide a means of contacting them when the winner is declared.

(a) The seal for the deal or game set shall be broken, torn open, or otherwise revealed in plain view of all persons present when:
   1. All tickets from a deal or game set have been sold;
   2. All the winning tickets from a deal or game set have been sold;
   3. All the lines on the sign-up card have been filled;
   4. The deal or game set has been closed, because no future date is anticipated; or
   5. Instructed to by the game as designed by the manufacturer.

(b) Each winning combination, the name of the game, and the serial number of the deal or game set shall be announced and posted at the location of the game.

(c) The date the seal tab was opened shall be recorded on the seal card.

Section 5. "Last Sale" Pulltabs. "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 6. Seal Card Games with Carry Over or Progressive Prizes. (1) The prize pool for a progressive pulltab game shall be established only through the play of deals or game sets of the same game which bear a manufacturer’s form number identical to the form number of any previously-played deals or game sets contributing to the prize pool.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial number on the tickets shall not be required to match the serial number on the progressive pulltab jackpot card if the deal is the second or subsequent deal played in the progressive game and one (1) progressive jackpot card is used for more than one (1) deal.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until the progressive jackpot prize is awarded/determined. If the game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day its office is open. If an organization ceases conducting charitable gaming or wishes to stop playing a progressive pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another progressive game or determine a method to award the progressive jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) The seal card for each deal or game set in a progressive game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the progressive jackpot prize pool.

(5) Every seal card for each deal or game set that has been played or is being played in the course of a progressive pulltab game, together with any progressive jackpot card, shall be displayed at all times while the game is in play, until the progressive jackpot prize is won.

(6) The amount contributed, the payouts made, and the jackpot carried forward shall be recorded in the gaming occasion records.

(7) A progressive or carryover pulltab game shall be played in accord with the manufacturer’s specifications for the determination of a winner, unless the department permits otherwise pursuant to subsection (3) of this section.

(8) As long as money remains in the jackpot prize pool, the organization shall continue to play the same games with the same form number.

(9) If a progressive or carryover pulltab game bearing the same manufacturer’s form number is no longer available, the organization shall contact the department for instructions on how to proceed.

(10) If a progressive or carryover pulltab game bearing the same manufacturer’s form number is no longer available, the organization shall contact the department for instructions on how to proceed.

(11) If an organization stops playing a progressive or carryover pulltab game, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities conducted by the organization until the expiration of fifteen (15) calendar days after the organization awards the prize.

(12) An organization shall display, in full and complete view of the players and at all times, the current value of the jackpot.

(13) An organization shall not award the jackpot prize in a progressive pulltab game played on an electronic pulltab device, a poster shall be displayed to fulfill this requirement.

(14) An organization shall verify that the serial number on the pulltab or deal is identical to the serial number on the winning ticket match the serial number on the pulltab or deal.

(15) A licensed charitable organization shall report to the department concerning its play of seal card games with a progressive or carryover pulltab game.

(16) The current jackpot pool in a progressive game shall be considered an adjusted gross receipt that shall be deposited within two (2) business days of the gaming occasion.

Section 7. Seal Card Games with Cumulative Prizes. (1) The prize pool for a cumulative pulltab game shall be established only through the play of deals or game sets of the same game which bear a manufacturer’s form number identical to the form number of any previously-played deals or game sets contributing to the prize pool, unless the department permits otherwise pursuant to subsection (3) of this section.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare, prize board, or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal.

(3) After a cumulative pulltab game has been started, it shall
remain in play continuously until the cumulative prize pool has been awarded. If that game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day their office is open. If an organization stops conducting charitable gaming or wishes to stop playing a cumulative pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another cumulative game or determine a method to award the cumulative jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) Prizes shall be offered and awarded only in accord with the manufacturer’s predesignated prize structure for the game, unless the department permits otherwise pursuant to subsection (3) of this section.

(5) The seal card for each deal or game set in a cumulative pulltab game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the cumulative prize pool.

(6) Every seal card for each deal or game set that has been played or is being played in the course of a cumulative pulltab game, together with any prize board, shall be displayed at all times while the game is in play, until the cumulative prize pool is awarded.

(7) The serial numbers for each deal or game set contributing to a cumulative prize pool shall be recorded in the gaming occurrence record.

(8) An organization shall not award the cumulative prize pool unless the serial number and form number on the winning ticket matches the serial number and form number on a seal card from a deal or game set of tickets which contributed to the cumulative prize board.

(9) A cumulative prize board shall not contain prizes totaling in excess of $2,400.

(10) A licensed charitable organization shall report to the department concerning its play of seal card games of cumulative games on the financial report.

SCOTT JONES, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: August 12, 2015

FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 notice 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for pulltab rules of play.

(b) The necessity of this administrative regulation: This regulation is necessary to establish standardized rules for the cumulative prize pool.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (9) and 238.545(1), (2). KRS 238.515 (2) and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.545(1) and (2) allow for the use of pulltabs. This regulation conforms by setting standards for their use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the department by setting parameters for the use of paper pulltabs.

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

(a) How the amendment will change this existing administrative regulation: This amendment to the electronic pulltab rules. It is also necessary to clarify certain problems presented to organizations in conducting pulltab games. Specifically, organizations have no means currently of ending a progressive jackpot game and because of the prize payout limit in Kentucky, they are amassing huge jackpots that they cannot find a way to pay out. If it also clarifies a concern about the sufficient mixing of paper pulltabs and potential foul play occurring when there is no proper mixing by shuffling.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the regulation to include electronic pulltab rules. It is also necessary to clarify certain problems presented to organizations in conducting pulltab games. Specifically, organizations have no means currently of ending a progressive jackpot game and because of the prize payout limit in Kentucky, they are amassing huge jackpots that they cannot find a way to pay out. If it also clarifies a concern about the sufficient mixing of paper pulltabs and potential foul play occurring when there is no proper mixing by shuffling.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (9) and 238.545(1), (2). KRS 238.515 (2) and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.545(1) and (2) allow for the use of pulltabs. This regulation conforms by setting standards for their use and the amendment provides further clarification and incorporates new versions of pulltab games.

(d) How this amendment assists the department in the effective administration of the statutes: The amendment will help the department assist organizations in ending problem games. It will also allow the department to obtain resources to use in training instead of having those potential resources destroyed. It also clarifies standards between paper and electronic pulltabs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will positively impact charitable organizations playing paper pulltabs. There are currently 603 licensed charitable organizations.

(4) Provide an analysis of how the entities identified in Question (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 only required actions will be to mix paper pulltabs by shuffling. They will also have new standards for electronic pulltabs that are substantially the same as those already in place for paper pulltabs. If they wish to end a progressive of cumulative game they must get permission from the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in...
Question (3): There should be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): The largest benefit will be in having a way to end progressive and cumulative games. They will also be able to donate unused gaming supplies instead of destroying them. The organizations will also have some framework for use of electronic pulltabs.

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

(a) Initially: There will be no cost to implement this amendment to the administrative regulation.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation.

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

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

(9) TIERING: Is tiering applied? No. This regulation applies equally to all organizations playing pulltabs in the conduct of charitable gaming.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515 and KRS 238.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect on the expenditures or revenues of any government agency.

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

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program for the first year? It is not anticipated that that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.

Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be fiscal impact.
independent testing facility, the department may request a demonstration of the product within thirty (30) days.

(c) The department shall either approve or disapprove the card-minding device and software. The department shall inform the manufacturer of its decision with results within thirty (30) days of the demonstration, or no later than sixty (60) days after the department receives the test results from the independent testing facility. Approval shall be granted in accordance with paragraph (a) of this subsection.

(6)(a) A manufacturer may conduct routine maintenance activities and replace secondary components of a card-minding device system without prior department approval or additional testing as long as this activity does not affect the operation of any proprietary software or the manner in which a bingo game is played, the integrity of any critical or controlled software, or the outcome of a bingo game. A record of all such activities shall be maintained and provided to the department within ten (10) days of the maintenance or replacement.

(7)(a) If a manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with a card-minding device system, card-minding device or software that affects the security or the integrity of the bingo game or the card-minding device or system, the manufacturer, distributor, or charitable organization shall immediately notify the department. The charitable organization shall also immediately notify the distributor of the defect, malfunction, or problem. The distributor shall immediately notify the manufacturer of the defect, malfunction, or problem.

(b) If the department detects, discovers, or is notified of any problem with a card-minding device system, card-minding device, or software that affects the security or the integrity of the bingo game or the card-minding device or system, the department shall direct the manufacturer, distributor, and charitable organization to immediately cease the sale, lease, or use of the affected card-minding device system, card-minding device, or software until the problem is corrected.

(c) If the department, in consultation with the manufacturer or distributor, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall require the manufacturer to issue a total recall of all affected card-minding device systems, card-minding devices, or software, if necessary.

(d) In choosing and directing a particular recall in accordance with paragraph (c) of this subsection, the department shall be guided in each circumstance by any combination of the following factors:

1. The nature of the defect;
2. Whether the defect affected game security;
3. Whether the defect affected game playability;
4. Whether the defect was limited to a specific number of bingo faces;
5. Whether the defect was easily detectable by a charitable organization;
6. Whether the defect was easily detectable by members of the general public;
7. Whether the defect threatens public confidence in the game; or
8. Whether the defect is capable of being used to adversely affect the fair play of the game.

(e) The manufacturer or distributor may correct the defect, if possible, without issuing a total recall if the affected card-minding devices and software are not offered for sale, lease, or use if and until the department allows. The manufacturer or distributor shall make all corrections within a reasonable time, not to exceed thirty (30) days, and they shall demonstrate the correction to the department. If the department believes the defect has been corrected and that the defect no longer affects game security or otherwise threatens public confidence in the game, the department may issue written notification that the affected card-minding device system, devices, or software may be reoffered for sale, lease, or use.

(f) If a recall is necessary, the department, in consultation with the manufacturer, shall determine a specific date for the recall of any affected card-minding device system, card-minding device, or software to be completed and whether the manufacturer is required to reimburse the organization or distributor.

(8)(a) If the department detects or discovers any problem with a card-minding device system that affects the security or the integrity of the bingo game or the card-minding device system, the department shall direct the manufacturer, distributor, or charitable organization to cease the sale, lease, or use of the card-minding device system until the problem is corrected.

(b) The department shall require the manufacturer to correct the problem or recall the card-minding device system immediately upon notification by the department to the manufacturer.

(c) If the manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with the card-minding device system that affects the security or the integrity of the bingo game or card-minding device system, the manufacturer, distributor, or charitable organization shall immediately notify the department.

(9)(a) A distributor or charitable organization shall not add or remove any software programs to an approved card-minding device system without the permission of the manufacturer and the department.

(b) If the department detects or discovers a card-minding device system at a playing location that is using components or software that were required to have been approved by the manufacturer and the department but have not been approved, the card-minding device system shall be determined to have an unauthorized modification and the use of the system shall cease immediately.

Section 3. Requirements for the Manufacturer of Card-minding Device Systems. (1) A manufacturer of a card-minding device system shall manufacture each site system to include a point of sale station and an internal accounting system that is capable of recording the charitable organization’s sale of all charitable gaming supplies.

(2)(a) A manufacturer of a card-minding device system shall ensure that the site system has internet capability, so that the department has the ability to remotely verify the operation, compliance, and internal accounting systems of the site system at any time. The department shall have real time and complete read-only access to all systems and devices (with given distributor level access to the machine).

(b) The manufacturer shall provide to the department all current protocols, passwords, and any other required information needed to access the system prior to the operation of the system within Kentucky.

(c) The department shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system within three (3) to thirty (30) days of the change.

(d) Any reports maintained or generated by the card-minding device system shall be capable of being downloaded or otherwise accessed via the internet by the department.

(3) A manufacturer of a card-minding device system shall manufacture each site system to ensure that an internal accounting system is capable of recording and retaining for a period of not less than twelve (12) months:

(a) The serial number of each bingo face sold for card-minding device use;
(b) The price of each face or package sold;
(c) The total amount of the card-minding device sales for each session;
(d) The total number of faces sold for use with card-minding devices for each session;
(e) The serial number of each hand-held card-minding device sold; and
(f) The terminal number or account number associated with each fixed base card-minding device sold.

(4)(a) The information referenced in subsection (3) of this section shall be secure and shall not be accessible for alteration during the session.

(b) The site system shall have report generation software with
the capability to print all information required to be maintained on
the site system’s active or archived databases. The total sales
activity report shall be completed in the format of Form CG-CMD.

(5) A manufacturer of a card-minding device system shall
manufacture each site system to ensure that the applicable point of
sale station is capable of printing a receipt for each sale or void of
a card-minding device. The receipt shall include the following
information:
(a) The date and time of the transaction;
(b) The dollar value of the transaction and quantity of
associated products;
(c) The sequential and consecutive transaction number;
(d) The session in which the product was sold;
(e) The serial number of each hand-held card-minding device
sold; and
(f) The terminal number or account number for each fixed base
card-minding device sold.

(6) A card-minding device system may include player tracking
software. Player tracking records shall at all times be the property
of the charitable organization and neither the manufacturer nor the
distributor shall be able to sell, rent, or otherwise furnish the
department or as otherwise authorized by law, the information
contained within the player tracking software without the express
permission of the charitable organization.

(7) A manufacturer of a card-minding device system shall
manufacture each associated site system to include a caller station
verifier that is able to verify winning cards and to print the cards for
poster. The caller station verifier shall be capable of posting all
balls called for verification purposes and printing an ordered list of
the called balls.

(8)(a) Each card-minding device system shall employ sufficient
security safeguards to allow verification that all proprietary software
components are authentic copies of the approved software
components and all functioning components of the card-minding
device system are operating with identical copies of approved
software programs.
(b) The system shall have sufficient security safeguards to
ensure that any restrictions or requirements authorized by the
department or any approved proprietary software are protected
from alteration by unauthorized personnel.
(c) Examples of security measures that may be employed to
comply with these provisions include the use of dongles, digital
signature comparison hardware and software, secure boot loaders,
encryption, and key and callback password systems.

(9) A manufacturer of a card-minding device system shall
ensure that a card-minding device shall not allow any bingo cards or
faces other than those verifiably purchased by the patron to be
available for play.

(10) A manufacturer shall not display, use, or otherwise furnish a
card-minding device which has in any manner been marked,
defaced, tampered with, or which is otherwise intended to deceiving
the public or affect a person’s chances of winning.

(11) If the card-minding device system is capable of using
radio frequency, it shall not be dual frequency.

(12) The card-minding device system shall provide password
protection for each organization.

(13) The card-minding device system shall erase, deactivate,
or render unplayable the electronic faces on each card-minding
device prior to the next scheduled bingo occasion:
(a) Upon turning off the device after the last bingo game of the
occasion has been played or upon placing the device into a
charging unit; and
(b) By a secondary timing method established by the
manufacturer.

(14) The card-minding device system shall ensure that the
patron shall purchase additional electronic bingo faces at the site
system and that additional faces shall not be purchased from the
floor.

Section 4. Tracking by Manufacturer of Card-minding Device
Systems. (1) Each manufacturer selling, leasing, or otherwise
furnishing card-minding device systems shall maintain a single log or
other record showing the following:
(a) The date of the transaction with the distributor;
(b) The model, version, and serial number of each hand-held
card-minding device;
(c) The account number or terminal number of each fixed base
card-minding device;
(d) The model and version number of the site system software;
(e) The name and license number of the distributor to whom
the card-minding device system was sold, leased, or otherwise
furnished.

(2) A manufacturer selling, leasing, or otherwise providing a
card-minding device system to a distributor shall provide the
distributor with an invoice or other documentation that contains, at
a minimum, the following information:
(a) The date of sale and the time period covered by the
invoice;
(b) The quantity sold or leased; and
(c) The total invoice amount.

(3) The manufacturer shall maintain physical or electronic copies
of the documentation required by this section for a period of thirty-six
(36) months.

Section 5. Distributor Requirements for Card-minding Device
Systems. (1) Before initial use by a charitable organization, the
distributor shall ascertain that the particular device and associated
software version are approved by the department for use in
Kentucky.

(2) If the card-minding devices are used at multiple locations,
each location shall have its own separate site system.

(3) Before the complete removal of any card-minding device
system, the distributor shall supply a copy of the data files to each
charitable organization which used the card-minding device system
and to the department.

(4) A distributor shall not display, use, or otherwise furnish a
card-minding device which has in any manner been marked,
defaced, tampered with, or which is otherwise intended to deceive
the public or affect a person’s chances of winning.

(5) Each distributor selling, leasing, or otherwise furnishing
card-minding device systems shall maintain a single log or other
record showing the following information:
(a) The playing location name, physical address, telephone
number, and facility license number, if applicable, where the card-
minding device system is located;
(b) The modem number and quantity of card-minding devices
at each playing location;
(c) The date the card-minding device system was installed or
removed;
(d) The model, version, and serial numbers or terminal
numbers of the card-minding devices and site system equipment;
(e) The name and license number of the charitable
organization or distributor to whom the card-minding device system
was sold, leased, or otherwise furnished;
(f) The name and license number of the manufacturer or
distributor from whom the card-minding device system was
purchased, leased, or otherwise obtained;
(g) Each contract, lease, or purchase agreement between a
distributor of a card-minding device and the charitable organization
or other distributor to which the devices are furnished; and
(h) The total dollar amount of card-minding device sales or
lease transactions regarding each charitable organization to which
card-minding devices were furnished during each calendar quarter.

(6) A distributor selling, leasing, or otherwise providing a card-
minding device system to a charitable organization or distributor
shall provide the charitable organization or distributor with an
invoice or other documentation that contains, at a minimum, the
following information:
(a) The date of sale and the time period covered by the
invoice;
(b) The quantity sold or leased; and
(c) The total invoice amount.

(7) The distributor shall maintain physical or electronic copies
of the documentation required by this section for a period of thirty-
six (36) months.
Section 6. Requirements for Charitable Organizations Using Card-minding Device Systems. (1) Before initial use of a card-minding device system by a charitable organization, the organization shall ascertain that the particular device and associated software version have been approved by the department for use in Kentucky.

(2) A licensed charitable organization shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a player’s chances of winning.

(3) If a player’s card-minding device malfunctions during a bingo game, it may be repaired or the faces transferred to another card-minding device if it will not interrupt the game.

(4) Each player shall be limited to the use of one (1) card-minding device at a time. Each card-minding device shall be limited to offering for play a maximum of 1,000 (seventy-two) card faces during any one (1) game of a session.

(5) The charitable organization shall ensure that the card-minding device system does not allow a card-minding device to be used to obtain a bingo prize for any bingo game other than for a game within the bingo session for which the card-minding device was sold.

(6) The department may examine and inspect any card-minding device and site system. The department shall be granted reasonable access to the card-minding devices and unlimited inspection of all parts of the site system.

(7) The organization shall provide the player with a receipt printed on a receipt printer for each sale detailing the transaction. The receipt shall contain, at a minimum, the following information:
   (a) A unique nonresettable transaction number that is printed in continuous, consecutive order;
   (b) The serial number of the card-minding device issued;
   (c) The date and time the receipt was issued;
   (d) The name of the charitable organization and license number;
   (e) A description, quantity, purchase price, and total dollar amount of each item purchased.

(8) The organization shall void the original transaction and issue a new receipt if a player requests a partial or full refund. Additional purchases shall not require voiding of the original transaction.

(9) A voided transaction shall be treated in the manner established by this section.
   (a) A voided transaction shall be processed immediately.
   (b) If a voided transaction involves a card-minding device, the card-minding device shall be connected to the site system to ensure all electronic bingo cards are erased or deactivated.
   (c) The player shall possess the receipt issued at the time of the purchase of the card-minding device before the purchase is voided.
   (d) The word “void” shall be clearly printed on the receipt.
   (e) The player shall write his or her name, address, telephone number, signature, and amount of refund on the back of the receipt before a partial or full refund may be issued.

(10) All voided receipts shall be attached to the Total Sales Activity Report printed at the end of each bingo occasion and maintained with the gaming records.

(11) If the organization loads the card-minding devices prior to selling them, all unsold card-minding devices shall be voided by the start of the second game.

(12) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required by subsection (7) of this section.

(13) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required by subsection (7) of this section.

(14) If the organization sells card-minding devices for a discounted price, or gives them away as a promotion, the site system shall be programmed to account for the discounted item and price separately from those sold at the regular price. A generic discount key shall not be allowed.

(15) The organization shall print a Total Sales Activity Report from the point of sale at the end of each bingo session and maintain it with the occasion records.

(16) A manufacturer’s representative or distributor’s representative may be present during a bingo session only to consult, demonstrate, and train on the operation of the card-minding device system.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015, at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the standards for the construction and distribution of bingo equipment including standards relative to card minding devices.
   (b) The necessity of this administrative regulation: This regulation is necessary to establish a standardized procedure for the construction and distribution of bingo equipment, including specific standards for card minding devices as required by statute.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), and (9), 238.545(1)(b), KRS 238.515 (2), (4), and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to “promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238].” KRS 238.545(1)(b) gives permission to charitable organizations to provide card-minding devices for use by players in bingo games. It requires the devices be capable of...
use in conjunction with bingo cards or paper at all times. It further grants broad authority to the department to define and regulate the use of card-minding devices and requires the department to promulgate administrative regulations regarding the use and control of those devices. This regulation is necessary for the department to comply with the requirements of KRS 238.545(1)(b).

(3) List the type and number of individual, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed charitable organizations, distributors and manufacturers will be impacted by the regulation change. There are currently 603 licensed organizations, sixteen (16) licensed distributors, and twenty-three (23) licensed manufacturers.

(4) Provide an analysis of how the entities identified in Question (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. Manufacturers will be required to follow procedures on reporting and fixing defects and malfunctions as well as grant the appropriate level of access to the department and alert the department of any password changes. The certification language, while changed, does not affect the current certification process. Manufacturers now will be able to provide different product to the organizations that will allow unlimited card faces. It is anticipated there will be a lag time in getting old equipment switched out for new equipment. Distributors will be required to follow procedure on reporting and fixing defects and malfunctions.

(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 costs to comply with a majority of this amendment. Organizations will likely need to switch out old card-minding devices with limited faces to new card-minding devices, which could cost money. However, it is the understanding of the department that the card face limit can be changed on some of the card-minding devices without switching out the hardware.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): The language on defects provides the manufacturer and opportunity to correct the defects without pulling all of the product from the market. Organizations will also benefit by having fewer card-minding devices on inventory, which cost money to rent. Having fewer devices will also make the devices more secure from theft or being broken.

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

(a) Initially: There will be no cost to implement this amendment to the administrative regulation.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation. The compliance department already monitors the use of card-minding devices.

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

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

(9) TIERING: Is tiering applied? No. This regulation applies equally to all licensed charitable gaming entities.
FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515, KRS 238.530, and KRS 238.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year of the administrative regulation is to be in effect. There should be no effect on the expenditures or revenues of any government agency.

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

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program this year? It is not anticipated that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.

Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be little to no fiscal impact.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(AMENDMENT)

820 KAR 1:046. Bingo rules of play.

RELATES TO: KRS 238.545

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1)(b).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the department to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.515(2) authorizes the department to establish charitable gaming standards. KRS 238.545(1)(b) requires the department to promulgate an administrative regulation concerning the use and control of card-minding devices. This administrative regulation establishes standards for the conduct of play of bingo.

Section 1. General Provisions. (1) All individuals involved in the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson shall be in full charge of the licensed gaming occasion, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) Except for Braille cards intended for use by blind players, bingo paper or card minding devices shall not be reserved by the charitable organization for any player. Legally-blind players may use their own cards if the licensee does not make Braille cards available. In accordance with KRS 238.505(15), Braille cards shall not be considered gaming supplies and equipment and may be purchased from ordinary sources of supply.

(4) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization except for a licensed charity fundraising event.

(5) If a bingo session is cancelled once it is commenced, an organization may refund a portion of the purchase price of the bingo paper or card-minding device. An organization shall not continue the session or award the prizes at a later date.

(6) Each organization’s gaming supplies shall be maintained in a location separate from another organization’s gaming supplies. This location shall be locked and access shall be controlled. An extra set of bingo balls shall not be stored at the caller’s stand but shall be stored with the other charitable gaming supplies.

(7) A volunteer at a charitable gaming occasion at which bingo cards or faces are sold shall not purchase or play bingo cards or faces at that occasion unless the volunteer’s duties are complete for the occasion. Once a volunteer starts playing bingo, that person shall not volunteer for the remainder of that gaming occasion.

(8) If the charitable organization has house rules concerning its bingo session, the house rules shall:

(a) Be posted in at least two (2) conspicuous locations at the gaming occasion and announced prior to the commencement of the gaming occasion; or

2. Be listed on the program;

(b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;

(c) Be followed; and

(d) Include the organization’s name and license number.

(9) Every ball in the bingo machine or other selection device shall be displayed for verification at the commencement and at the completion of each bingo session.

(10) Individual bingo paper sheets in a pack shall not be sold as individual bingo paper sheets.

(11) The organization shall buy a complete set of paper and use that paper before starting another set.

(12) A charitable organization shall not separate faces on one (1) paper sheet or any paper sheets in a pack prior to play.

(13) The price for each type of bingo sheet, pack, or package shall be listed on the bingo program.

(14) Bingo paper sheets, bingo paper packs, and bingo paper packages shall be used during the bingo session for which they were purchased. An organization shall not allow a player to carry over purchased, but unused, bingo paper sheets, bingo paper sheet packs, or bingo paper packages to a subsequent bingo session.

(15) An organization shall not allow a player to play bingo paper that was not purchased at that session, except for Braille cards as provided in subsection (3) of this section.

(16) The organization shall not duplicate or otherwise make copies of bingo paper.

(17) If an organization sells the same paper packs or paper sheets for different prices, the packs or sheets shall be distinguishable by serial number.

(18) An organization shall not sell bingo paper in a bundle.

(19) If an organization sells bingo paper as a package, the package shall become a unique item with a certain price and the items in the package shall not be sold individually unless a separate serial number is used.

(20) If an organization games in back to back sessions, it may presell paper for the second session if a different set of paper is used with a different color or border and a different serial number. The money from the preselling of paper shall be deposited with the second session receipts and the sales recorded on the second session gaming occasion records. If the price for the presold paper is discounted, the organization shall list this discount on the gaming occasion program and use a third set of paper with a different serial number.

(21) An organization shall perform an inventory and obtain permission from the department before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper, or any portion thereof. An organization may also donate gaming supplies to the department for demonstration or training purposes if the department so requests.
Section 4. Break Open Bingo. (1) A break-open bingo game shall begin when, in the presence of players attending the bingo occasion, the organization calls and posts, either manually or by use of a flashlight, a predetermined quantity of randomly selected bingo numbers from a selection device or a separate bingo number container. If a flashlight is used, these numbers shall be posted on a separate board than the regular bingo board unless the regular board is capable of keeping track of these numbers separately. The balls shall then be placed back into the selection pool until the game is played on the program.

(2) Sealed bingo paper sheets for a break open game may be sold throughout the bingo occasion. Additional bingo paper sheets for a break open game shall not be sold after the organization resumes calling letters and numbers when the game is played on the program.

(3) An organization may allow players to trade break open bingo faces for new faces.

(4) If the charitable organization allows players to trade break open bingo faces for new faces, two (2) sets of the game faces shall be maintained. One (1) set shall be known as the “original set” and shall be of a different serial number than the second set, known as the “trade-in set.”

(5) An organization shall list on the bingo program the price of the original set and the trade-in set.

Section 5. Player Pick. If the charitable organization offers a Player Pick game, the requirements in this section shall apply. (1) A player shall select numbers between one (1) and seventy-five (75). A player shall not select more than five (5) numbers for each column. The player may allow the machine to select the numbers.

(2) Duplicate numbers shall not be played on a purchased face. If duplicate numbers appear on a face, the card shall be void.

(3) Once selected, the machine shall print a face with the selected numbers.

(4) The faces shall conform to the construction and randomization standards set forth in 820 KAR 1:042.

(5) The price of each face and the amount of numbers that will be chosen shall be listed on the bingo program.

(6) The numbers shall be daubed as the balls are called when the game is played as listed on the bingo program.

(7) A player shall win if he or she is the first person to cover the numbers.

Section 6. Continuation Games. (1) Multiple patterns may be played on one (1) bingo face. Each portion of the continuation game shall be considered a single bingo game, even though the bingo balls shall not be returned to the selection pool after a winner has been determined and verified.

(2) Each winning pattern shall be verified independently.

Section 7. Progressive Bingo Games. (1)(a) Progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on progressive games are included in the prize limit established in KRS 238.545(1), regardless of the method by which a player is eligible to participate.

(b) The licensed charitable organization shall be responsible for ensuring that the value of any progressive bingo game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the $5,000 limit.

(2) All receipts on progressive bingo games shall be reported to the department as gross receipts for the date collected pursuant to KRS 238.550.

(3) Once a progressive bingo game has been started, the game shall be played in the same manner at every occasion until the prize is awarded. The jackpot prize shall be offered at each successive bingo occasion for that charitable organization until the jackpot prize has been won.

Section 8. Winner Verification and Registration. (1) A manufacturer of bingo paper shall make available for purchase a verification book or other verification system for all paper manufactured.

(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of paper in play.

(3) When a player declares a winning bingo, the steps established in this subsection shall be followed for winner verification.

(a) The game shall be stopped before the next number is called. If the next number has been selected, it shall be secured to ensure that if the declared “bingo” is invalid, the game will continue.

(b)1. If an electronic verifier or verifier book is used, a volunteer for the charitable organization shall:

   a. Show the winning face to a neutral player, who shall be a player other than the winner; and

   b. Call back the perm number while in front of the neutral player.

2. If any other verification system is used, a volunteer for the charitable organization shall:

   a. Show the winning face to a neutral player, who shall be a player other than the winner; and

   b. Call back the winning combination while in front of the neutral player.

(4) The caller shall ask at least twice if there are any other winners before announcing the close of the game. If playing a continuation game, the caller shall ask at least twice if there are
any other winners before the close of that part of the game.

(5) If more than one (1) winner is declared in a bingo game, prizes shall be awarded as established in this subsection.

(a) Cash prizes shall be divided equally among the verified winners.

(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

Section 9. Prizes. (1) If a merchandise prize or discount is available to everyone, it shall be considered a promotional item and counted as an expense.

(2) If a merchandise prize or discount is not available to everyone, it shall be included in the prize limit established in KRS 238.545(1) at its fair market value. It shall be included in expenses for purchased prizes at actual cost. If the merchandise prize is a gaming supply, it shall be included in supplies expense at actual cost.

(3) The fair market value of bingo paper, a card-minding device, electronic pulltab device, or paper pulltabs awarded as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, electronic pulltab device, or paper pulltab at that gaming occasion.

(4)(a) If bingo paper is awarded as a door prize or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;
2. The date on which it was awarded;
3. The date on which it was redeemed;
4. The amount of paper given in exchange for the voucher; and
5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its session records.

(5) If bingo paper is awarded as a promotional item, the description of the paper shall be listed on the program with "free" or "promotional" listed as the price. If the organization also sells that type of paper, a separate set of paper with a separate serial number shall be used.

(6)(a) If a card-minding device or electronic pulltab device is awarded as a door prize or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;
2. The date on which it was awarded;
3. The date on which it was redeemed; and
4. The number of card-minding devices or the number of faces loaded on each device, or the number of electronic pulltab devices and credits loaded on each device, if any, given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device or electronic pulltab device. No more than one (1) card-minding device or one (1) electronic pulltab device may be redeemed per player per session.

(d) The organization shall retain the voucher with its session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher and package involving a card-minding device or electronic pulltab device.

(7) If a card-minding device is awarded as a promotional item, the description of the promotional package shall be listed on the program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(8) If an organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed, and the coupon and the voucher shall be retained with the gaming occasion records.

(9) If the organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the gaming occasion records.

(10) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded to the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales and it shall be recorded as a sale on the session records.

(11) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(12) A voucher shall be redeemed on the same day as awarded.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 the above 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rules and procedures for the playing of bingo during charitable gaming occasions. KRS 238.515(9) authorizes the department to formally and consistently regulate bingo games played during charitable gaming events.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the department to uniformly and consistently regulate bingo games played during charitable gaming events.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 238.515(2) authorizes the department to establish reasonable standards for the conduct of charitable gaming. KRS 238.515(9) authorizes the department to promulgate administrative regulations necessary to carry out KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The department is charged with the responsibility of licensing and regulating charitable gaming in Kentucky. In order to meet that responsibility, the department must set reasonable standards and rules for the playing of bingo.

(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: The amendment provides that bingo supplies and equipment may be donated to the department for use in training. It also changes the section regarding prizes at a bingo session to reflect the addition of electronic pulltab devices.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow organizations who no longer wish to game to get rid of their supplies and equipment by a means other than destroying them should the distributor or another organization not which to purchase them. The change to the prize section was necessitated by the passage of SB 33 and the offering of electronic pulltab devices.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of KRS Chapter 238. This amendment therefore conforms to the content of the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist the department is assisting charitable organizations who no longer wish to game by giving the organization’s the option to donate the supplies to the department in lieu of destroying them. The amendment also clarifies the amendment to allow electronic pulltab devices to be given as prizes; bringing it in line with all other forms of charitable gaming in Kentucky.

(e) The necessity of the amendment to this administrative regulation: The amendment will affect the 603 organizations currently licensed to conduct charitable gaming in Kentucky.

(f) Provide an analysis of how the entities identified in Question (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 organizations will be able to donate their supplies to the department when they cease gaming if a distributor or other organizations does not want to buy them. They will also be able to offer electronic pulltab devices and electronic pulltabs as prizes at a bingo session.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities involved in Question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): They will be able to get rid of excess inventory, if new, or by change, if it is an amendment. They will also be able to introduce a new product to their players by offering them as prizes.

(d) Provide an estimate of how much it will cost to implement this administrative regulation: Initially: There will be no cost to implement this amendment to the administrative regulation.

(e) On a continuing basis: There should be no additional cost on a continuing basis.

(f) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation.

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

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

(i) TIERING: Is tiering applied? No. All licensed charitable organizations are being treated the same.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation: The Kentucky Department of Charitable Gaming as the agency responsible for implementing this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(2),(9); KRS 238.545(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. This amendment to the administrative regulation will have no effect on expenditures and revenues of any 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 subsequent years? This amendment to the regulation will not generate any new or additional revenues.

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

(c) How much cost to administer this program for the first year? No additional administrative cost.

(d) How much cost will it lead to administer this program in subsequent years? No additional administrative cost.

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

Revenues (+/-): (na);
Expenditures (+/-): (na);
Other explanation: This amendment to the regulation does not have any fiscal impact.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming

(Amendment)

820 KAR 1:050. Raffle standards.

RELATES TO: KRS 238.545(3), 238.550(5)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9).
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) authorizes the Department[Office] of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming and for the conduct of raffles. KRS 238.515(9) authorizes the Department[Office] to promulgate administrative regulations necessary to implement KRS Chapter 238. This administrative regulation establishes standards for the construction and distribution of raffle materials and for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section or duplicate ticket and shall be consecutively numbered.

(2) The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser’s name, complete address, and telephone number.

(3) The following information shall be printed on each ticket:

(a) The date and time for each drawing;
(b) The location of each drawing;
(c) The name of the charitable organization conducting the raffle;
(d) The charitable organization’s license number or exemption number, if any;
(e) The price of the ticket; and
(f) Each prize to be awarded with a fair market value over $500.

(4) The requirements of subsections (2) and (3) of this section shall be waived if:

(a) The raffle tickets sell for one (1) dollar[$1] or less;
(b) The raffle sales are initiated and concluded and all winners are selected at a special charity fundraising event; or
(c) The raffle sales are initiated and concluded and all winners are selected at licensed special limited charity games.
Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing, and all tickets that were not sold. If all sold tickets are not returned or accounted for, the organization shall not conduct the raffle and shall refund all raffle ticket purchases.

(4) Before drawing, the charitable organization shall place each stub of the ticket or other detachable section or duplicate of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) If the winner is not present at the drawing, the organization shall notify the winner by certified mail within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.

(6) If a winner does not wish to claim the prize, but wishes to donate it to the organization, the winner shall provide the organization a written statement within the thirty (30) day period stating that the winner wishes to donate the prize to the organization. A prize winner shall not donate the prize back to the organization if to do so would violate KRS 238.540(7).

(7) If a raffle winner does not claim the prize or donate it to the organization within thirty (30) days after having been contacted, the charitable organization shall notify the Department of Charitable Gaming, and draw another ticket in the presence of department personnel.

(8) The requirements of subsections (5), (6), and (7) of this section shall be waived, and the organization shall be allowed to draw tickets until a winner is present if:

(a) The raffle tickets sell for one (1) dollar ($1) or less;

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the construction and distribution of raffle materials and for the conduct of raffles.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a standardized procedure for conducting raffles.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9), KRS 238.515 (2), (4), and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." This regulation conforms as it establishes and enforces reasonable standards for the conduct of a raffle.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates effective administration of the statutes by providing standards for the conduct of a raffle.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows for duplicate tickets instead of just detachable sections. It also clarifies that all tickets must be accounted for before the raffle drawing can take place. Finally, it corrects the improper use of "Office of Charitable Gaming" by changing the language to "Department of Charitable Gaming." Similarly the amendment corrects the improper labeling of the "Public Protection Cabinet" as the "Environmental and Public Protection Cabinet."

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to account for a variety of ticket styles and to ensure the integrity of a raffle by mandating the accounting of all raffle tickets and requiring the return of all sold raffle tickets before a raffle drawing can occur.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9), KRS 238.515 (2), (4), and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." This regulation amendment clarifies and enforces the reasonable standards for the conduct of a raffle.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures integrity of the raffle and allows more flexibility in ticket style.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will only impact charitable organizations conducting raffles. There are currently 603 licensed charitable organizations.

(4) Provide an analysis of how the entities identified in Question (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 organizations will be required to account for all raffle tickets prior to a raffle drawing. It also allows them more flexibility in ticket style.

In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): There should be no cost associated with this
What will be the effect of this administrative regulation on the use of charitable gaming supplies? (a) Initially: There will be no cost to implement this amendment to the administrative regulation.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation.

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

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

(9) TIERING: Is tiering applied? No. Only licensed charitable organizations are affected by this regulation and it applies equally to all.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515. KRS 238.505 also defines charitable gaming to include raffles.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should be no effect on the expenditures or revenues of any government agency.

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

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

4. What will be the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year? The amendment to the regulation will not generate revenue in the first year or in subsequent years.

5. Can the fiscal impact of this administrative regulation be determined? Yes.

6. Findings: There will be no fiscal impact.
the event. This contract shall specify exactly the items provided, at what cost, and from whom.

Section 5. Expenses. (1) The organization shall pay the gaming expenses for the event from the gaming account. All other expenses shall be paid from the general account.

(2) If an expense is both a gaming expense and a general expense, the expense shall be prorated pursuant to the amount of gross receipts obtained from gaming and nongaming events. The full amount shall be paid from the general account and the amount attributable to gaming shall be reimbursed from the gaming account to the general account.

Section 6. Incorporation by Reference. (1) Form CG-Schedule A, "Charity Fundraising Event or Special Limited Charity Fundraiser Event License Application", 5/15/11/13, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the conduct of charity fundraising events and requires organizations using a specific form to apply for a license to conduct a Charity Fundraising Event ("CFE") or Special Limited Charity Fundraising Event ("SLCFE"). The application form is incorporated by reference.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a standardized procedure and application for licensed charitable organizations to apply for and conduct a CFE.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9) and 238.545(4). KRS 238.515 (2), (4), and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to “promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238].” KRS 238.545(4) sets forth the limits to a licensed charitable organization conducting a CFE or SLCFE. It requires an organization obtain a license to conduct a CFE or SLCFE. This regulation is necessary for the department to uniformly and efficiently collect the information necessary to issue or deny a license to an organization to conduct a CFE.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates effective administration of the statutes by providing a standardized form and procedure for licensed charitable organizations to apply for licensure and to conduct a CFE, and for the department to collect the necessary information to determine if a license can be granted per the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates an updated CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraiser Event License Application.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate the updated CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraising Event License Application. The application was updated to incorporate changes made necessary by the passage of SB 33 and HB 91 relating to electronic pulltabs devices and types of CFEs.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9) and 238.545(4). KRS 238.515 (2), (4), and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to “promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238].” KRS 238.545(4) sets forth the limits to a licensed charitable organization conducting a CFE or SLCFE. It requires an organization obtain a license to conduct a CFE or SLCFE. This regulation amendment incorporates the updated CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraising Event License Application, as required by the statute changes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the new application form in line with the new law from the past legislative session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact charitable organizations attempting to obtain a license to conduct a CFE. There are currently 603 licensed charitable organizations.

(4) Provide an analysis of how the entities identified in Question (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 applicants for a CFE will be required to use the updated CG-Schedule A application when applying for a license. The organizations will be allowed to have electronic pulltabs at CFE events and will also be allowed to conduct a banquet as a form of CFE event.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): The main function of this amendment is to incorporate the updated CG-Schedule A application for CFE’s and SLCFE’s. Licensed charitable organizations are already required to fill out an application form to conduct a CFE and the department is already required to process the applications and either grant or deny a license. As such, the amendment to this regulation will not cost any of the entities identified in Question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): Charitable organizations will be able to use electronic pulltabs at CFE events and will be able to conduct a banquet as a type of CFE event.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There will be no cost to implement this amendment to the 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 in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation. The licensing department is already processing applications.

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

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

(9) TIERING: Is tiering applied? No. Only licensed charitable organizations are affected by this regulation and it applies equally to all.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515 and KRS 238.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first year or in subsequent years. There should be no effect on the expenditures or revenues of any government agency.

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

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program this program for the first year? It is not anticipated that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.

Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be little to no fiscal impact as the amendment merely updates certain information in the application and does not require any new or additional procedures or actions.
Section 3. Equipment Used for Events. (1) Poker tables, blackjack tables, prize wheels, and chips, scrup, or imitation money shall not be considered charitable gaming supplies and equipment, and may be purchased from ordinary sources of supply. The organization shall not pay for poker tables, blackjack tables, prize wheels or chips, scrup, or imitation money from the charitable gaming account.

(2) Roulette wheels and craps tables shall be considered charitable gaming supplies and shall be obtained from a licensed distributor. The organization shall pay for roulette wheels and craps tables from the charitable gaming account.

(3) For the special limited charity games played at the event, the organization shall provide the department with a copy of the executed contract for the use of those supplies. If no contract exists, the organization shall provide the list of the items provided. The list shall be considered a promotional expense, if all parties are equally eligible.

Section 4. Expenses. (1) The organization shall pay the gaming expenses for the event from the gaming account. All other expenses shall be paid from the general account.

(2) If an expense is a gaming expense and a general expense, the expense shall be prorated pursuant to the amount of gross receipts obtained from gaming and nongaming events. The full amount shall be paid from the general account and the amount attributable to gaming shall be reimbursed from the gaming account to the general account.

(3) Food, beverages, and other items provided to participants without additional payment at an event where only gaming activity takes place shall be considered a promotional expense, if all participants are equally eligible.

Section 5. Incorporation by Reference. (1) Form CG-Schedule A, "Charity Fundraising Event or Special Limited Fundraising Event License Application", S 15 (141), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days prior to the hearing of their intent to attend. The department shall notify any individual 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the conduct of special limited charity fundraising events and requires organizations use a specific form to apply for a license to conduct a Charity Fundraising Event ("CFE") or Special Limited Charity Fundraising Event ("SLCFE"). The application form is incorporated by reference.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a standardized procedure and application for licensed charitable organizations to apply for and conduct a SLCFE.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9) and 238.545(4). KRS 238.515 (2), (4), and (9) sets forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.545(4) sets forth the limits to a licensed charitable organization conducting a CFE or SLCFE. It requires an organization obtain a license to conduct a CFE or SLCFE, and for the department to uniformly and efficiently collect the information necessary to issue or deny a license to an organization to conduct a SLCFE.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates effective administration of the statute, by providing a standardized form and procedure for licensed charitable organizations to apply for licensure and to conduct a SLCFE, and for the department to collect the necessary information to determine if a license can be granted per the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates an updated CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraising Event License Application.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate the updated CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraising Event License Application. The application was updated to incorporate a regulation necessary by the passage of SB 33 and HB 91 relating to electronic pulltab devices and types of CFE events, respectively.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9) and 238.545(4). KRS 238.515 (2), (4), and (9) sets forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.545(4) sets forth the limits to a licensed charitable organization conducting a CFE or SLCFE. It requires an organization obtain a license to conduct a CFE or SLCFE. This regulation amendment incorporates the updated CG-Schedule A, Charity Fundraising Event or Special Limited Charity Fundraising Event License Application, as required by the statute changes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the new application form in line with the new law from the past legislative session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact charitable organizations attempting to obtain a license to conduct a SLCFE. There are currently 803 licensed charitable organizations.
amendment, including:
  (a) List 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 applicants for a SLCFE will be required to use the updated CG-Schedule A application when applying for a license. The organizations will be allowed to have electronic pulltabs at SLCFE events and will also be allowed to conduct a banquet as a form of SLCFE event.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): The main function of this amendment is to incorporate the updated CG-Schedule A application for CFE's and SLCFE's. Licensed charitable organizations are already required to fill out an application form to conduct a SLCFE and the department is already required to process the applications and either grant or deny a license. As such, the amendment to this regulation will not cost any of the entities identified in Question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): Charitable organizations will be able to use electronic pulltabs at SLCFE events and will be able to conduct a banquet as a form of SLCFE event.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
  (a) Initially: There will be no cost to implement this amendment to the 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 in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation. The licensing department is already processing applications.

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

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

(9) TIERING: Is tiering applied? No. Only licensed charitable organizations are affected by this regulation and it applies equally to all.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT
1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515 and KRS 238.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should be no effect on the expenditures or revenues of any government agency.

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

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program this year? It is not anticipated that that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.
Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be little to no fiscal impact as the amendment merely updates certain information and does not require any new or additional procedures or actions.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming (Amendment)

820 KAR 1:057. Accurate records.

RELATES TO: KRS 238.550(5), 238.560(2)
STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) and 238.550(5) authorize the department[office] to establish and enforce standards for accounting, recordkeeping, and reporting to the department[office] to ensure charitable gaming receipts are counted and reported. This administrative regulation establishes the minimum requirements for accurate records.

Section 1. Bank Account and Records. (1) A licensed charitable gaming organization shall maintain a single bank account for charitable gaming receipts. This account shall be separate from any other account maintained by the organization.

(2) Disbursements for charitable gaming expenses and charitable donations shall be made by check or electronic fund transfer directly from the charitable gaming account.

(3) All receipts from each gaming occasion shall be deposited by the second business day following the occasion at which they were received. The deposit for each occasion shall be made separately and shall not be combined with the deposit from any other occasion.

(4) All types of deposits, including startup cash, bad checks collected and check collection fees, progressive game carry forward, and adjusted gross receipts, shall be listed separately on the deposit reconciliation sheet, and the deposit slip, if possible. Each individual check shall be listed separately on the deposit slip. If a register tape is run listing the amounts of the individual checks, it may be attached to the deposit slip. Total cash and coins shall be listed separately. The organization shall keep a copy of the deposit slip.

(5) Checks that have been returned for insufficient funds that have not been collected shall be retained by the organization for three (3) years following the close of the calendar year in which the check was issued. If the check has been turned over to someone else for collection, the organization shall keep a copy of the check with information regarding the person collecting the check.

(6) Monthly bank statements and reconciliations for all accounts shall be maintained for three (3) years following the close of a calendar year.

(7) Copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be provided to the department[office] upon request.

(8) Gross receipts shall include the money received from the sale of raffle tickets, bingo cards or faces, pickle jars, bonanza balls, or hot balls, card-minding devices, pulltabs, electronic pulltab devices and electronic pulltabs, charity fundraising event games, special limited charity fundraising event games, bad check collections, credit card fees and reasonable check collection fees minus bad checks.

Section 2. Start-up Cash. (1) If the source of start-up cash is
not the charitable gaming account, the source of the start-up cash shall be identified on the gaming occasion sheet and signed by the chairperson.

(2) Start-up cash from one (1) organization shall not be commingled with the start-up cash from another organization. The start-up cash shall be identified on the check withdrawing the funds and on the deposit slip, if possible.

Section 3. Organization Records. (1) The chief financial officer shall be the custodian of the gaming records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the department[office].

(2) An organization that hand-writes data and later enters the information onto another form or computer program shall retain the hand-written records along with the other form or computer generated record.

(3) Organizations shall prepare and maintain accurate and adequate corporate or other organizational records including articles of incorporation, minutes of board of directors meetings, and resolutions.

(4) Organizations shall maintain detailed records of all expenditures made in furtherance of its charitable purpose, including all charitable contributions.

(5) All records shall be made available for inspection and audit at the request of the department[office].

(6) Any organization’s records, or copies of those records, deemed necessary to complete an inspection, audit, or investigation, may be retained by the department[office] or its employees or agents. The department[office] shall provide a written receipt of the records at the time of removal.

(7) Organizations shall provide records requested by the department[office], or any of its employees, within ten (10) calendar days, unless a longer response time is allowed by the department[office].

(8) An organization shall perform an inventory and obtain permission of the department[office] before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper or any portion thereof. An organization may also donate gaming supplies to the department for demonstration and training purposes if the department[office] requests.

(9) When an organization ceases to game, the organization shall:
(a) Perform a final inventory;
(b) Return all unused product to a distributor;
2. Donate the product to another organization with the permission of the department or, if another organization does not want the gaming supplies, they may be donated to the department, upon request, for training and demonstration purposes[office]; or
3. Destroy the product with the permission of the department[office]; and
(c) Spend or disburse the charitable gaming funds consistent with its charitable purpose.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 transcription 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601. phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Noelle J. Bailey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for accounting, recordkeeping and reporting by setting the minimum requirements for accurate records.
(b) The necessity of this administrative regulation: This regulation is necessary to establish the requirements for recordkeeping for charitable gaming.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(4), (9), 238.550(3). KRS 238.515 (4), and (9) sets forth the powers of the department to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for, and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." This regulation conforms to the statute by setting out minimum standards for organizations regarding accurate records.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates effective administration of the statutes by providing the requirements for handling and reporting money obtained in the course of charitable gaming.
(2) If 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 states that electronic pulltab device and electronic pulltab sales shall be included in gross receipts. It also allows organizations to donate charitable gaming supplies and equipment to the department. Finally, it corrects the improper use of "Office of Charitable Gaming" by changing the language to "Department of Charitable Gaming." Similarly the amendment corrects the improper labeling of the "Public Protection Cabinet" as the "Environmental and Public Protection Cabinet."
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include electronic pulltab sales in gross receipts. The amendment was further necessary to note the correct cabinet and department names.
(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515 (4), (9) and 238.550(3). KRS 238.515 (4), and (9) sets forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." This regulation amendment incorporates conforms to the authorizing statute by stating what is included in gross receipts. It also conforms by providing parameters for the disposition of supplies and equipment when an organization no longer intends to game. The amendment further corrects the regulation to reflect the current cabinet and department names as stated in the statutes.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify that electronic pulltabs and pulltabs are included in gross receipts and will give organizations another option to donate their supplies when they no longer intend to game. It will also now reflect the correct agency name.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact licensed charitable organizations. There are currently 603 licensed charitable organizations.

(4) Provide an analysis of how the entities identified in Question (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) 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 organizations will have additional options to get rid of supplies when they quit gaming. They will also be required to report electronic pulltab sales in their gross receipts.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): There should be no cost to the organization.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost to implement this amendment to the administrative regulation.
(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation.

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

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

(9) TIERING: Is tiering applied? No. Only licensed charitable organizations are affected by this regulation and it applies equally to all.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515 and KRS 238.550.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect on the expenditures or revenues of any government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to the regulation should not generate revenue in the first year or in subsequent years. See response to (a) above.

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program this program for the first year? It is not anticipated that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.
Expenditures (+/-): Not applicable; see response to (c) above.
Other explanation: There should be no fiscal impact.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)

820 KAR 1:058 Gaming occasion records.

RELATES TO: KRS 238.550
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.550(3), (5), (6), (7), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.500, 238.515, and 238.550 authorize the department to ensure charitable gaming receipts are properly accounted for by the organizations. This administrative regulation establishes the minimum requirements for recordkeeping.

Section 1. General Provisions. (1) Each licensed charitable gaming organization shall prepare and maintain records for each gaming occasion. The gaming occasion records shall be prepared or completed by a volunteer or chairperson of the organization. The gaming occasion records shall not be completed by a bookkeeper who is independently compensated for doing so.

(2) Gaming proceeds shall be counted by an officer or a chairperson and the count shall be verified. A count may be verified by a volunteer.

(3) A gaming occasion record shall contain:
(a) The name and license number of the organization conducting the gaming occasion;
(b) The printed name and signature of the person taking the deposit; and
(c) The name and address of the donor of every donated prize whose fair market value is in excess of $500; and
(d) A deposit reconciliation worksheet which records:
   1. All currency, coins, checks, and credit card receipts available for deposit;
   2. All profit or loss from each gaming activity, all start-up cash, all cash from incomplete pulltab sales, any progressive game carry forward, bad checks collected and check collection fees, and all other gaming receipts that should be available for deposit;
   3. Any variance between the amount of currency, coins, checks, and credit card receipts actually available for deposit, and the amount that should be available for deposit according to the gaming occasion records;
   4. The amount of donations received at the gaming occasion which will be deposited into the general account;
   5. The printed name and signature of the chairperson in charge of the gaming occasion;
   6. The printed name and signature of the person taking the deposit from the gaming occasion;
   7. The printed name and signature of the person making the deposit, if different from the person taking the deposit; and
   8. The printed name and signature of the person in possession of the start-up cash, and the amount and source of the start-up cash.

(4) If an organization offers coupons for bingo paper or a card-mixing device, a voucher shall be completed when the coupon is redeemed and the coupon and the voucher shall be retained with the gaming occasion records.

(5) If an organization offers coupons for pulltabs or electronic pulltab devices, the type and number of pulltabs, electronic pulltab devices and credits loaded on each device, if any, given away shall be recorded on the gaming occasion records and on CG-FIN Attachment C and D. The coupon shall be retained with the gaming occasion records.

(6) If the organization sells gift certificates for bingo paper or a
card-minding device, the receipts for the sale shall be counted as 
gaming receipts on the day they are received. When the gift 
certificate is redeemed, a voucher shall be completed and the gift 
certificate and the voucher shall be retained with the gaming 
occasion records.
(7) If the organization sells gift certificates for pulltabs or 
electronic pulltab devices, the receipts for the sale shall be counted 
as gaming receipts on the day they are received. When the gift 
certificate is redeemed, the type and number of pulltabs, electronic 
pulltab devices and credits loaded on each device, if any, given 
away shall be recorded on the gaming occasion records and on 
CG-FIN Attachment C and D. The gift certificate shall be retained 
with the gaming occasion records.
(8) All charitable gaming receipts and records shall be kept 
separate from noncharitable gaming receipts and records.
(9) All gaming occasion records shall be retained by the 
organization for a period of three (3) years. Gaming occasion 
records shall be made available for inspection and audit by the 
department[office] upon request.
(10) Organizations shall provide records requested by the 
department[office] or any of its employees, within ten (10) 
calendar days unless a longer response time is allowed by the 
request.
Section 2. Bingo Paper Sale Records. Bingo paper sale 
records shall contain the following information:
(1) Attendance determined by headcount of number of people 
playing bingo;
(2) Each type of bingo paper being sold;
(3) The serial number of the set of each type of paper sold;
(4) The number of each type of bingo paper given away with 
the voucher being redeemed attached to the gaming occasion 
records, if applicable;
(5) Number of each type of bingo paper destroyed;
(6) The number of each type of bingo paper sold;
(7) The price of each type of bingo paper sold;
(8) The number of pickle jar, bonanza ball, or hot ball games 
sold;
(9) The price of pickle jar, bonanza ball, or hot ball games and 
whether the price is per person or per pack;
(10) The number of player pick bingo games sold;
(11) The price of each player pick bingo game sold;
(12) The amount of money expected to be received from the 
sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot 
ball for that occasion;
(13) The amount of money actually received from the sale of 
bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for 
that occasion;
(14) The cash short or cash over from the sale of bingo paper, 
player pick, and pickle jar, bonanza ball, or hot ball for that 
occasion; and
(15) The sales report printed from the player pick machine that 
includes the number of games sold, price for each game, and 
the amount of money expected from the sale of player pick games for 
that gaming occasion;
(16) Records of all carryover or cumulative bingo games 
played which shall contain the following information:
(a) The name of each progressive bingo game in play;
(b) The amount carried over from the previous occasion;
(c) The receipts from the current occasion;
(d) The amount paid out for the current occasion; and
(e) The amount carried forward to the next occasion;
(17) A copy of the gaming occasion program, which shall 
include:
(a) The organization name and license number;
(b) A specific description of all bingo products for sale and the 
price of each product; and
(c) All bingo games played and the payout and alternate 
payout, if any, for each game; and
(18) Form CG-Vol.
Section 3. Bingo Payout Records. (1) Bingo payout records 
shall contain the following information:
(a) A list of all bingo games that will be played at that gaming 
occasion;
(b) Each pickle jar, bonanza ball, or hot ball game available to 
be awarded;
(c) The prize expected or available to be awarded for each 
bingo game and door prize;
(d) The prize that was actually awarded for each bingo game 
and door prize;
(e) A notation for the prize awarded for each bingo game and 
door prize, specifying whether the prize was cash, a check, or 
merchandise, and if merchandise, a description of that 
merchandise, the cost of the merchandise and the fair market 
value of the merchandise;
(f) If a voucher was issued for card-minding devices or bingo 
paper, the fair market value of the card-minding devices or bingo 
paper;
(g) The total amount of all cash awarded for bingo prizes and 
door prizes;
(h) The total amount of all checks issued as bingo prizes and 
door prizes;
(i) The total cost and fair market value of all merchandise 
awarded for bingo prizes and door prizes;
(j) A grand total of cash, checks, and fair market value of 
merchandise awarded for bingo prizes and door prizes, which shall 
not exceed $5,000;
(k) If a check from the organization’s charitable gaming 
checking account was issued as a prize instead of cash, the 
total of the check; and
(l) The information required by subsections (2), (3), and (4) of 
this section, if applicable
(2) If a paper pulltab or electronic pulltab device is awarded as 
a bingo prize, the person in charge of bingo payouts shall purchase 
the pulltabs or electronic pulltab device and any credits loaded on 
the device from the pulltab vendor by transfer of cash from bingo 
payout to pulltab sales. It shall be recorded as a cash payout on 
the bingo payout session record and it shall be included as a gross 
receipt on the pulltab session record and on CG-FIN Attachment C 
and D.
(3) If pulltabs, including electronic pulltab devices and any 
credits loaded on a device, are given away as a door prize, the 
amount given away shall:
(a) Be included as a gross receipt on the pulltab session record 
and on CG-FIN Attachment C and D;
(b) Be listed on the pulltab session record as given away;
(c) Be included at fair market value on CG-FIN Attachment B to 
determine compliance with the $5,000 payout limit;
(d) Be deducted from gross receipts on CG-FIN Attachment C 
and D; and
(e) Not be listed as a purchased prize on CG-FIN Part 1 line 2.
(4) If pulltabs, including electronic pulltab devices and any 
credits loaded on a device, are given away as a promotional item, 
the amount given away shall:
(a) Be included as a gross receipt on the pulltab session record 
and on CG-FIN Attachment C and D;
(b) Be listed on the pulltab session record as given away;
(c) Be deducted from gross receipts on CG-FIN Attachment C 
and D; and
(d) Not be listed as a purchased prize on CG-FIN Part 1 line 2.
records shall contain the following information:
(1) The type of programs loaded, including the number of 
faces;
(2) The number of units rented for each type of program;
(3) The number of each type of card-minding device rental 
given away, with the redeemed voucher attached to the gaming 
occasion records;
(4) The number of units voided for each type of program;
(5) The price per unit for each type of program;
(6) The amount of money expected to be received from the 
rental of card-minding devices;
(7) The actual amount of money received from the rental of 
card-minding devices for that gaming occasion;
Section 5. Pulltab Records. (1) Pulltab records shall contain the following information for each session:
(a) The name, serial number, and form number of all games played;
(b) The name of all progressive jackpot games in play during that gaming occasion;
(c) The ticket count for each pulltab game sold;
(d) The price for each ticket;
(e) The prize expected or available to be awarded for each pulltab game, including the progressive jackpot games;
(f) The name, serial number, form number, and quantity of pulltab tickets given away as a door prize or a promotional item;
(g) If a pulltab is awarded as a pulltab prize, the information required by subsection (2) of this section;
(h) The prize that was actually awarded for each pulltab game, including the progressive jackpot games;
(i) A notation for the prize awarded for each pulltab game specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
(j) If a voucher was issued for card-minding devices or bingo paper, the fair market value of the card-minding devices or bingo paper;
(k) If a pulltab game was played in conjunction with a progressive jackpot game, as designed by the manufacturer, the amount contributed to the progressive jackpot;
(l) The cash short or cash over for each pulltab session;
(m) The total amount of all cash awarded for pulltab prizes;
(n) The total amount of all checks issued as pulltab prizes;
(o) The total cost of all merchandise awarded for pulltab prizes;
p) If a check from the organization’s charitable gaming checking account was issued as a pulltab prize instead of cash, the number of the check;
(q) The total amount of money from any incomplete sale of pulltab games;
(r) Records of any progressive pulltab games sold which shall contain the following information:
1. The name of each progressive pulltab jackpot game in play;
2. The amount carried over from the previous occasion;
3. The receipts from the current occasion;
4. The amount paid out for the current occasion;
5. The amount carried forward to the next occasion;
6. The serial number of all games that contributed to the prize pool; and
7. Form CG-Vol.
(2) If a pulltab is awarded as a pulltab prize, the person in charge of pulltab payouts shall purchase the pull tabs from the deal being awarded as the prize by transfer of cash from the deal being sold to the deal being awarded as the prize. It shall be recorded as a cash payout for the deal being sold and it shall be included as a gross receipt for the deal being awarded as a pulltab prize and on CG-FIN Attachment C and D.

Section 6. Electronic Pulltab Device Records. Electronic pulltab device records shall contain the following information:
(1) The name, serial number, and form number of all electronic pulltab games played;
(2) The number, type, and price of each electronic pulltab device sold;
(3) The ticket count for each electronic pulltab game sold;
(4) The price for each electronic pulltab ticket sold;
(5) The name of all electronic progressive jackpot games in play during that gaming occasion;
(6) The prize expected or available to be awarded for each electronic pulltab game;
(7) The amount of money expected to be received from the sale of electronic pulltab devices and electronic pulltabs at a gaming occasion;
(8) The actual amount of money received from the sale of electronic pulltab devices and electronic pulltabs at a gaming occasion;
(9) The cash short or cash over from the sale of electronic pulltab devices and electronic pulltabs at a gaming occasion;
(10) The total sales activity report, CG-EPD;
(11) All information required under Section 5 of this administrative regulation; and
(12) Form CG-Vol.

Section 7. Raffle Records. (1) If the raffle tickets sell for $100 or more, the raffle records shall contain the following information:
(a) The number of raffle tickets printed;
(b) The sales price for each ticket;
(c) The date raffle ticket sales began;
(d) The date the raffle drawing was held;
(e) A voided raffle ticket or copy of a raffle ticket;
(f) If tickets are given to volunteers to sell, a list of each volunteer’s name with the total number of the tickets and ticket numbers given to them;
(g) The total amount of money collected for the raffle event;
(h) The total number of raffle tickets sold from the sale of all raffle tickets for the raffle event;
(i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
(j) Total cash short or cash over amount from raffle ticket sales for the raffle event;
(k) A list of all raffle prizes awarded;
(l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
(m) The total amount of all cash awarded for raffle prizes;
(n) The total amount of all checks issued as raffle prizes;
(o) If a check from the organization’s charitable gaming checking account was issued as a prize instead of cash, the number of the check;
(p) Each winning ticket stub;
(q) All unsold tickets; and
(r) A list of all raffle expenses including a copy of all invoices supporting each expense.
(2) If the raffle tickets sell for fifty (50) dollars to $100, the raffle records shall contain the following information:
(a) The number of raffle tickets printed;
(b) The sales price for each ticket;
(c) The date raffle ticket sales began;
(d) The date the raffle drawing was held;
(e) A voided raffle ticket or copy of a raffle ticket;
(f) If tickets are given to volunteers to sell, a list of each volunteer’s name with the total number of the tickets and ticket numbers given to them;
(g) The total amount of money collected for the raffle event;
(h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
(i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
(j) Total cash short or cash over amount from raffle ticket sales for the raffle event;
(k) A list of all raffle prizes awarded;
(l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
(m) The total amount of all cash awarded for raffle prizes;
(n) The total amount of all checks issued as raffle prizes;
(o) If a check from the organization’s charitable gaming checking account was issued as a prize instead of cash, the number of the check;
(p) Each winning ticket stub; and
(q) All unsold tickets; and
(r) A list of all raffle expenses including a copy of all invoices supporting each expense.
(q) A list of all raffle expenses including a copy of all invoices supporting each expense.
(3) If the raffle tickets sell for more than one (1) dollar but less than fifty (50) dollars, the raffle records shall contain the following information:
(a) The number of raffle tickets printed;
(b) The sales price for each ticket;
(c) The date raffle ticket sales began;
(d) The date the raffle drawing was held;
(e) A voided raffle ticket or copy of a raffle ticket;
(f) The total amount of money collected for the raffle event;
(g) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
(h) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
(i) Total cash short or cash over amount from raffle ticket sales for the raffle event;
(j) A list of all raffle prizes awarded;
(k) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
(l) The total amount of all cash awarded for raffle prizes;
(m) The total amount of checks issued as raffle prizes;
(n) If a check from the organization’s charitable gaming checking account was issued as a prize instead of cash, the number of the check;
(o) Each winning ticket stub; and
(p) A list of all raffle expenses including a copy of all invoices supporting each expense.
(4) If the raffle ticket sells for one (1) dollar or less, the raffle records shall contain the following information:
(a) The beginning and ending serial number or ticket number for each roll of tickets sold or the beginning and ending number of the tickets printed;
(b) The quantity of tickets sold;
(c) The sales price of the tickets;
(d) The date of the raffle;
(e) The total amount of money collected for the raffle event;
(f) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
(g) Total cash short or cash over amount from raffle ticket sales for the raffle event;
(h) A list of all raffle prizes awarded;
(i) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
(j) The total amount of all cash awarded for raffle prizes;
(k) The total amount of all checks issued as raffle prizes;
(l) If a check from the organization’s charitable gaming checking account was issued as a prize instead of cash, the number of the check;
(m) Each winning ticket stub; and
(n) A list of all raffle expenses, including a copy of all invoices supporting each expense.

Section 9[8.] Special Limited Charity Fundraising Event Records. (1) Special limited charity fundraising event records shall contain the following information for special limited charitable games:
(a) The name of each game to be played;
(b) The quantity of scrip, chips, or imitation money the central bank started with prior to any sales, and the corresponding cash amount associated with each denomination of scrip, chips, or imitation money;
(c) The quantity of scrip, chips, or imitation money the central bank sold during the special limited charity fundraising event;
(d) The amount of money received by the central bank from the sale of scrip, chips, or imitation money;
(e) Cash short or cash over from the sale of scrip, chips, or imitation money;
(f) The quantity of scrip, chips, or imitation money collected by the central bank and redeemed for prizes;
(g) Prizes awarded by the central bank;
(h) A notation for prizes awarded specifying whether each prize was cash, check, or merchandise, and if merchandise, a description of that merchandise and the cost;
(i) The amount of money corresponding to the scrip, chips, or imitation money collected by the central bank shall be compared to the sale of scrip, chips, or imitation money by the central bank at the conclusion of the special limited charity fundraising event. Any variance shall be documented and cash short or cash over shall be determined.
(3) For all tournaments played during special limited charity fundraising events, the special limited charity fundraising event records shall contain the following information in addition to the regular records required at special limited charity fundraising events:
(a) A record of attendance shall be kept for the special limited charitable games; and
(b) A copy of the gaming occasion program, which shall include the:
1. Organization name and license number;
2. Cost to enter, the cost of the buy backs, and the cost of the additions;
3. Rules of the game;
4. Manner for raising blinds or closing tables; and
5. Prizes. The prizes may be listed as a percentage of the receipts.
(4) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records shall be maintained.
(5) If pulltabs are sold, accurate pulltab records shall be maintained.
(6) If raffles are conducted at a special limited charity fundraising event, accurate raffle records shall be maintained.
(7) The organization shall complete Form CG-Vol and keep it with the gaming occasion record for that event.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards to ensure charitable gaming receipts are properly accounted for by the organization. The standards are the minimum requirements for recordkeeping.
(b) The necessity of this administrative regulation: This regulation is necessary to establish reporting requirements for licensed organizations to ensure gaming receipts are properly accounted for.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9), 238.550(3), (5), (6), (7), (8). KRS 238.515 (2), (4), and (9) sets forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to ensure charitable gaming receipts are properly accounted for; and, to “promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238].” KRS 238.550(3) governs charitable gaming receipts. (5) requires organizations to keep accurate records for three years and requires those records be available to the department. (6) and (7) dictate whether an organizations reports quarterly or annually. (8) detail information that must be included in the financial reports of an organization. This regulation conforms to the statute by specifying what information an organization must report on electronic pulltab devices and electronic pulltabs.
(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes information necessary for organizations to report relating to electronic pulltab devices. This will also assist the manufacturers of electronic pulltab devices to know what information must be accessible to the organizations and the department.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact charitable organizations using electronic pulltab devices.
(f) Provide an analysis of how the entities identified in Question (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 organizations using electronic pulltab devices will be required to record and retain the information contained in 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 should be no cost to the organization.
(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): Organizations will benefit by knowing what information they are required to retain.
(d) Provide an estimate of how much it will cost to implement this administrative regulation, if new, or by change, if it is an amendment:
(a) Initially: There will be no cost to implement this amendment to the administrative regulation.
(b) On a continuing basis: There should be no additional cost on a continuing basis.
(e) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation.
(f) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by change, if it is an amendment: There will be no increase in fees or funding necessary to implement this amendment to the administrative regulation.
(g) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment to the regulation does not establish any new fees or directly or indirectly increase any fees.
(h) TIERING: Is tiering applied? No. Only licensed charitable organizations are affected by this regulation and it applies equally to all charitable gaming organizations.

Protection Cabinet."
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515 and KRS 238.550.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no effect on the expenditures or revenues of any government agency.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to the regulation should not generate revenue in the first year or in subsequent years.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? See response to (a) above.
   (c) How much will it cost to administer this program this year? It is not anticipated that there will be any cost in administering the program that this regulation relates to. There will be manpower necessary to review the organizations records on electronic pulltabs.
   (d) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

Revenues (+/-): Not applicable; see response to (c) above.

Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: No fiscal impact is expected.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming

(Amendment)

820 KAR 1:120. Allowable expenses.

RELATES TO: KRS 238.536, 238.550(9)

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.550(9)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) authorizes the department[Office] to establish standards to insure charitable gaming receipts are properly accounted for and KRS 238.515(9) authorizes the Department[Office] of Charitable Gaming to promulgate administrative regulations necessary to carry out the provisions of the chapter. KRS 238.550(9)(j) authorizes the Department[Office] of Charitable Gaming to approve charitable gaming expenses determined to be legitimate but which have not already been authorized by statute. This administrative regulation establishes the other allowable expenses and establishes the limitations and exclusions for the listed categories of expenses.

Section 1. Other Allowable Expenses. In addition to those authorized expenses provided for in KRS 238.550(9), each of the following expenses is determined to be legitimate and shall be allowable charitable gaming expenses of a licensed charitable organization:

1. The following customary and usual banking fees or charges paid to any financial institution in connection with an organization’s charitable gaming account:
   (a) Monthly service charges;
   (b) Check verification service charges;
   (c) Check printing charges;

   (d) Charges relating to returned checks; or
   (e) Copying charges for bank records;

2. Customary and usual fees or charges paid to a check reader or verification company incurred in connection with the organization’s charitable gaming activities;

3. Customary and usual fees or charges incurred with accepting and processing credit card purchases from patrons at the organization’s charitable gaming activities;

4. Food, any noncash item not to exceed twenty-five (25) dollars in fair market value given upon achieving a predetermined goal in a raffle, or clothing provided to volunteers as authorized in 820 KAR 1:060;

5. Payments made to the Department[Office] of Charitable Gaming;

6. Printing costs incurred in connection with an organization’s charitable gaming activities, which shall be the costs for printing or copying raffle tickets, gaming occasion programs, house rules, and vouchers;

7. Payments for the purchase of prizes to be awarded during the organization’s conduct of charitable gaming;

8. Promotional items;

9. Federal excise taxes levied under 26 U.S.C. 4401 and 4411, or fees associated with the filing of Internal Revenue Service Form 11-C and paid by a licensed charitable organization during the calendar year; and

10. Customary and usual fees or charges incurred in the collection of checks dishonored for insufficient funds.

Section 2. Charitable Gaming Expense Categories. (1) The items that may be included as a utilities expense, pursuant to KRS 238.550(9)(c), shall be the money paid for electric, gas, water, sewer, telephone, and trash collection. It may also include any cable or internet expenses that are incurred by the charitable organization for credit card services,[a] card-mining devices, or electronic pull tab systems.

2. The items that may be included as an advertising expense, pursuant to KRS 238.550(9)(e), shall be the expenses for a handout, flyer, radio, television, advertising sign, billboard, or other media used to promote an event or activity required to be licensed under KRS Chapter 238 and any printing costs associated with them.

3. The items that may be included as a bookkeeping expense, pursuant to KRS 238.550(9)(g), shall be the costs of completing the financial report, the federal excise tax form, and the federal gaming forms. Bookkeeping expenses shall not include expenses associated with handling charitable gaming funds, preparing gaming occasion records, or ordering supplies.

4. The items that may be included as security services, pursuant to KRS 238.550(9)(h), shall be the expenses associated with paying a person whose sole duty is to promote and provide peace, order, and safety at a charitable gaming event which:
   (a) May include patrolling the parking lot or accompanying the organization’s personnel to the bank or night depository with the charitable gaming receipts; and
   (b) Shall not include costs for security or alarm systems or for special lighting for the building or parking lot.

SCOTT JONES, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: August 12, 2015

FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey; General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes allowable charitable gaming expenses not otherwise dictated in statute.

(b) The necessity of this administrative regulation: This regulation is necessary to establish what charitable gaming expenses are allowable under statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9), 238.550(9)(j). KRS 238.515 (2), (4), and (9) sets forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes other allowable expenses for charitable organizations.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows for cable or internet expenses for electronic pulltab devices to be included as a utilities expense. It also corrects the improper use of "Office of Charitable Gaming" by changing the language to "Department of Charitable Gaming." Similarly the amendment corrects the improper labeling of the "Public Protection Cabinet" as the "Environmental and Public Protection Cabinet."

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the regulation to include internet as a charitable gaming utilities expense and to include utilities associated with electronic pulltab devices as a result of the passage of SB 33.

(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2), (4), (9), 238.550(9)(j). KRS 238.515 (2), (4), and (9) sets forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities; to establish standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for; and, to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]."

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify for organizations what is an allowed utilities expense.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact charitable organizations. There are currently 603 licensed charitable organizations.

(4) Provide an analysis of how the entities identified in Question (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 organizations will be able to, but not required to, include internet expenses and utilities expenses for electronic pulltabs in their charitable gaming expenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): There should be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): Organizations will benefit by being able to deduct internet and utilities for electronic pulltabs as charitable gaming expenses. This will help them with their 40% retention.

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

(a) Initially: There will be no cost to implement this amendment to the administrative regulation.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation.

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

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

(9) TIERING: Is tiering applied? No. Only licensed charitable organizations are affected by this regulation and it applies equally to all.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515 and KRS 238.550.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is in effect. There should be no effect on the expenditures or revenues of any government agency.

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

(b) How 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 response to (a) above.

(c) How much will it cost to administer this program this year? It is not anticipated that there will be any cost in administering the program that this regulation relates to.

(d) How much will it cost to administer this program in subsequent years? See response to (c) above.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of this administrative regulation.

Revenues (+/-): Not applicable; see response to (c) above.
Expenditures (+/-): Not applicable; see response to (c) above.
Other explanation: There should be no fiscal impact.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming (Amendment)

820 KAR 1:125. Gaming inspections.

RELATES TO: KRS 238.515(2), 238.560
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) authorizes the department[office] to enforce reasonable standards for the conduct of charitable gaming. KRS 238.560 authorizes the department[office] to inspect and examine charitable gaming operations. This administrative regulation establishes how the department[office] will enforce the conduct of charitable gaming through inspections.

Section 1. Organizations. A compliance officer, investigator, auditor, or any other employee authorized by the department[office] may inspect the conduct of gaming by a licensed or exempt organization to ensure that it complies with all the statutes and administrative regulations of the department[office].

Section 2. Facilities. A compliance officer, investigator, auditor, or any other employee authorized by the department[office] may inspect the operation of a charitable gaming facility to ensure that it complies with all the statutes and administrative regulations of the department[office].

Section 3. Manufacturers and Distributors. A compliance officer, investigator, auditor, or any other employee authorized by the department may inspect the operation of a licensed manufacturer or distributor to ensure that it complies with all the statutes and administrative regulations of the department. The cost of any inspection or audit shall be the responsibility of the licensed manufacturer or distributor.

SCOTT JONES, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: August 12, 2015
FILED WITH LRC: August 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 will be accepted until the end of the calendar day on September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-5625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Noelle J. Bailey

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes how the department will enforce the conduct of gaming through inspections.
(b) The necessity of this administrative regulation: This regulation is necessary to allow the department to inspect the operation of all Kentucky licensed charitable gaming entities.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2) and (9). KRS 238.515(2) and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities and to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." While not listed as statutory authority, KRS 238.560 authorizes the department to inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In order to properly regulate licensees the department must have authority to inspect their operation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment adds the right of the department to inspect the operations of manufacturers and distributors pursuant to KRS 238.560. The amendment also establishes that the cost of an inspection or audit of a licensed manufacturer or distributor will be at the cost of the manufacturer or distributor.
(b) The necessity of this amendment to this administrative regulation: This amendment is necessary as inspections of manufacturers and distributors had been left out of the regulation although they were authorized by statute.
(c) How the amendment conforms to the content of the authorizing statutes: The statutory authorities for this regulation are KRS 238.515(2) and (9). KRS 238.515(2) and (9) set forth the powers of the department to establish and enforce reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities and to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [KRS Chapter 238]." KRS 238.560 authorizes the department to inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed. This amendment conforms to this statute by establishing regulations for the inspection of premises where charitable gaming supplies and equipment are manufactured and distributed.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the department to inspect and audit manufacturers and distributors at the licensees expense. These entities have not previously been audited or inspected because they are generally located out of state and the cost to inspect was too high. This puts the cost of inspection and audit on the for-profit manufacturers and distributors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact licensees manufacturers and distributors. There are currently twenty-three (23) licensed manufacturers and sixteen (16) licensed distributors.

(4) Provide an analysis of how the entities identified in Question (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 manufacturers and distributors will have to allow inspections and audits by the department. They will
FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation? The Kentucky Department of Charitable Gaming as implementer of this 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 in effect? There should be no net effect on the expenditures or revenues of any government agency.

4. How much 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 the regulation should not generate revenue in the first year or in subsequent years.

5. How 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 response to (a) above.

6. How much will it cost to administer this program for the first year? It is not anticipated that there will be any cost in administering the program that this regulation relates to.

7. How much will it cost to administer this program in subsequent years? See response to (c) above.

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

*Revenues (+/-): Not applicable; see response to (c) above.

*Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be no fiscal impact.

RELATES TO: KRS 238.510, 238.515(6), 238.530, 238.555, 238.560(3), 238.995

STATUTORY AUTHORITY: KRS 238.515(6), (9), 238.560(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(6) and 238.560(3) authorize the Department of Charitable Gaming to take appropriate disciplinary action against persons who do not operate in compliance with KRS Chapter 238 and the administrative regulations promulgated thereunder, KRS 238.560(3) directs the Department of Charitable Gaming as implementer of this administrative regulation.

Section 1. (1) The Department of Charitable Gaming as implementer of 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 subsequent years? See response to (a) above.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): The manufacturers and distributors will be required to pay the cost of the inspection or audit. The cost will vary depending on the location of the licensee and the size of the operation. Due to limited personnel the department does not anticipate conducting more than a few inspections per year, thus this would not be a yearly cost to these licensees.

(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 to implement this administrative regulation:

(a) Initially: There will be no cost to implement this amendment to the administrative regulation.

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

6. What is the source of the funding to be used in the implementation and enforcement of this administrative regulation? Funding will be provided by the licensee as they will be required to pay for the inspection. There will be no additional funding necessary to enforce the provisions of the amended regulation.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: There should be no increase in fees or funding necessary to implement this amendment to the administrative regulation.

State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment to the regulation does not establish any new fees or directly or indirectly increase any fees. It does create additional costs for licensed manufacturers and distributors.

9. TIERING: Is tiering applied? No. This regulation applies equally to all classes of regulated entities.

Section 2. The Department of Charitable Gaming as implementer of 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 subsequent years? n/a

(b) In administering this regulation, how much will it cost each of the entities identified in Question (3): This regulation applies to the conduct of charitable games, including conducting special limited charitable games, shall be subject to a fine not to exceed $500 for each offense. A second or subsequent violation of the same statutory or regulatory provision during the same year shall be subject to a fine not to exceed $1,000 for each offense.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): n/a

(d) How much will it cost to administer this program for the first year? It is not anticipated that there will be any cost in administering the program that this regulation relates to.

(e) How much will it cost to administer this program in subsequent years? See response to (c) above.

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

*Revenues (+/-): Not applicable; see response to (c) above.

*Expenditures (+/-): Not applicable; see response to (c) above.

Other explanation: There should be no fiscal impact.
$1,000 for each offense.

(8) A violation of KRS 238.510(5) relative to gambling offenses committed on licensed charitable gaming premises or in conjunction with charitable gaming shall be subject to a fine not to exceed $1,000 for each offense.

(9) Any other violation of KRS Chapter 238 or 820 KAR Chapter 1 for which a fine is not established in this section shall be subject to a fine not to exceed $1,000 for each offense.

Section 3. The department[office] may impose upon any license holder a term of probation for any violation of KRS Chapter 238 or 820 KAR Chapter 1. The department[office] may impose this administrative action, in accordance with KRS 238.560(3), if it determines that department[office] oversight and monitoring of the license holder’s activities will promote efforts to correct the cited violation and deter future violations.

Section 4. The department[office] may revoke, suspend or deny a license or application for license for any violation of KRS Chapter 238 or 820 KAR Chapter 1 under the following circumstances:

(1) The department[office] shall revoke or deny a license if:
   (a) An applicant or license holder or individual associated with the applicant or license holder in a capacity listed in KRS 238.525(3) has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995, or any two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B during the term of licensure;
   (b) A license holder fails to file any reports required pursuant to KRS Chapter 238 or 820 KAR Chapter 1;
   (c) A license holder, upon notice of delinquency, fails to remit to the department[office] of the charitable gaming fee required pursuant to KRS 238.570(1); and
   (d) With respect to license renewal applications, a license holder fails to fulfill any requirement, qualification or eligibility restriction for licensure set forth in KRS Chapter 238 or 820 KAR Chapter 1.

(2) The department[office] may revoke, suspend or deny the license or application of a charitable organization, a manufacturer, a distributor or a facility for violations of KRS Chapter 238 or 820 KAR Chapter 1 if the nature, frequency and severity of the offenses charged, and the license holder’s or applicant’s history of previous violations, demonstrate an unwillingness or inability to operate in compliance with the law.

Section 5. The department[office] shall issue a written notice of violation to a license holder determined to have violated provisions of KRS Chapter 238 or 820 KAR Chapter 1. The notice shall be provided on a Form CG-NOV, Notice of Violation(s). Any Notices of Violation issued to a license holder shall be considered by the department[office] in evaluating the license holder’s history of previous violations. A Notice of Violation shall state the provisions alleged to have been violated and shall notify the license holder that the department[office] may take administrative action against the license holder as a result of the violations.

Section 6. A person shall submit a request, in writing, to the department[completed Office of Charitable Gaming Complaint Form] to initiate an investigation of an alleged violation.

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

(a) Form CG-NOV, “Notice of Violation(s),” 07/01, is incorporated by reference[.and]

(b) Form CG-Complaint “Office of Charitable Gaming Complaint Form,” 07/01.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Department[Office of Charitable Gaming, Public Protection and Regulation Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, Monday through Friday, 8 a.m. to 4:30 p.m.}

Scott Jones, Commissioner
Ambrose Wilson IV, Secretary
Approved by Agency: August 12, 2015
Filed with LRC: August 14, 2015 at 11 a.m.
Public Hearing and Public Comment Period: A public hearing on this administrative regulation shall be held on September 24, 2015 at 10:30 a.m., Eastern Time at the Department of Charitable Gaming, 132 Brighton Park Boulevard, 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 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 calendar day on September 30, 2015. Send written notification of intent not to be heard at the public hearing and comments on the proposed administrative regulation to the contact person.

Contact Person: Noelle J. Bailey, General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

Regulatory Impact Analysis and Tiering Statement

Contact Person: Noelle J. Bailey

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation classifies administrative offenses and describes recommended penalties and other administrative actions for those offenses.
   (b) The necessity of this administrative regulation: This regulation is necessary to establish what constitutes and administrative violation and what the penalties for those violations can be.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes are KRS 238.515(5), (9), 238.560(3). KRS 238.515(6) permits the department to take appropriate disciplinary actions and making referrals for criminal prosecution of persons who do not operate in compliance with the statutes. KRS 238.515(9) authorizes the Department to "promulgate administrative regulations which are necessary to carry out the purposes and intent of [Chapter 238]." KRS 238.560(3) permits the department to take appropriate administrative action for violation of the provisions of the statute. This may include fines, suspensions, revocations, etc. The regulation conforms to the statute by setting out the specific violations and penalties.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the administration of the statutes as it specifies what constitutes a violation and what penalties are allowed for those violations.

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

   (a) How the amendment will change this existing administrative regulation: This amendment establishes violations of KRS 238.510 relating to gambling offenses committed on charitable gaming premises or in conjunction with charitable gaming is an administrative violation subject to a fine. It further gets rid of the unused CG-Complaint form and only requiring investigations request be submitted in writing. Finally, it also corrects the improper use of "Office of Charitable Gaming" by changing the language to "Department of Charitable Gaming." Similarly the amendment corrects the improper labeling of the "Public Protection Cabinet" as the "Environmental and Public Protection Cabinet."

   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to get rid of an unused complaint form and to clarify that a gambling violation conducted at
a charitable gaming premises or in conjunction with charitable gaming can also be an administrative violation.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes are KRS 238.515(6), (9), 238.560(3). KRS 238.515(6) permits the department to take appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate in compliance with the statutes. KRS 238.515(9) authorizes the Department to "promulgate administrative regulations which are necessary to the carry out the purposes and intent of [Chapter 238]." KRS 238.560(3) permits the department to take appropriate administrative action for violation of the provisions of the statute. That may include fines, suspensions, revocations, etc. The amendment conforms to the statute by setting out a specific violation and penalty.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the department to file an administrative action against any licensed entity involved in illegal gambling in conjunction with charitable gaming.

(a) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact all licensed charitable gaming entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in Question (3): There should be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in Question (3): There should be no revenue generated for the first year or any subsequent year? This regulation should not require any additional administrative costs.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See response to (c) above.

(c) How much will it cost to administer this program for the first year? This regulation should not require any additional administrative costs.

(d) How much will it cost to administer this program in future years? See response to (c) above.

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

(6) What is the source of the funding to be used in the implementation and enforcement of this administrative regulation: There will be no additional funding necessary to implement this amendment to administrative regulation. There will be no additional funding necessary to enforce the provisions of the amended regulation.

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

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

(9) TIERING: Is tiering applied? No. This regulation applies equally to all classes of regulated entities.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming as the agency responsible for implementing this regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(6), (9), 238.560(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. There will be no effect on the expenditures and revenues of state or local government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There should be no revenue generated for the first full year or any subsequent year.

(b) How much will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See response to (a) above.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)


RELATES TO: KRS 216B.010-216B.131, 216B.990, 218A.175
STATUTORY AUTHORITY: KRS 13A.100, 216B.040, 216B.105
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040 and 216B.105 mandate that the Cabinet for Health and Family Services[Human Resources] regulate health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation of special health clinics.

Section 1. Definitions. (1) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the clinic is vested.

(2) "Commission" means the Commission for Health Economics Control in Kentucky.

(3) "License" means an authorization issued by the cabinet for the purpose of operating a special health clinic.

(4) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(5) "Diagnostic services" means[those] services which are performed to ascertain and assess an individual's physical health condition.

(6) "Treatment services" means[those] services provided to an individual who, because of a physical health condition, is in need of medical assistance for the attainment of the individual's[his] maximum level of physical function.

(7) "Qualified registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041.

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Licensing and Regulation in the Office of the Inspector General, Cabinet for Health and Family Services[Human Resources].

Section 2. Scope of Operations and Services. (1) Special health clinics are institutions which provide the type of diagnostic or
treatment services like those allowed to be provided in a private practitioner’s office or clinic operated by a group of practitioners [limited health services] on an outpatient basis, and shall not include the provision of surgical services allowed to be performed by ambulatory surgical centers licensed pursuant to 902 KAR 20:106.

(2) Services licensed as a special health clinic, if not exempt from licensure pursuant to KRS 216B.020(2) or otherwise licensed in a separate category under 902 KAR Chapter 20, include:
(a) [These services include:] Family planning clinics;
(b) [Pulmonary care clinics;]
(c) [Disability determination clinics;]
(d) [Weight loss clinics;]
(e) [Speech and hearing clinics;]
(f) [Wellness centers;]
(g) [Counseling centers;]
(h) Occupational health clinics;
(i) Sports medicine clinics;
(j) Dental clinics;
(k) [Pediatric intern medicine, oncology, neurology, cardiology, family practice, and other medical specialty clinics.]  

(3) An entity excluded from the definition of pain management facility pursuant to KRS 218A.175(1)(b) shall obtain a special health clinic license for a clinic owned and operated by the entity if:
(a) The majority of the patients of the practitioners at the clinic are provided treatment for pain that includes the use of controlled substances; and
(b) The clinic is located off-campus[. and any clinic which only provides diagnostic services].

Section 3. Administration. (1) Licensee.
(a) [The licensee shall be legally responsible for the service and for compliance with federal, state and local laws and regulations pertaining to the operation of the service, limited to the scope of the service’s certificate of need.
(b) [The licensee shall establish lines of authority and designate an administrator who shall be principally responsible for the daily operation of the clinic.
(2) Policies. [The clinic 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 the;  
1. Services[service(s)] offered;
2. [Methods and protocols for service delivery;]
3. [Qualifications of personnel involved in the delivery of the services; and
4. [and] Goals of the services[service(s)];]
(e) A description of the administrative and patient care records and reports[.]
(f) Procedures to be followed if an individual seeks or is in need of care and treatment that is beyond the scope of services offered by the clinic, which may include:
1. Advising the individual to seek services elsewhere;
2. Making a referral on behalf of the individual; or
3. Contacting emergency medical services; and
(g) Procedures to be followed [in the event] the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals.
(3) Patient care policies. Patient care policies shall be developed by the medical director in collaboration with a group of the clinic’s other professionals to address all medical aspects of the clinic’s program, including:
1. A description of the services the clinic provides directly and those provided through agreement;
2. Guidelines for the medical management of health problems, which include the conditions requiring medical consultation or patient referral;
3. Guidelines for the maintenance of medical records in accordance with subsection (6) of this section; and
4. Procedures for review and evaluation of the services provided by the clinic at least annually.
(4) Personnel.
(a) Medical director. [The clinic shall have a medical director who;]
1. Shall be[a] a;
2. [Licensed to practice in Kentucky and who is responsible for all medical aspects of the clinic except those clinics which provide only audiological services; or
b. Dentist having a full and active license to practice in Kentucky if the clinic provides only dental services;]
2. Shall provide direct services, supervision, and consultation to the clinic’s staff;
3. Shall participate with a group made up of clinic professionals including at least one (1) nurse, or one (1) dental hygienist if the clinic provides only dental services, in the development of:
   a. Execution and periodic review of the clinic’s written policies and services as described in subsection (3) of this section; and
   b. Written protocols signed by the medical director which include standing orders, rules of practice, and medical directives that apply to services provided by the clinic and direct the step-by-step collection of subjective and objective data from the patient, direct data analysis, direct medical action depending on the data collected, and include the rationale for each decision made;
4. Shall periodically review the clinic’s patient records, provide medical orders, and provide medical care services to patients of the clinic;
5. Shall be present for consultation weekly and be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral; and
6. May serve as both the clinic’s administrator and medical director.
(b) The clinic shall:
1. Employ, directly or by contract, a sufficient number of qualified personnel [e.g., physicians, nurses, therapists[and technicians, or dental hygienists]] to provide effective patient care and all other related services; and
2. Maintain[—There shall be] written personnel policies which are available to all employees;
   (c) There shall be a written job description for each position which shall be reviewed and revised as necessary.
(d) Current personnel records shall be maintained for each employee[and which include the following:]
   1. Name, address, and Social Security number;
   2. Evidence of current registration, certification, or licensure of personnel;
   3. Records of training and experience; and
   (5)[(4)] In-service training. All personnel shall participate in[annual]ongoing in-service training programs relating to their respective job activities including thorough job orientation for new employees.
   (6)[(5)] Medical records.
   (a) [The clinic shall maintain accurate, readily accessible, and complete medical records which contain at least the following:]
   1. Medical or social history relevant to the services provided, including data obtainable from other providers;
   2. Name[Names] of the patient, referring physician, if any, and physicians orders for special diagnostic services;
   3. Date and description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, names of personnel who provided the services, medications and treatments prescribed; and disposition made;
   4. Reports of all physical examinations and laboratory and other test findings relevant to the services provided; and
   5. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.
   (b) Medical records shall be the property of the clinic.
(c) The original medical record shall not be removed from the clinic except in compliance with a court order or subpoena.

d) Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(e) Confidentiality/Security: Use and Disclosure:

1. The clinic 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.

2. The clinic may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as established in this administrative regulation.

3. This administrative regulation shall not be construed to forbid the clinic 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.

4. Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The clinic shall:

1. Establish systematic procedures to assist in the continuity of care if the patient moves to another source of care and the clinic shall, upon proper release, transfer medical records or an abstract thereof when requested.

2. Provide for the safeguarding of records. After the patient's death or completion of the medical record, the medical record shall be placed in an inactive file and retained for:

1. One (1) year;

2. If, in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(h) The clinic shall:

1. Make provisions for the secure storage of patient medical records in a secure location which includes the physical security of the records and shall not disclose the records to anyone except persons specifically authorized to have access to them.

2. The licensee shall safeguard the record and its content against loss, defacement, and tampering.

(7) Kentucky Health Information Exchange (KHIE). A clinic shall participate in the KHIE pursuant to the requirements of 900 KAR 5:010.

(8) The clinic shall:

(a) Carry out or arrange for an annual evaluation of its total program;

(b) Consider the findings of the evaluation; and

(c) Take corrective action, if necessary;

(e) The evaluation required by subsection (8) of this section shall include:

1. The utilization of clinic services, including at least the number of patients served and the volume of services;

(b) A representative sample of both active and closed clinical records; and

(c) The clinic’s health care policies[if A specific location shall be designated by the special health clinic for the storage and maintenance of the clinic’s medical records].

Section 4. Provision of Services. A licensed special health clinic shall comply with the requirements listed in Sections 3 and 5 of this administrative regulation, the clinic's program narrative, and the additional requirements of this section which relate to the particular services[service(s)] offered by the licensee. (1) Equipment used for direct patient care by a special health clinic shall comply with the following:

(a) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

(b) 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; and

(c) There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment.

2. Diagnostic services shall be performed in accordance with the special health clinic’s[clinics] protocol.

3. (a) Diagnostic services include family planning clinics, disability determination clinics, counseling centers, wellness centers, and other clinics providing diagnostic services only.

(b) Diagnostic services shall be provided under the supervision of a physician, or a dentist if the clinic provides only dental services, who is qualified by advanced training and experience in the use of the specific technique utilized for diagnostic purposes, except for a family planning clinic(s) or a wellness center.

4. (c) The clinic shall prepare a record for each patient to include the date of the procedure, name of the person, description of the procedures ordered and performed, the referring physician, the name of the person performing the procedure, and the date and name of the physician, if any, to whom the results were sent.

(d) Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

5. (4) Protocols for diagnostic examinations shall be developed by the medical director; [2] Personnel performing a physical examination shall:

[a] Have adequate training and be currently licensed, registered or certified in accordance with applicable Kentucky statutes and administrative regulations; and

[b] Be knowledgeable of the relevant scope of practice by their certification or license.

6. [4] A wellness center shall have at least one (1) person on staff, employed full time, who has current advanced cardiac life support certification.

7. (3) Treatment services includes pulmonary care clinics, weight loss clinics, and speech and hearing clinics.

(a) Diagnosis services includes family planning clinics, disability determination clinics, counseling centers, wellness centers, and other clinics providing diagnostic services only.

(b) Diagnostic services shall be provided under the supervision of a physician, or a dentist if the clinic provides only dental services.

7. [4] Protocols for diagnostic examinations shall be developed by the medical director; [2] Personnel performing a physical examination shall:

[a] Have adequate training and be currently licensed, registered or certified in accordance with applicable Kentucky statutes and administrative regulations; and

[b] Be knowledgeable of the relevant scope of practice by their certification or license.

8. [4] A wellness center shall have at least one (1) physician on staff, employed full time, who has current advanced cardiac life support certification.

9. (3) Treatment services includes pulmonary care clinics, weight loss clinics, and speech and hearing clinics.

(a) Diagnosis services includes family planning clinics, disability determination clinics, counseling centers, wellness centers, and other clinics providing diagnostic services only.

(b) Diagnostic services shall be provided under the supervision of a physician, or a dentist if the clinic provides only dental services.

7. [4] Protocols for diagnostic examinations shall be developed by the medical director; [2] Personnel performing a physical examination shall:

[a] Have adequate training and be currently licensed, registered or certified in accordance with applicable Kentucky statutes and administrative regulations; and

[b] Be knowledgeable of the relevant scope of practice by their certification or license.

8. [4] A wellness center shall have at least one (1) physician on staff, employed full time, who has current advanced cardiac life support certification.

9. (3) Treatment services includes pulmonary care clinics, weight loss clinics, and speech and hearing clinics.

(a) Diagnosis services includes family planning clinics, disability determination clinics, counseling centers, wellness centers, and other clinics providing diagnostic services only.

(b) Diagnostic services shall be provided under the supervision of a physician, or a dentist if the clinic provides only dental services.

7. [4] Protocols for diagnostic examinations shall be developed by the medical director; [2] Personnel performing a physical examination shall:

[a] Have adequate training and be currently licensed, registered or certified in accordance with applicable Kentucky statutes and administrative regulations; and

[b] Be knowledgeable of the relevant scope of practice by their certification or license.

8. [4] A wellness center shall have at least one (1) physician on staff, employed full time, who has current advanced cardiac life support certification.

9. (3) Treatment services includes pulmonary care clinics, weight loss clinics, and speech and hearing clinics.

(a) Diagnosis services includes family planning clinics, disability determination clinics, counseling centers, wellness centers, and other clinics providing diagnostic services only.

(b) Diagnostic services shall be provided under the supervision of a physician, or a dentist if the clinic provides only dental services.

7. [4] Protocols for diagnostic examinations shall be developed by the medical director; [2] Personnel performing a physical examination shall:

[a] Have adequate training and be currently licensed, registered or certified in accordance with applicable Kentucky statutes and administrative regulations; and

[b] Be knowledgeable of the relevant scope of practice by their certification or license.

8. [4] A wellness center shall have at least one (1) physician on staff, employed full time, who has current advanced cardiac life support certification.

9. (3) Treatment services includes pulmonary care clinics, weight loss clinics, and speech and hearing clinics.

(a) Diagnosis services includes family planning clinics, disability determination clinics, counseling centers, wellness centers, and other clinics providing diagnostic services only.

(b) Diagnostic services shall be provided under the supervision of a physician, or a dentist if the clinic provides only dental services.

7. [4] Protocols for diagnostic examinations shall be developed by the medical director; [2] Personnel performing a physical examination shall:

[a] Have adequate training and be currently licensed, registered or certified in accordance with applicable Kentucky statutes and administrative regulations; and

[b] Be knowledgeable of the relevant scope of practice by their certification or license.

8. [4] A wellness center shall have at least one (1) physician on staff, employed full time, who has current advanced cardiac life support certification.

9. (3) Treatment services includes pulmonary care clinics, weight loss clinics, and speech and hearing clinics.

(a) Diagnosis services includes family planning clinics, disability determination clinics, counseling centers, wellness centers, and other clinics providing diagnostic services only.

(b) Diagnostic services shall be provided under the supervision of a physician, or a dentist if the clinic provides only dental services.

7. [4] Protocols for diagnostic examinations shall be developed by the medical director; [2] Personnel performing a physical examination shall:

[a] Have adequate training and be currently licensed, registered or certified in accordance with applicable Kentucky statutes and administrative regulations; and

[b] Be knowledgeable of the relevant scope of practice by their certification or license.

8. [4] A wellness center shall have at least one (1) physician on staff, employed full time, who has current advanced cardiac life support certification.
Section 5. Physical environment. (1) Accessibility. The clinic shall meet requirements for making buildings and facilities accessible to and usable by persons with a disability [the physically handicapped] pursuant to KRS 198B.260 and administrative regulations promulgated thereunder. [All clinics shall comply with this requirement by July 1, 1989.]

(2) Fire safety. An initial license to operate a special health clinic or a new license to operate a clinic upon approval of a change of location shall not be issued before the clinic obtains approval from the State Fire Marshal’s office [the Fire Marshal’s office before licensure and relicensure is granted by the licensure agency].

(3) Housekeeping and maintenance services.
(a) Housekeeping.
1. The clinic shall maintain a clean and safe facility free of unpleasant odors.
2. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sanitary devices.
(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:
1. The clinic 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. The pest control program shall be in operation in the clinic. 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.

(4) The clinic shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include the:
(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; and
(b) Provision of in-service education programs annually on the causes, effect, transmission, prevention, and elimination of infections.

(5) 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.

(6) The facility shall be kept free from insects and rodents and their nesting places.

(7) Garbage and trash:
(a) Shall be removed from the premises regularly; and
(b) Containers shall be cleaned daily.

(8) A clinic shall establish and maintain a written policy for the handling and disposal of infectious, pathological, or contaminated wastes, which shall include the requirements established in this subsection.

(9) Sharp wastes, including broken glass, scalpels, blades, and hypodermic needles, shall be segregated from other wastes and placed in puncture-resistant [aggregated in rigid disposable] containers immediately after use.

(10) A needle or other contaminated sharp waste shall not be recap, 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).

(11) A sharp waste container shall be incinerated on or off site or rendered nonhazardous.

(12) Any nondisposable sharp waste shall be placed in a hard walled container for transport to a processing area for decontamination.

(13) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.

(14) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.
(a) The clinic shall not contract with or employ a physician or prescribing practitioner:  
1. Whose Drug Enforcement Administration number has ever been revoked;  
2. Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction;  
3. Who has had any disciplinary limitation placed on his or her license by:  
   a. The Kentucky Board of Medical Licensure;  
   b. The Kentucky Board of Nursing;  
   c. The Kentucky Board of Dentistry;  
   d. The Kentucky Board of Optometric Examiners;  
   e. The State Board of Podiatry;  
   f. Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans; or  
g. A licensing board of another state if the disciplinary action resulted from illegal or improper prescribing or dispensing of controlled substances; or  
4. 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.  

(b) The clinic’s medical director shall:  
1. Be board certified and have a full, active, and unencumbered license to practice medicine in the commonwealth issued under KRS Chapter 311;  
2. Be physically present practicing medicine in the clinic for at least fifty (.50) percent of the time that patients are present in the clinic;  
3. Within ten (10) days after the clinic 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; and  
4. Meet one (1) of the following:  
   a. Hold a current subspecialty certification in pain management by a member board of the American Board of Medical Specialties, or hold a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;  
   b. Hold a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties or hold a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;  
   c. Hold a current board certification by the American Board of Pain Medicine;  
   d. Hold a current board certification by the American Board of Interventional Pain Physicians; or  
   e. Have completed a fellowship in pain management or an accredited residency program that included a rotation of at least five (5) months in pain management.  

(c) The clinic shall, within ten calendar (10) days after termination of the medical director, notify the cabinet of the identity of any interim medical director until a permanent director is secured for the clinic.  

(d) Each licensed physician who prescribes or dispenses a controlled substance to a patient in the clinic as part of his or her employment agreement with the clinic 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 clinic.  

Section 7. Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technology Service, incorporated by reference in 902 KAR 20:008 Section 2(6), if:  
(a) Any person with ownership interest in the special health clinic has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;  
(b) Any person with ownership interest in the clinic has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program;  
(c) An administrative sanction or criminal conviction relating to controlled substances has been imposed on the clinic or any owner or individual under contract or employed directly by the clinic for an act or omission done within the scope of the clinic’s license or the individual’s employment; or  
(d) The applicant fails, after the initial inspection, to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(6).  

(2) If, during the initial inspection of the special health clinic, 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 clinic to the appropriate professional licensing board and appropriate law enforcement agency; and  
(b) Withhold issuing a license to the clinic 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 special health clinic’s license if it finds:  
(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the clinic to comply with the provisions of this administrative regulation;  
(b) An administrative sanction or criminal conviction relating to controlled substances is imposed on the clinic or any individual employed by the clinic for an act or omission done within the scope of the clinic’s license or the individual’s employment;  
(c) The clinic fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(5); or  
(d) The clinic is terminated from participation in the Medicaid program pursuant to 907 KAR 1:671.  

(4)(a) The denial or revocation of a special health clinic’s license shall be mailed to the applicant or licensee by certified mail, return receipt requested, or by personal service.  
(b) 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) Urgent action to suspend a license  
(a) The cabinet shall take urgent action to suspend a special health clinic’s license if the cabinet has probable cause to believe that:  
1. The continued operation of the clinic would constitute a danger to the health, welfare, or safety of the facility’s patients; or  
2. A physician or other prescriber practicing at the clinic may be engaged in an improper or inappropriate prescribing or dispensing of a controlled substance;  
   b. 1. The special health clinic shall be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice.  
   2. Notice of the urgent suspension shall set forth the particular reasons for the action.  
   c. If the cabinet issues an urgent suspension of the clinic’s license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician or other prescriber practicing at the special health clinic to the appropriate professional licensing board and appropriate law enforcement agency.  
   d. Notice of a hearing on an urgent suspension shall be served on the clinic by certified mail, return receipt requested, or by personal service.  
   (b) Within five (5) working days of completion of the hearing, the cabinet’s hearing officer shall render a written decision.
affirming, modifying, or revoking the urgent suspension.

(b) The urgent 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 urgent suspension, the cabinet shall take action to revoke the special health clinic’s license pursuant to subsection (3) of this section if:

(a) The clinic fails to attend the expedited hearing;

(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;

(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 clinic.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders. Needles and sponges shall not be cut, dismantled, or destroyed after use, but shall be placed intact directly into a rigid container. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:080; and

6. The clinic shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the amendment is proposed administratively.

5. The necessity of the amendment for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

a. Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIONOUS WASTE," and identifies the waste from which the waste is being removed and shall be attached to the bag in a conspicuous manner.

b. All unpreserved tissue specimens procedures shall be incinerated on or off site.

c. The following wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible:

(i) Dressings and materials from open or contaminated wounds;

(ii) Waste materials and disposable linens from isolation rooms;

(iii) Culture plates;

(iv) Test tubes;

(v) Sputum cups; and

(vi) Contaminated sponges and swabs.

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 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 September 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 September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email 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 to operate a special health clinic.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.020 and KRS 216B.105, which requires the Cabinet for Health and Family Services to regulate all health facilities that are not the private offices or clinics of physicians or other practitioners of the healing arts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.020 and KRS 216B.105 by establishing the minimum requirements for operation a health facility licensed as a special health clinic.

(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 minimum requirements for licensure as a special health clinic.

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

(a) how the amendment will change this existing administrative regulation: This amendment will allow a dentist to serve as the medical director of a facility licensed as a special health clinic if the clinic provides only dental services. This amendment will also require special health clinics to participate in the Kentucky Health Information Exchange (KHIE); updates requirements related to the confidentiality and security of medical records; adds a new Section 967 which is applicable only to entities exempt from the definition of "pain management facility" pursuant to KRS 218A.175, but are licensed as a special health clinic in which the clinic’s practitioners prescribe controlled substances to a majority of the clinic’s patients for the treatment of pain, i.e. any hospital-owned special health clinic operated off the hospital’s campus in which the majority of the patients are treated for pain; adds a new section on denial and revocation of licensure; and makes technical changes to comply with the administrative regulation drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify who may serve as medical director of a special health clinic as well as make other needed revisions described in paragraph (a) above.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the minimum requirements for operation a health facility licensed as a special health clinic.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing the minimum requirements for licensure as a special health clinic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment impacts the 146 currently licensed special health clinics.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Special health clinics will be required to participate in KHIE and otherwise demonstrate compliance with the requirements for operation of a health facility licensed as a special health clinic.

In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of participating in KHIE is undetermined at...
this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Currently, only physicians are allowed to serve as a special health clinic’s medical director. The amendment benefits clinics by allowing for a dentist to serve as the medical director if the clinic provides only dental services. Further, the addition of the requirement to participate in KHIE is a quality measure intended to improve patient care.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation is from agency funds and state general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts clinics licensed as special health clinics.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040 and KRS 216B.105

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes necessary.

(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:

VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives

907 KAR 1:595. Model Waiver II service coverage and reimbursement policies and requirements.

RELATES TO: KRS 314.011, 42 C.F.R. 440.70, 440.185, 42 U.S.C. 1396, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1315

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented, to qualify for federal Medicaid funds. This administrative regulation establishes the service coverage and reimbursement policies and requirements relating to Model Waiver II services provided to a Medicaid eligible recipient. These services are provided pursuant to a 1915(c) home and community based waiver granted by the U.S. Department for Health and Human Services in accordance with 42 U.S.C. 1396n(c).

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081;

(b) Medicare certified; and

(c) Medicaid certified.

(5) "Licensed practical nurse" is defined by KRS 314.011(9).

(6) "Model Waiver II services" means 1915(c) home and community based waiver program in-home ventilator services provided to a Medicaid-eligible recipient who:

(a) Is dependent on a ventilator; and

(b) Would otherwise require a nursing facility level of care in a hospital based nursing facility which will accept a recipient who is dependent on a ventilator.

(7) "MWMA portal" means the Kentucky Medicaid Waiver Management Application internet portal located at http://chfs.ky.gov/dms/mwma.htm.

(8) "Participant" means a recipient who qualifies for and is receiving Model Waiver II services in accordance with Section 2 of this administrative regulation.

(9) "Person-centered service plan" means a written individualized plan of services.

(10) "Private duty nursing agency" means a facility licensed to provide private duty nursing services:

(a) By the Cabinet for Health and Family Services, Office of Inspector General; and

(b) Pursuant to 902 KAR 20:370.

(11)(b) "Recipient" is defined by KRS 205.8451(9).

(12)(g) "Registered nurse" is defined by KRS 314.011(5).

(13) [14] "Registered respiratory therapist" is defined by KRS 314A.010(3)(a).

(14)(i) "Ventilator" means a respiration stimulating mechanism.

(15) [16] "Ventilator dependent" means the condition or state of an individual who:

(a) Requires the aid of a ventilator for respiratory function; and

(b) Meets the high intensity nursing facility patient status criteria established in 907 KAR 1:022.

Section 2. Participant Model Waiver II Recipient Eligibility and Related Policies. (1)(a) To be eligible to receive Model Waiver II services, an individual shall:
Section 3. Provider Participation Requirements. To participate in the Model Waiver II program, a:
1. Home health agency shall:
   a. Be eligible for Medicaid pursuant to 907 KAR 20:010;
   b. Require ventilator support for at least twelve (12) hours per day; and
   c. Meet ventilator dependent patient status requirements established in 907 KAR 1:022;
   (b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection:
   1. The individual or a representative on behalf of the individual shall:
      a. Apply for 1915(c) home and community based waiver services via the MWMA portal;
      b. Complete and upload into the MWMA portal a MAP - 115 Application Intake - Participant Authorization, and
      c. Complete and upload into the MWMA portal a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA portal; and
   2. A registered nurse on behalf of the individual applying for services shall:
      a. Complete and upload into the MWMA portal:
         i. A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form;
         ii. A person-centered service plan; and
         iii. A MAP-351A, Medicaid Waiver Assessment[Form]; and
      b. Upload[1] a MAP-10, Waiver Services – Physician’s Recommendation[MAP109, Plan of Care/Prior Authorization for Model Waiver II Services], which shall be signed and dated by a physician.
      (c) An individual’s eligibility for Model Waiver II services shall begin upon receiving[; and]
      1. Submit to the department an application packet which shall contain:
         a. A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form;
         b. A person-centered service plan; and
         c. A MAP-351A, Medicaid Waiver Assessment[Form]; and
      (2) For an individual to remain eligible for Model Waiver II services[; the requirements established in this subsection shall be met]
         a. The[An] individual shall:
             1. Maintain Medicaid eligibility requirements established in 907 KAR 20:010; and
             2. Remain ventilator dependent pursuant to 907 KAR 1:022[.]
      (b) A Model Waiver II level of care determination confirming that the individual qualifies shall be performed and submitted to the department every six (6) months; and[.]
      (c) A MAP-10, Waiver Services – Physician’s Recommendation[MAP109, Plan of Care/Prior Authorization for Model Waiver II Services] shall be:
         1. Signed and dated by a physician every sixty (60) days on behalf of the individual; and
         2. Uploaded into the MWMA portal[Submitted to the department.] after being signed and dated in accordance with subparagraph 1 of this paragraph, every sixty (60) days.
   (3) A Model Waiver II service shall not be provided to a recipient who is:
   a. Receiving a service in another 1915(c) home and community based waiver program; or
   b. An inpatient of:
      1. A nursing facility;
      2. An intermediate care facility for individuals with an intellectual disability; or
   3. Another facility.
   (4) The department shall not authorize a Model Waiver II service unless it has ensured that:
      a. Ventilator dependent status has been met; and
      b. The service:
         1. Is available to the recipient;
         2. Will meet the need of the recipient; and
         3. Does not exceed the cost of traditional institutional ventilator care.
   Section 4. Covered Services. (1) The following shall be covered Model Waiver II services:
      a. Skilled nursing provided by:
         1. A registered nurse; or
         2. A licensed practical nurse; or
      b. Respiratory therapy.
      (2) Model Waiver II services shall be provided by an individual employed by or under contract through a private duty nursing agency or home health agency as a:
         a. Registered nurse;
         b. Licensed practical nurse; or
         c. Registered respiratory therapist.
   Section 5. Payment for Services. The department shall reimburse a participating home health agency or private duty nursing agency for the provision of covered Model Waiver II services as established in this section. (1) Reimbursement shall be based on a fixed fee for a unit of service provided for each covered service referenced in Section 4 of this administrative regulation with one (1) hour equal to one (1) unit of service.
      2. The fixed fee for skilled nursing services provided by:
         a. A registered nurse shall be thirty-one (31) dollars and ninety-eight (98) cents for each unit of service;
         b. A licensed practical nurse shall be twenty-nine (29) dollars and ten (10) cents for each unit of service; and
         c. A registered respiratory therapist shall be twenty-seven (27) dollars and forty-two (42) cents for each unit of service.
      (3) Reimbursement shall not exceed sixteen (16) units of service per day.
   (4) Payment shall not be made for a service to an individual for whom it can reasonably be expected that the cost of the 1915(c) home and community based waiver program service furnished under this administrative regulation would exceed the cost of the service if provided in a hospital-based nursing facility.
   Section 6. Maintenance of Records. (1) A Model Waiver II service provider shall maintain:
      a. A clinical record for each participant[participant[HCB recipient] which shall contain the following:
         1. Pertinent medical, nursing, and social history;
         2. [A comprehensive assessment entered on a MAP-351A, Medicaid Waiver Assessment Form, and signed by the:
            a. Assessment team; and
            b. Department];
         3. A person-centered service plan[completed MAP109, MWII, Plan of Care/Prior Authorization for Model Waiver II Services];
         4. A copy of the MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the participant[recipient]; or the participant[recipient’s] legal representative at the time of application or reapplication and each recertification thereafter;
         5. Documentation of all level of care determinations;
         6. All documentation related to prior authorizations including requests, approvals, and denials;
         7. Documentation that the participant[recipient’s] legal representative was informed of the procedure for reporting complaints; and

7. (b) Documentation of each service provided that shall include:
   a. The date the service was provided;
   b. The duration of the service;
   c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant’s residence at home;
   d. Progress notes which shall include documentation of changes, responses, and treatments utilized to evaluate the participant’s needs; and
   e. The signature of the service provider.

(b) Each MAP-10, Waiver Services – Physician’s Recommendation submitted regarding the participant in accordance with Section 2 of this administrative regulation and
(c) Incident reports as required by Section 7 of this administrative regulation if an incident with the participant occurs.

(2)(a) Except as provided in paragraph (b) of this subsection, a clinical record or incident report shall be retained for at least six (6) years from the date that a covered service is provided.

(b) If the participant is a minor, a clinical record or incident report shall be retained for three (3) years after the participant reaches the age of majority under state law, if that is a longer time period than the time period required by paragraph (a) of this subsection.

(3) Upon request, a provider shall make information regarding service and financial records available to the:
   a. Department;
   b. Cabinet for Health and Family Services, Office of Inspector General or its designee;
   c. United States Department for Health and Human Services or its designee;
   d. General Accounting Office or its designee;
   e. Office of the Auditor of Public Accounts or its designee; or
   f. Office of the Attorney General or its designee.

Section 7. Incident Reporting. (1) There shall be two (2) classes of incidents.

(b) The following shall be the two (2) classes of incidents:
   1. An incident; or
   2. A critical incident.

2. An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
   a. A minor injury;
   b. A medication error without a serious outcome; or
   c. A behavior or situation that is not a critical incident.

3. A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
   a. Can reasonably be expected to result in harm to a participant; and
   b. Shall include:
      1. Abuse, neglect, or exploitation;
      2. A serious medication error;
      3. Death;
      4. A homicidal or suicidal ideation;
      5. A missing person; or
      6. Other action or event that the provider determines may result in harm to the participant.

4. If an incident occurs, the Model Waiver II provider shall:
   1. Report the incident by making an entry into the MWMA portal that includes details regarding the incident; and
   2. Be immediately assessed for potential abuse, neglect, or exploitation.

5. If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:
   a. The individual who discovered or witnessed the incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant; and
   b. The incident shall immediately be considered a critical incident.

6. The critical incident procedures established in subsection (5) of this section shall be followed; and
   a. The participant’s registered nurse and participant’s guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.

5. If a critical incident occurs, the:
   (a) Individual who witnessed the critical incident or discovered the critical incident shall immediately:
      1. Act to ensure the health, safety, and welfare of the at-risk participant; and
      2. Report the critical incident by making an entry in the MWMA portal including details of the incident; and
   (b) Model Waiver II provider shall:
      1. Conduct an immediate investigation and involve the participant’s registered nurse in the investigation; and
      2. Prepare a report of the investigation, which shall be recorded in the MWMA portal and shall include:
         a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
         b. Details of the critical incident; and
         c. Relevant participant information including:
            i. A listing of recent medical concerns;
            ii. A listing of recent mental health concerns;
            iii. Recommendations for preventive measures.

6. If a critical incident does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA portal within eight (8) hours of discovery.

7. If a death of a participant occurs, a Model Waiver II provider shall submit to the MWMA portal mortality data documentation within fourteen (14) days including:
   a. The participant’s person-centered service plan at the time of death;
   b. Any current assessment forms regarding the participant;
   c. The participant’s medication administration records from all service sites for the past three (3) months along with a copy of each prescription;
   d. Progress notes regarding the participant from all service sites for the past thirty (30) days;
   e. The results of the participant’s most recent physical exam;
   f. All incident reports, if any exist, regarding the participant for the past six (6) months;
   g. Any medication error report, if any exist, related to the participant for the past six (6) months;
   h. A full life history of the participant including any update from the last version of the life history;
   i. Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant’s life;
   j. Emergency medical services notes regarding the participant if available;
   k. The police report if available;
   l. A copy of:
      1. The participant’s advance directive, medical order for scope of treatment, living will, or health care directive if applicable; and
      2. The cardiopulmonary resuscitation and first aid card for any provider’s staff member who was present at the time of the incident that resulted in the participant’s death;
   m. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and
   n. A record of any crisis training for any staff member present at the time of the incident that resulted in the participant’s death.

8. A Model Waiver II provider shall report a medication error by making an entry into the MWMA portal.

9. A Model Waiver II provider shall:
   (1) Implement a procedure or procedures to ensure that the following is reported:
      a. Abuse, neglect, or exploitation of a Model Waiver II recipient in accordance with KRS Chapters 209 or 620;
      b. A slip or fall;
      c. A transportation incident;
      d. Improper administration of medication;
      e. A medical complication; or
      f. An incident caused by the recipient, including:
         1. Verbal or physical abuse of staff or other recipients;
         2. Destruction or damage of property; or
3. Recipient self-abuse:
   (2) Ensure that a copy of each incident reported in this subsection is maintained in a central file subject to review by the department; and
   (3) Implement a process for communicating the incident, the outcome, and the prevention plan to:
   (a) The Model Waiver II service recipient involved, his or her family member, or his or her responsible party; and
   (b) The attending physician, physician assistant, or advanced practice registered nurse.

Section 8. Use of Electronic Signatures.[44] 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 Model Waiver II service 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, and 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 with:
       1. A copy of the provider’s electronic signature policy;
       2. The signed consent form; and
       3. The original filed signature immediately upon request.

Section 9. Federal Financial Participation. The department’s coverage of and reimbursement for Model Waiver II services pursuant to [A policy established in] this administrative regulation shall be contingent upon null and void if the Centers for Medicare and Medicaid Services:
   (1) [Denies] Federal financial participation for the coverage and reimbursement policy; and/or
   (2) [Disapproves] Federal financial participation for the Medicaid Model Waiver II services.

Section 10. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be appealed in accordance with 907 KAR 1:560.
   (2) An appeal of a negative action regarding a Medicaid beneficiary’s eligibility shall be appealed in accordance with 907 KAR 1:560.
   (3) An appeal of a negative action regarding a Medicaid provider shall be appealed in accordance with 907 KAR 1:671.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
   (b) "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015[January 2000 edition; and]
   (c) "MAP-10 Waiver Services – Physician’s Recommendation", June 2015;
   (d) "MAP - 116 Service Plan – Participant Authorization", June 2015;

   (2) This material may be inspected, copied, or obtained, subject to applicable copyright laws.

   (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


LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 13, 2015
FILED WITH LRC: August 13, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2015 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing September 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 September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service coverage and reimbursement policies for the Medicaid Model Waiver II services. This program enables individuals who have nursing facility level of care needs primarily due to needing to be on a ventilator for at least twelve (12) hours per day to be able to receive services in the home rather than being admitted to a nursing facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service coverage and reimbursement policies for the Medicaid Model Waiver II 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 service coverage and reimbursement policies for the Medicaid Model Waiver II 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 service coverage and reimbursement policies for the Medicaid Model Waiver II 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 requires individuals to apply for services via an online portal – Medicaid Waiver Management Application (MWMA) – mandated by the Centers for Medicare and Medicaid Services (CMS) and revises incident reporting provisions including the requirement that incidents be recorded in the MWMA portal.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with a federal mandate.

(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.

(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.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals receiving Model Waiver II services, home health agencies, and private duty nursing agencies will be affected by the amendment. There are currently forty-three (43) individuals receiving services via the program and a total of nineteen (19) providers – home health agencies and private duty nursing agencies combined – enrolled as Model Waiver II service 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: Individuals will have to apply for services via an online portal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No fees are imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Applicants should benefit from a streamlined application process.

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

(a) Initially: DMS anticipates that the amendment to this administrative regulation will be budget neutral initially.

(b) On a continuing basis: DMS anticipates that the amendment to this administrative regulation will be budget neutral 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 sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds 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.

(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 requirements apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

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

3. Minimum or uniform standards contained in the federal mandate. No more than 200 individuals may receive services at any one time via a Model Waiver.

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 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 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? The Department for Medicaid Services (DMS) anticipates that the amendment to this administrative regulation will be budget neutral in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendment to this administrative regulation will be budget neutral 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 Medicaid Services
Division of Community Alternatives
(Amendment)

907 KAR 1:835. Michelle P. waiver services and reimbursement.

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

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 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 and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions. (1) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

2) "ADHC" means adult day health care.

3) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

4) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant who does not require twenty-four (24) hour care in an institutional setting.

5) "Advanced practice registered nurse" or "APRN" means
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(6)(45) "Assessment team" means a team which:
(a) Conducts assessment or reassessment services; and
(b) Consists of:
1. Two (2) registered nurses; or
2. One (1) registered nurse and one (1) of the following:
   a. A social worker;
   b. A certified psychologist with autonomous functioning;
   c. A licensed psychological practitioner;
   d. A licensed marriage and family therapist; or
   e. A licensed professional clinical counselor.

(7)(46) "Behavior support specialist" means an individual who has:
(a) A master’s degree from an accredited institution with formal graduate course work in a behavioral science; and
(b) At least one (1) year of experience in behavioral programming.

(8)(47) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 6 of this administrative regulation and participant's approved person-centered service plan.

(9)(48) "Budget allowance" is defined by KRS 205.5605(1).

(10)(49) "Certified psychologist" means an individual who is a certified psychologist in accordance with KRS 319.056.

(11) "Consumer" is defined by KRS 205.5605(2).

(12) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:
   (a) Assist with the design of their programs;
   (b) Choose their providers of services; and
   (c) Direct the delivery of services to meet their needs.

(13) "Covered services and supports" is defined by KRS 205.5605(3).

(14) "DCBS" means the Department for Community Based Services.

(15) "Department" means the Department for Medicaid Services or its designee.

(16) "Developmental disability" means a severe, chronic disability that:
   (a) Is attributable to:
      1. Cerebral palsy or epilepsy; or
      2. Any other condition, excluding mental illness, closely related to an intellectual disability resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with an intellectual disability and which requires treatment or services similar to those required by persons with an intellectual disability;
      (b) Is manifested prior to the individual's 22nd birthday;
      (c) Is likely to continue indefinitely; and
   (d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:
      1. Self-care;
      2. Understanding and use of language;
      3. Learning;
      4. Mobility;
      5. Self-direction; or

(17) "Direct care staff" means an individual hired by a Michelle P. waiver provider to provide services to the participant in a manner that the participant or participant's legal representative or family member can understand;

(18) "Direct care staff" means an individual who:
   (a) Is eighteen (18) years of age or older; and
   (b) Has a high school diploma or GED; or
   2a. Is twenty-one (21) years of age or older; and
   b. Is able to communicate with a participant in a manner that the participant or participant's legal representative or family member can understand;
   (b) Has a valid Social Security number or valid work permit if not a U.S. citizen;
   (c) Can understand and carry out simple instructions;
   (d) Has the ability to keep simple records; and
   (e) Is managed by the provider's supervisory staff.

(19)(50) "Electronic signature" is defined by KRS 369.102(8).

(20)(51) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(21) "Home health agency" means an agency that is:
   (a) Licensed in accordance with 902 KAR 20:081; and
   (b) Medicare and Medicaid certified.

(22) "ICF-IIID" means an intermediate care facility for individuals with an intellectual disability.

(23) "Intellectual disability" means an individual has:
   (a) Significantly sub-average intellectual functioning;
   (b) An intelligence quotient of seventy (70) or below;
   (c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
      1. Communication;
      2. Self-care;
      3. Home living;
      4. Social or interpersonal skills;
      5. Use of community resources;
      6. Self-direction;
      7. Functional academic skills;
      8. Work;
      9. Leisure; or
      10. Health and safety; and
   (d) Had an onset prior to eighteen (18) years of age.

(24) "Intellectual disability professional" means an individual who:
   (a) Has at least one (1) year of experience working with individuals with an intellectual or developmental disability;
   (b) Meets the personnel and training requirements established in Section 2 of this administrative regulation; and
   (c)1. Is a doctor of medicine or osteopathy;
      2. Is a registered nurse;
      3. Holds a bachelor's degree from an accredited institution in a human services field.

(25) "Level of care determination" means a determination that an individual meets the Michelle P. waiver level of care criteria established in Section 5 of this administrative regulation.

(26) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(27) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(28) "Licensed practical nurse" or "LPN" means a person who:
   (a) Meets the definition of KRS 314.011(9); and
   (b) Works under the supervision of a registered nurse.

(29) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(30) "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(31) "Licensed psychologist" means an individual who:
   (a) meets the requirements established in KRS 319.053; or
   (b) is a certified psychologist with autonomous functioning.

(32) "Licensed psychological practitioner" means an individual who:
   (a) Meets the requirements established in KRS 319.010(6); and
   (b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(33) "MWMA portal" means the Kentucky Medicaid Waiver Management Application Internet portal located at http://chfs.ky.gov/dms/mwma.htm.

(34) Michelle P. waiver recipient means an individual who:
   (a) Is a recipient as defined by KRS 205.8451(9);
   (b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and
   (c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(35) "Normal babysitting" means general care provided to a
child which includes custody, control, and supervision.

32) "Occupational therapist" is defined by KRS 319.010(3).

33) "Occupational therapy assistant" is defined by KRS 319.010(4).

34) "Participant" means an individual who:
   (a) Is a recipient as defined by KRS 205.8451(9);
   (b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and
   (c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

35) "Participant-directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based waiver services programs that allows recipients to receive non-medical services in which the individual:
   (a) Assists with the design of the program;
   (b) Chooses the providers of services; and
   (c) Directs the delivery of services to meet his or her needs.

36) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

37) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 8 of this administrative regulation.

38) "Physical therapist" is defined by KRS 327.010(2).

39) "Physical therapist assistant" means a skilled health care provider who:
   (a) Is certified by the Kentucky Board of Physical Therapy; and
   (b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

40) (a) "Physician assistant" or "PA" is defined by KRS 311.840(3).

41) Plan of care or "POC" means a written individualized service plan developed by:
   (a) A Michelle P. waiver recipient or a Michelle P. waiver recipient’s legal representative;
   (b) The case manager or support broker; and
   (c) Any other person designated by the Michelle P. waiver recipient if the Michelle P. waiver recipient designates another person.

42) Plan of treatment means a care plan used by an ADHC center.

43) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

44) "Qualified professional in the area of intellectual disabilities" is defined by KRS 2028.010(12).

45) "Registered nurse" or "RN" means a person who:
   (a) Meets the definition established in KRS 314.011(5); and
   (b) Has at least one (1) year of experience as a licensed practical nurse or a registered nurse.

46) "Representative" is defined by KRS 205.5605(6).

47) "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907 KAR 12-010, Section 7.

48) "Sex crime" is defined by KRS 17.165(1).

49) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

50) "Speech-language pathologist" is defined by KRS 334A.020(3).

51) "State plan" is defined by 42 C.F.R. 400.203.

52) "Supportive staff" means an individual employed by the Michelle P. waiver provider who shall manage direct care staff and who:
   (a) Is eighteen (18) years of age or older; and
   b. Has a high school diploma or GED; or
   2. Is twenty-one (21) years of age or older;
   (b) Has a minimum of one (1) year experience in providing services to individuals with an intellectual or developmental disability;
   (c) Is able to adequately communicate with the participant, staff, and family members;
   (d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and
   (e) Has the ability to perform required record keeping.

53) "Support broker" means an individual chosen by a participant in an agency designated by the department to:
   (a) Provide training, technical assistance, and support to the participant;
   (b) Assist the participant in any other aspects of PDS(COO); and
   (c) Directs the delivery of services to meet his or her needs.

Section 2. Non-PDS/Non-COO Provider Participation Requirements. (1) In order to provide Michelle P. waiver services, excluding participant-consumer directed options, a provider shall be:
   (a) Licensed in accordance with:
      1. 902 KAR 20:066 if an adult day health care provider;
      2. 902 KAR 20:078 if a group home;
      3. 902 KAR 20:081 if a home health agency; or
      4. 902 KAR 20:081 if a community health center;
   (b) Certify the provider in accordance with KRS 17.165(3).

54) "Violent crime" is defined by KRS 17.165(3).

55) "State plan" is defined by 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164; and

56) "Violent crime" is defined by KRS 17.165(3).

57) "Violent crime" is defined by KRS 17.165(3).

58) "Violent crime" is defined by KRS 17.165(3).

59) "Violent crime" is defined by KRS 17.165(3).

60) "Violent crime" is defined by KRS 17.165(3).

61) "Violent crime" is defined by KRS 17.165(3).
with Section 8 of this administrative regulation: [MAP 109]:

4. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the participant or his or her legal representative at the time of application or reapproval and each re-certification thereafter;
5. The name of the case manager;
6. Documentation of all level of care determinations;
7. All documentation related to prior authorizations, including requests, approvals, and denials;
8. Documentation of each contact with, or on behalf of, a participant;
9. Documentation that the participant receiving ADHC services or legal representative was provided a copy of the ADHC center’s posted hours of operation;
10. Documentation that the participant or legal representative was informed of the procedure for reporting complaints; and
11. Documentation of each service provided. The documentation shall include:
   a. The date and time the service was provided;
   b. The duration of the service;
   c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant’s home;
   d. Itemization of each service delivered;
   e. The participant’s arrival and departure time, excluding travel time, if the service was provided outside the participant’s home;
   f. Progress notes which shall include documentation of changes, responses, and treatments utilized to meet the participant’s needs; and
   g. The signature of the service provider; and
   (b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained for the longer of:
      1. At least six (6) years from the date that a covered service is provided; or
      2. For a minor, three (3) years after the participant reaches the age of majority under state law.

2. (Upon request, a Michelle P. waiver provider shall make information regarding service and financial records available to the:
   a. Department of Health and Family Services;
   b. Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;
   c. United States Department for Health and Human Services or its designee;
   d. United States Government Accountability Office or its designee;
   e. Kentucky Office of the Auditor of Public Accounts or its designee; or
   f. Kentucky Office of the Attorney General or its designee.

Section 4. Participant Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible participant who:
   a. Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and
   b. Would, without waiver services, be admitted to an ICF-IID or a nursing facility.

2. To apply for participation in the program, an individual or individual’s representative shall:
   (a) Apply for 1915(c) home and community based waiver services via the MWMA portal; and
   (b) Complete and upload into the MWMA portal a MAP – 115 Application Intake – Participant Authorization.

3. The department shall perform a Michelle P. waiver service level of care determination for each participant at least once every twelve (12) months or more often if necessary.

4. A Michelle P. waiver service shall not be provided to an individual who:
   a. Does not require a service other than:
      1. An environmental and minor home adaptation;
      2. Case management; or
      3. An environmental and minor home adaptation and case management;
   b. Is an inpatient of:
      1. A hospital;
      2. A nursing facility; or
      3. An ICF-IID;
   c. Is a resident of a licensed personal care home; or
   d. Is receiving services from another 1915(c)/Medicaid home and community based services waiver service program.

5. A Michelle P. waiver provider shall inform a participant or the participant’s legal representative of the choice to receive:
   a. Michelle P. waiver services; or
   b. Institutional services.

6. An eligible participant or the participant’s legal representative shall select a participating Michelle P. waiver provider from which the participant wishes to receive Michelle P. waiver services.

7. A Michelle P. waiver provider shall [use a MAP-24 to notify the department in writing electronically or in print of a participant’s wishes to receive Michelle P. waiver services.]

8. Involuntary termination of a service to a participant by a Michelle P. waiver provider shall require:
   a. Simultaneous notice in writing electronically or in print to the participant or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:
      1. A statement of the intended action;
      2. The basis for the intended action;
      3. The authority by which the action is taken; and
      4. The participant’s right to appeal the intended action through the provider’s appeal or grievance process; and
   b. Submittal of a MAP-24 to the department at the time of the intended action; and
   c. The case manager or support broker in conjunction with the provider to:
      1. Provide the participant with the name, address, and telephone number of each current provider in the state;
      2. Provide assistance to the participant in making contact with another provider;
      3. Arrange transportation for a requested visit to a provider site;
      4. Provide a copy of pertinent information to the participant or legal representative;
      5. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;
      6. Continue to provide supports until alternative services are secured; and
      7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service Level of Care Criteria. (1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:
   a. Requires physical or environmental management or rehabilitation and:
      1. Has a developmental disability or significantly sub-average intellectual functioning;
      2. Requires a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning

975
functioning while:
   a. Learning fundamental living skills;
   b. Obtaining educational experiences which will be useful in self-supporting activities; or
   c. Increasing awareness of his or her environment; or
3. Has a primary psychiatric diagnosis if:
   a. The individual possesses care needs listed in subparagraph 1 or 2 of this paragraph;
   b. The individual's mental care needs are adequately handled in an ICF-IID; and
   c. The individual does not require psychiatric inpatient treatment; or
   b) Has a developmental disability and meets the;
   1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or
   2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2).

(2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet the Michelle P. waiver service level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Covered Services. (1) A Michelle P. waiver service shall:
   a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the participant.[Michelle P. waiver recipient];
   (b) Be provided pursuant to a person-centered service plan[plan of care] or, for a PDS/CDO service, pursuant to a person-centered service plan[plan of care] and support spending plan;
   (c) Except for PDS/CDO services, not be provided by a member of the participant[s][Michelle P. waiver recipient[s] family. A PDS/CDO service may be provided by a participant[s][Michelle P. waiver recipient[s] family member; and
   (d) Be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit to the department a:
   a) Completed MAP 10, Waiver Services Physician's Recommendation that has been signed and dated by:
      1. A physician;
      2. An advanced practice registered nurse;
      3. A physician assistant; or
      4. An intellectual disability professional; and
   (b) Person-centered service plan[MAP 109,] and MAP 351, Medicaid Waiver Assessment[To the department]

(3) Covered Michelle P. waiver services shall include:
   a) A comprehensive assessment, which shall:
      1. Be completed by the department;
      2. Identify a participant[s][Michelle P. waiver recipient[s] needs and the services the participant[Michelle P. waiver recipient] or the participant[s][recipient[s] family cannot manage or arrange for on the participant's[recipient's] behalf;
      3. Evaluate a participant[s][Michelle P. waiver recipient[s] physical health, mental health, social supports, and environment;
      4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, APRN, or another qualified professional in the area of intellectual disabilities;
      5. Be conducted by an assessment team; and
      6. Include at least one (1) face-to-face home visit by a member of the assessment team with the participant[Michelle P. waiver recipient] and, if appropriate, the participant's[recipient's] family;
   (b) A reassessment service, which shall:
      1. Be completed by the department;
      2. Determine the continuing need for Michelle P. waiver services and, if appropriate, PDS/CDO services;
      3. Be performed at least every twelve (12) months;
      4. Be conducted using the same procedures used in an assessment service; and
   5. Not be retroactive;
   (c) [A] Case management[service] which shall meet the requirements established in Section 9 of this administrative regulation and which shall:
      1. Consist of coordinating the delivery of direct and indirect services to a participant[Michelle P. waiver recipient];
      2. Be provided by a case manager who shall:
         a. Arrange for a service but not provide a service directly;
         b. Contact the participant[Michelle P. waiver recipient] monthly through a face-to-face visit at the participant's[Michelle P. waiver recipient's] home, in the ADHC center, or the adult day training provider's location; and
         c. Ensure that service delivery is in accordance with a participant's[recipient's] person-centered service[Michelle P. waiver recipient's] plan[of care]; and d. Meet the requirements of subsection (4) of this section;
      3. Not include a group conference;
      4. Include development of a plan of care that shall:
         a. Be completed on the MAP 109 using Person-Centered Planning, Guiding Principles; and
         b. Reflect the needs of the Michelle P. waiver recipient;
      c. List goals, interventions, and outcomes;
      d. Specify services needed;
      e. Determine the amount, frequency, and duration of services;
      f. Provide for reassessment at least every twelve (12) months;
      g. Be developed and signed by the case manager and Michelle P. waiver recipient, family member, or legal representative; and
      h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of the Michelle P. waiver service level of care;
   1. Include documentation with a detailed monthly summary note which includes:
      a. The month, day, and year for the time period each note covers;
      b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
      c. The signature, date of signature, and title of the individual preparing the note; and
      d. Documentation of at least one (1) face-to-face meeting between the case manager and participant[Michelle P. waiver recipient], family member, or legal representative;
   (d) [1] Include requiring a participant[Michelle P. waiver recipient] or legal representative to sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver services or institutional services and
   (e) Not be provided to a participant[recipient] by an agency if the agency provides any other Michelle P. waiver service to the participant[recipient];
   (d) A homemaker service, which shall consist of general household activities and shall:
      1. Be provided by direct care staff;
      2. Be provided to a participant[Michelle P. waiver recipient];
      a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and
      b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaker activities; and
   1. Include documentation with a detailed note, which shall include:
      a. The month, day, and year for the time period each note covers; and
      b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
   (e) A personal care service which shall:
      1. Be age appropriate;
      2. Consist of assisting a participant[recipient] with eating, bathing, dressing, personal hygiene, or other activities of daily
living; 
3. Be provided by direct care staff;
4. Be provided to a participant [Michelle P. waiver recipient];
   a. Who does not need highly skilled or technical care;
   b. For whom services are essential to the participant’s health and welfare and not for the participant’s family; and
   c. Who needs assistance with age-appropriate activities of daily living; and
5. Include documentation with a detailed note which shall include:
   a. The month, day, and year for the time period each note covers;
   b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
   c. The signature, date of signature, and title of the individual preparing the note; and
   d. Beginning and ending time of service;
   e. An attendant care service, which shall consist of hands-on care that is:
      1. Provided by direct care staff to a participant [Michelle P. waiver recipient] who:
         a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and
         b. Has a family member or other primary caretaker who is employed or attending school and is not able to provide care during working hours;
      2. Not of a general housekeeping nature;
      3. Not provided to a participant [Michelle P. waiver recipient] who is receiving any of the following Michelle P. waiver services:
         a. Personal care;
         b. Homemaker;
         c. ADHC;
         d. Adult day training;
         e. Community living supports; or
         f. Supported employment; and
   f. Include documentation with a detailed note which shall include:
      a. The month, day, and year for the time period each note covers;
      b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
      c. The signature, date of signature, and title of the individual preparing the note; and
      d. [id] Beginning and ending time of service;
   g. A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and be:
      1. Provided by direct care staff who provide services at a level which appropriately and safely meets the medical needs of the participant [Michelle P. waiver recipient];
      2. Be provided to a participant [Michelle P. waiver recipient] who has care needs beyond normal babysitting;
      3. Be used no less than six every six (6) months; and
      4. [Provided in accordance with 902 KAR 20:066, Section 2(1)(b)(10a) through 5. If provided to a child under age twenty one (21) in an ADHC center; and] Include documentation with a detailed note which shall include:
         a. The month, day, and year for the time period each note covers;
         b. The signature, date of signature, and title of the individual preparing the note; and
         c. The beginning and ending time of service;
   h. An environmental and minor home adaptation service, which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a participant [Michelle P. waiver recipient] and which shall:
      1. Meet all applicable safety and local building codes;
      2. Relate strictly to the participant’s disability and needs;
      3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the participant [Michelle P. waiver recipient];
      4. Be submitted on a [form] MAP 95 Request for Equipment Form that is uploaded into the MWMA portal for prior authorization; and
      5. Include documentation with a detailed note which shall include:
         a. The month, day, and year for the time period each note covers; and
         b. The signature, date of signature, and title of the individual preparing the note;
   i) Occupational therapy which shall be:
      1. A physician ordered evaluation of a participant [Michelle P. waiver recipient] level of functioning by applying diagnostic and prognostic tests;
      2. Physician-ordered services in a specified amount and duration to guide a participant [Michelle P. waiver recipient] in the use of therapeutic, creative, and self-care activities to assist the participant [recipient] in obtaining the highest possible level of functioning;
      3. Training of other Michelle P. waiver providers on improving the level of functioning;
      4. Exclusion of maintenance or the prevention of regression;
      5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and
      6. Documented with a detailed staff note which shall include:
         a. The month, day, and year for the time period each note covers;
         b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
         c. The signature, date of signature, and title of the individual preparing the note;
   j) Physical therapy, which shall:
      1. Be a physician-ordered evaluation of a participant [Michelle P. waiver recipient] by applying muscle, joint, and functional ability tests;
      2. Be physician-ordered treatment in a specified amount and duration to assist a participant [Michelle P. waiver recipient] in obtaining the highest possible level of functioning;
      3. Include training of other Michelle P. waiver providers on improving the level of functioning;
      4. Be exclusive of maintenance or the prevention of regression;
      5. Be provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and
      6. Be documented with a detailed monthly summary note which shall include:
         a. The month, day, and year for the time period each note covers;
         b. Progression or lack of progression toward outcomes identified in the person-centered service plan; and
         c. The signature, date of signature, and title of the individual preparing the note;
   k) Speech language pathology services [therapy] which shall:
      1. Be a physician-ordered evaluation of a participant [Michelle P. waiver recipient] with a speech or language disorder;
      2. Be a physician-ordered habilitative service in a specified amount and duration to assist a participant [Michelle P. waiver recipient] with a speech or language disability in obtaining the highest possible level of functioning;
      3. Include training of other Michelle P. waiver providers on improving the level of functioning;
      4. Be provided by a speech-language pathologist; and
      5. Be documented with a detailed monthly summary note which shall include:
         a. The month, day, and year for the time period each note covers;
         b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
         c. The signature, date of signature, and title of the individual preparing the note;
   l) An adult day training service, which shall:
      1. Support the participant [Michelle P. waiver recipient] in daily, meaningful routines in the community; and
      2. Stress training in:
a. The activities of daily living;
   b. Self-advocacy;
   c. Adaptive and social skills; and
   d. Vocational skills;
3. Be provided in a community setting which may:
   a. Be a fixed location; or
   b. Occur in public venues;
4. Not be diversional in nature;
5. If provided on site:
   a. Include facility-based services provided on a regularly-
      scheduled basis;
   b. Lead to the acquisition of skills and abilities to prepare the
      participant[recipient] for work or community participation; or
   c. Prepare the participant[recipient] for transition from school to
      work or adult support services;
6. If provided off site:
   a. Include services provided in a variety of community settings;
   b. Provide access to community-based activities that cannot be
      provided by natural or other unpaid supports;
   c. Be designed to result in increased ability to access
      community resources without paid supports;
   d. Provide the opportunity for the recipient to be involved with
      other members of the general population; and
   e. Be provided as:
      (i) An enclave or group approach to training in which recipients
          work as a group or are dispersed individually throughout an
          integrated work setting with people without disabilities;
      (ii) A mobile crew performing work in a variety of community
          businesses or other community settings with supervision by the
          provider; or
      (iii) An entrepreneurial or group approach to training for
          participants to work in a small business created specifically by or
          for the recipient or recipients;
7. Ensure that any participant[recipient] performing productive
   work that benefits the organization is paid commensurate with
   compensation to members of the general work force doing similar
   work;
8. Require that an adult day training service provider conduct,
   at least annually, an orientation informing the participant[recipient]
   of supported employment and other competitive opportunities in
   the community;
9. Be provided at a time mutually agreed to by the
   participant[recipient] and Michelle P. waiver provider;
10.a. Be provided to participants of[recipients] age twenty-two
     (22) years or older;
   b. Be provided to participants of[recipients] age sixteen (16) to
     twenty-one (21) years as a transition process from school to work
     or adult support services; and
11. Be documented with:
   a. A detailed monthly summary note, which shall include:
      (i) The month, day, and year for the time period each note
          covers;
      (ii) Progression, regression, and maintenance toward
          outcomes identified in the person-centered service plan[of care];
      (iii) The signature, date of signature, and title of the individual
          preparing the note; and
   b. A time and attendance record, which shall include:
      (i) The date of service;
      (ii) The beginning and ending time of the service;
      (iii) The location of the service; and
      (iv) The signature, date of signature, and title of the individual
          providing the service;
12. The analysis of data concerning the frequency, intensity,
   duration of a behavior; and
13. The history of reinforcement for the behavior;
14. Critical variables that preceded the behavior;
15. Effects of different situations on the behavior; and
16. A hypothesis regarding the motivation, purpose, and factors
   which maintain the behavior;
17. If provided off site:
   a. Be provided to participants of[recipients] age twenty-two
      (22) years or older;
   b. Be provided to participants of[recipients] age sixteen (16) to
      twenty-one (21) years as a transition process from school to work
      or adult support services; and
   c. Be revised as necessary;
   d. Define the techniques and procedures used;
   e. Be designed to equip the participant[recipient] to
      communicate his or her needs and to participate in age-appropriate
      activities;
   f. Include the hierarchy of behavior interventions ranging from
      the least to the most restrictive;
   g. Reflect the use of positive approaches; and
   h. Prohibit the use of restraints, seclusion, corporal
      punishment, verbal abuse, and any procedure which denies private
      communication, requisite sleep, shelter, bedding, food, drink, or
      use of a bathroom facility;
18. Include the provision of training to other Michelle P. waiver
   providers concerning implementation of the behavioral support
   plan;
19. The analysis of data concerning the frequency, intensity,
   and duration of a behavior; and
20. The reports of a Michelle P. waiver provider involved in
    implementing the behavior support plan;
21. Provide for the design, implementation, and evaluation of
    systematic environmental modifications;
22. Be provided by a behavior support specialist; and
23. Be documented by a detailed staff note, which shall include:
   a. The analysis of data concerning the frequency, intensity,
      and duration of a behavior; and
   b. The reports of a Michelle P. waiver provider involved in
      implementing the behavior support plan;
   c. The signature, date of signature, and title of the behavior
      support specialist;
   (o) An ADHC service, which shall:
   (1) Be provided to participants of[recipients] age twenty-two
       (22) years or older;
   (2) Be provided to participants of[recipients] age sixteen (16) to
       twenty-one (21) years as a transition process from school to work
       or adult support services; and
   (3) Be revised as necessary;
   (4) Define the techniques and procedures used;
   (5) Be designed to equip the participant[recipient] to
       communicate his or her needs and to participate in age-appropriate
       activities;
   (6) Include the hierarchy of behavior interventions ranging from
       the least to the most restrictive;
   (7) Reflect the use of positive approaches; and
   (8) Prohibit the use of restraints, seclusion, corporal
       punishment, verbal abuse, and any procedure which denies private
       communication, requisite sleep, shelter, bedding, food, drink, or
       use of a bathroom facility;
24. Include the provision of training to other Michelle P. waiver
   providers concerning implementation of the behavioral support
   plan;
1. Be provided to a participant[Michele P. waiver recipient] who is at least twenty-one (21) years of age;
2. Include the following basic services and necessities provided to participants[Michele P. waiver recipients] during the posted hours of operation:
   a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;
   b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
   c. Snacks;
   d. Supervision by an RN;
   e. Age and diagnosis appropriate daily activities; and
   f. Routine services that meet the daily personal and health care needs of a participant[Michele P. waiver recipient], including:
      i. Monitoring of vital signs;
      ii. Assistance with activities of daily living; and
      iii. Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant[Michele P. waiver recipient];
3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;
4. Include respite care services pursuant to paragraph (g) of this subsection;
5. Be provided to a participant[Michele P. waiver recipient] by the health team in an ADHC center, which may include:
   a. A physician;
   b. A physician assistant;
   c. An APRN;
   d. An RN;
   e. An LPN;
   f. An activities director;
   g. A physical therapist;
   h. A physical therapist assistant;
   i. An occupational therapist;
   j. An occupational therapy assistant;
   k. A speech-language pathologist;
   l. A social worker;
   m. A nutritionist;
   n. A health aide;
   o. An LPCC;
   p. An LMFT;
   q. A certified psychologist with autonomous functioning; or
   r. A licensed psychologist;
6. Be provided pursuant to a plan of treatment that[The plan of treatment shall be developed and signed by each member of the plan of treatment team which shall include the participant[recipient] or a legal representative of the participant[recipient];]
   a. Be developed and signed by each member of the plan of treatment team which shall include the participant[recipient] or a legal representative of the participant[recipient];
   b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and
   c. Be developed annually from information on the MAP 351, Medicaid Waiver Assessment and revised as needed; and
   (p) Community living supports, which shall:
      1. Be provided to facilitate independence and promote integration into the community for a participant[an SCL recipient] residing in his or her own home or in his or her family's home;
      2. Be supports and assistance that[which] shall be related to chosen outcomes, and not be diversional in nature, and [This] may include:
         a. Routine household tasks and maintenance;
         b. Activities of daily living;
         c. Personal hygiene;
         d. Shopping;
         e. Money management;
   f. Medication management;
   g. Socialization;
   h. Relationship building;
   i. Leisure choices;
   j. Participation in community activities;
   k. Therapeutic goals; or
   l. Nonmedical care not requiring nurse or physician intervention;
3. Not replace other work or day activities;
4. Be provided on a one-on-one basis;
5. Not be provided at an adult day-training or children’s day habilitation site;
6. Be documented by:
   a. A time and attendance record, which shall include:
      i. The date of the service;
      ii. The beginning and ending time of the service; and
      iii. The signature, date of signature, and title of the individual providing the service; and
   b. A detailed monthly summary note, which shall include:
      i. The month, day, and year for the time period each note covers; and
      ii. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan(of care); and
   iii. The signature, date of signature, and title of the individual preparing the summary note; and
7. Be limited to sixteen (16) hours per day alone or in combination with adult day training and supported employment.
4. A case manager shall:
   (a) Have a bachelor’s degree from an accredited institution in a human services field and be supervised by:
      1. A qualified professional in the area of intellectual disabilities;
      2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
      3. An individual with a bachelor’s degree in a human services field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
      4. A social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
      5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
      6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
      7. A certified psychologist or licensed psychological associate who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
   (b) Be an RN;
   (c) Be an LPN;
   (d) Be a qualified social worker;
   (e) Be an LMFT;
   (f) Be an LPCC;
   (g) Be a licensed psychologist; or
   (h) Be a licensed psychological practitioner.
Section 7. Participant[Consumer]-Directed Services[Option]
(1) Covered services and supports provided to a participant receiving PDS [Michele P. waiver recipient participating in CDD] shall be nonmedical and include:
   (a) A home and community support service which shall:
      1. Be available only as participant-directed services under the consumer-directed option;
      2. Be provided in the participant’s home or in the community;
      3. Be based upon therapeutic goals and not be diversional in nature;
      4. Not be provided to an individual if the same or similar
service is being provided to the individual via non-PDS[CDO] 
Michelle P. waiver services; and 
5. Include: 
a. Assistance, support, or training in activities including meal 
preparation, laundry, or routine household care or maintenance; 
b. Activities of daily living including bathing, eating, dressing, 
personal hygiene, shopping, or the use of money; 
c. Reminding, observing, or monitoring of medications; 
d. Nonmedical care which does not require a nurse or 
physician intervention; 
e. Respite; or 
f. Socialization, relationship building, leisure choice, or 
participation in generic community activities; 
(b) Goods and services which shall: 
1. Be individualized; 
2. Be utilized to reduce the need for personal care or to 
have been determined to be for the needs of the 
participant[recipient]; 
3. Not include experimental goods or services; and 
4. Not include chemical or physical restraints; 
(c) Community day support service which shall: 
1. Be available only as participant-directed services[under the 
consumer-directed option]; 
2. Be provided in a community setting; 
3. Be tailored to the participant[recipient]'s specific personal 
outcomes related to the acquisition, improvement, and retention of 
skills and abilities to prepare and support the participant[consumer] 
for work or community activities, socialization, leisure, or retirement 
activities; 
4. Be based upon therapeutic goals and not be diversional in 
nature; and 
5. Not be provided to an individual if the same or similar 
service is being provided to the individual via non-PDS[CDO] 
Michelle P. waiver services; or 
(d) Financial management which shall: 
1. Include managing, directing, or dispersing a 
participant[consumer]'s funds identified in the 
participant[consumer]'s approved PDS[CDO] budget; 
2. Include payroll processing associated with the individuals 
hired by a participant[consumer] or participant[consumer]'s 
representative; 
3. Include withholding local, state, and federal taxes and 
make payments to appropriate tax authorities on behalf of a 
participant[consumer]; 
4. Be performed by an entity: 
a. Enrolled as a Medicaid provider in accordance with 907 KAR 
1:672; and 
b. With at least two (2) years of experience working with 
individuals possessing the same or similar level of care needs as 
those referenced in Section 5 of this administrative regulation; 
5. Include preparing fiscal accounting and expenditure reports for: 
a. A participant[consumer] or participant[consumer]'s 
representative; and 
b. The department. 
(2) To be covered, a PDS[CDO service] shall be specified in a 
person-centered service plan[al case]. 
(3) Reimbursement for a PDS[CDO service] shall not exceed 
the department's allowed reimbursement for the same or similar 
service provided in a non-PDS[CDO] Michelle P. waiver setting[al] 
except that respite may be provided in excess of the cap 
established in Section 14(12)(2) of this administrative regulation if: 
(a) Necessary per the participant's person-centered 
service[consumer]'s plan[al case]; and 
(b) Approved by the department in accordance with subsection 
(13) of this section. 
(4) A participant[consumer], including a married 
participant[consumer], shall choose providers and a 
participant[consumer]'s choice shall be reflected or documented in 
the person-centered service plan[al case]. 
(a) A participant[consumer] may designate a representative to 
act on the participant[consumer]'s behalf. 
(b) The PDS[CDO] representative shall: 
1. Be twenty-one (21) years of age or older; 
2. Not be monetarily compensated for acting as the 
PDS[CDO] representative or providing a PDS[CDO service]; and 
3. Be appointed by the consumer on a MAP-2000 
Initiation/Termination of Participant-Directed Services[form]. 
(6) A consumer may voluntarily terminate PDS[CDO services] 
by completing a MAP-2000, Initiation/Termination of Participant-
Directed Services and submitting it to the support broker. 
(7) The department shall immediately terminate a 
participant[consumer] from PDS[CDO services]: 
(a) Imminent danger to the participant[consumer]'s health, 
safety, or welfare exists; 
(b) The participant[consumer] fails to pay patient liability; 
(c) The participant's person-centered service[recipient]'s plan 
al case] indicates he or she requires more hours of service than 
the program can provide; thus, jeopardizing the 
participant[recipient]'s safety and welfare due to being left alone 
without a caregiver present; or 
(d) The participant[recipient], caregiver, family, or guardian 
threatens or intimidates a support broker or other PDS[CDO] staff. 
(8) The department may terminate a participant[consumer] 
from PDS[CDO services] if it determines that the participant's PDS 
[consumer's CDO] provider has not adhered to the person-
centered service plan[al case]. 
(9) Except for a termination required by subsection (7) of this 
section, prior to a participant[consumer]'s termination from 
PDS[CDO services], the support broker shall: 
(a) Notify the assessment or reevaluation service provider of 
potential termination; 
(b) Assist the participant[consumer] in developing a resolution 
and prevention plan; 
(c) Allow at least thirty (30) but no more than ninety (90) days for the participant[consumer] to resolve the issue, develop and 
implement a prevention plan, or designate a PDS[CDO] representative; 
(d) Complete, and submit to the department, a MAP-2000, 
Initiation/Termination of Participant-Directed Services terminating 
the participant[consumer] from PDS[CDO services] if the 
participant[consumer] fails to meet the requirements in paragraph 
(c) of this subsection; and 
(e) Assist the participant[consumer] in transitioning back to 
traditional Michelle P. waiver services. 
(10) Upon an involuntary termination of PDS[CDO services], 
the department shall: 
(a) Notify a participant[consumer] in writing of its decision to 
terminate the participant's PDS[CDO] participation; and 
(b) Inform the participant[consumer] of the right to appeal the 
department's decision in accordance with Section 16(14) of this 
adминистative regulation. 
(11) A PDS[CDO] provider shall: 
(a) Be selected by the participant[consumer]; 
(b) Submit a completed Kentucky Participant[Consumer] 
Directed Services[Option: Employee/Provider Contract to the 
support broker]; 
(c) Be eighteen (18) years of age or older; 
(d) Be a citizen of the United States with a valid Social Security 
number or possess a valid work permit if not a U.S. citizen; 
(e) Be able to communicate effectively with the 
participant[consumer], participant[consumer]'s representative, or 
family; 
(f) Be able to understand and carry out instructions; 
(g) Be able to keep records as required by the 
participant[consumer]; 
(h) Submit to a criminal background check; 
(i) Submit to a check of the: 
1. Nurse Aide Abuse Registry maintained in accordance with 
906 KAR 1:100 and not be found on the registry; and 
2. Caregiver Misconduct Registry in accordance with 922 KAR 
5:120 and not be found on the registry; 
(j) Not have pled guilty or been convicted of committing a sex 
crime or violent crime; 
(k) Complete training on the reporting of abuse, neglect, or
exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant;

(i) Be approved by the department;

(m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)(a) The department shall establish a twelve (12) month budget for a participant based on the participant’s person-centered service plan.

(b) A participant’s twelve (12) month budget shall not exceed $40,000 unless:

1. The participant’s support broker requests a budget adjustment to a level higher than $40,000; and

2. The department approves the adjustment.

(c) The department shall consider the following factors in determining whether to grant a twelve (12) month budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the participant’s health, safety, and welfare; and

4. If a significant change has occurred in the participant’s:

   a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

   b. Natural support system; or

   c. Environmental living arrangement, resulting in the participant’s relocation.

(d) A participant’s twelve (12) month budget may encompass a service or any combination of services listed in subsection (1) of this section, if each service is established in the participant’s person-centered service plan and approved by the department.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a PDS service is expanded to a point in which expansion necessitates a twelve (12) month budget increase, the entire service shall only be covered via traditional (non-PDS) waiver services.

(15) A support broker shall:

(a) Provide needed assistance to a participant with any aspect of PDS services or blended services;

(b) Be available to a participant twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continuously monitor a participant’s health, safety, and welfare; and

(e) Complete or revise a person-centered service plan in accordance with Section 8 of this administrative regulation.

(16)(a) A support broker or case manager may conduct an assessment or reassessment for a PDS participant.

(b) A PDS assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

Section 8. Person-centered Service Plan Requirements. (1) A person-centered service plan shall be established:

(a) For each participant; and

(b) By the participant’s person-centered team.

(2) A participant’s person-centered service plan shall:

   (a) Be developed by:

      1. The participant; the participant’s guardian, or the participant’s representative;

      2. The participant’s case manager;

      3. The participant’s person-centered team; and

      4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

   (b) Use a process that:

      1. Provides the necessary information and support to empower the participant, the participant’s guardian, or the participant’s legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant’s schedules and activities without coercion or restraint;

      2. Is timely and occurs at times and locations convenient for the participant;

      3. Reflects cultural considerations of the participant;

      4. Provides information:

         a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

         b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

      5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;

      6. Includes a method for the participant to request updates to the person-centered service plan as needed;

      7. Enables all parties to understand how the participant:

         a. Learns;

         b. Makes decisions; and

         c. Chooses to live and work in the participant’s community;

      8. Discovers the participant’s needs, likes, and dislikes;

      9. Empowers the participant’s person-centered team to create a person-centered service plan that:

         a. Is based on the participant’s:

            i. Assessed clinical and support needs;

            ii. Strengths;

            iii. Preferences; and

            iv. Ideas;

         b. Encourages and supports the participant’s:

            i. Rehabilitative needs; and

            ii. Habilitative needs; and

         c. Is based on reasonable costs given the participant’s support needs;

         d. Includes:

            i. The participant’s goals;

            ii. The participant’s desired outcomes; and

            iii. Matters important to the participant;

         e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;

         f. Includes:

            i. Information necessary to support the participant during times of crisis; and

            ii. Risk factors and measures in place to prevent crises from occurring;

         g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;

         h. Records the alternative home and community-based settings that were considered by the participant;

         i. Reflects that the setting in which the participant resides was chosen by the participant;

         j. Is understandable to the participant and to the individuals who are important in supporting the participant;

         k. Identifies the individual or entity responsible for monitoring the person-centered service plan;

         l. Is finalized and agreed to with the informed consent of the participant or the participant’s legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;

         m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;

         n. Includes those services which the individual elects to self-determine; and
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

o. Prevents the provision of unnecessary or inappropriate services and supports; and
(c) Include in all settings the ability for the participant to:
1. Have access to make private phone calls, texts, or emails at the participant’s preference or convenience;
2. a. Choose when and what to eat;
b. Have access to food at any time;
c. Choose with whom to eat or whether to eat alone; and
d. Choose appropriating clothing according to the:
(i) Participant’s preference;
(ii) Weather; and
(iii) Activities to be performed.
(3) If a participant’s person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.
(4)(a) A participant’s person-centered service plan shall be:
1. Entered into the MWMA portal by the participant’s case manager; and
2. Updated in the MWMA portal by the participant’s case manager.
(b) A participant or participant’s authorized representative shall complete and upload into the MWMA portal a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA portal.

Section 9. Case Management Requirements. (1) A case manager shall:
(a) Have a bachelor’s degree from an accredited institution in a human services field and be supervised by:
1. A qualified professional in the area of intellectual disabilities who:
   a. Has at least one (1) year of experience working directly with individuals with an intellectual disability or a developmental disability;
   b. Meets the federal educational requirements for a qualified intellectual disability professional established in 42 C.F.R. 483.430; and
   c. Provides documentation of education and experience;
2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
3. An individual with a bachelor’s degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
4. A licensed clinical social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
7. A certified psychologist or licensed psychological associate who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
8. A licensed psychological practitioner or certified psychologist with autonomous functioning who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
(b) Be a registered nurse;
(c) Be a licensed practical nurse;
(d) Be a licensed clinical social worker;
(e) Be a licensed marriage and family therapist;
(f) Be a licensed professional clinical counselor;
(g) Be a licensed psychologist; or
(h) Be a licensed psychological practitioner.
(2) A case manager shall:
(a) Communicate in a way that ensures the best interest of the participant;
(b) Be able to identify and meet the needs of the participant;
(c) Be competent in the participant’s language either through personal knowledge of the language or through interpretation; and
2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;
(d) Ensure that:
1. The participant is educated in a way that addresses the participant’s:
   a. Need for knowledge of the case management process;
   b. Personal rights; and
   c. Risks and responsibilities as well as awareness of available services; and
2. All individuals involved in implementing the participant’s person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;
(e) Have a code of ethics to guide the case manager in providing case management which shall address:
1. Advocating for standards that promote outcomes of quality;
2. Ensuring that no harm is done;
3. Respecting the rights of others to make their own decisions;
4. Treating others fairly; and
5. Being faithful and following through on promises and commitments;
(f)1. Lead the person-centered service planning team; and
2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant’s person-centered service plan;
(g)1. Include the participant’s participation or legal representative’s participation in the case management process; and
2. Make the participant’s preferences and participation in decision making a priority;
(h) Document:
1. A participant’s interactions and communications with other agencies involved in implementing the participant’s person-centered service plan; and
2. Personal observations;
(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant’s person-centered service plan;
(j) Be accountable to:
1. A participant to whom the case manager provides case management in ensuring that the participant’s needs are met;
2. A participant’s person-centered team and provide leadership to the team and follow through on commitments made; and
3. The case manager’s employer by following the employer’s policies and procedures;
(k) Stay current regarding the practice of case management and case management research;
(l) Assess the quality of services, safety of services, and cost-effectiveness of services being provided to a participant in order to ensure that implementation of the participant’s person-centered service plan is successful and done so in a way that is efficient regarding the participant’s financial assets and benefits;
(m) Document services provided to a participant by entering the following into the MWMA portal:
1. A monthly department approved person-centered monitoring tool; and
2. A monthly entry, which shall include:
   a. The month and year for the time period the note covers;
   b. An analysis of progress toward the participant’s outcome or outcomes;
   c. Identification of barriers to achievement of outcomes;
   d. A projected plan to achieve the next step in achievement of outcomes;
   e. The signature and title of the case manager completing the note; and
   f. The date the note was generated;
(n) Accurately reflect in the MWMA portal if a participant is:
   1. Terminated from the Michelle P. waiver program;
   2. Admitted to an intermediate care facility for individuals with an intellectual disability;
   3. Admitted to a hospital;
   4. Admitted to a skilled nursing facility;
   5. Transferred to another Medicaid 1915(c) home and
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

6. Relocated to a different address; and
   (o) Provide information about participant-directed services to
   the participant or the participant’s guardian:
   1. At the time the initial person-centered service plan is
      developed;
   2. At least annually thereafter; and
   3. Upon inquiry from the participant or participant’s guardian.
   (3) If a participant:
      (a) Voluntarily terminates participation in the Michelle P. waiver
          program in order to be admitted to a hospital, to a nursing
          facility, or to an intermediate care facility for individuals
          with an intellectual disability, the participant’s case manager
          shall enter the request into the MWMA portal;
      (b) Is transferred to another 1915(c) home and community
          based waiver services program, the case manager shall enter
          the transfer request into the MWMA portal.
   (4) Case management shall:
      (a) Consist of coordinating the delivery of direct and indirect
          services to a participant;
      (b) Be provided by a case manager who shall:
          1. Arrange for a service but not provide a service directly;
          2. Contact the participant monthly through a face-to-face visit
             at the participant’s home, in the ADHC center, or at the adult
             day training provider’s location;
          3. Assure that service delivery is in accordance with a
             participant’s person-centered service plan; and
          4. Meet the requirements of this section;
      (c) Not include a group conference;
      (d) Include documenting:
          1. The signature, date of signature, and title of the individual
             preparing the note; and
          2. Documentation of at least one (1) face-to-face meeting
             between the case manager and participant, family member, or
             legal representative;
      (e) Include requiring a participant or legal representative to
          sign a MAP-350, Long Term Care Facilities and Home and
          Community Based Program Certification Form at the time of
          application or reapplication and at each recertification to document
          that the individual was informed of the choice to receive Michelle P.
          waiver or institutional services; and
      (f) Not be provided to a participant by an agency if the agency
          provides any other Michelle P. waiver service to the participant.
   (5)(a) Case management for any participant who begins
       receiving Michelle P. waiver services after the effective date of
       this administrative regulation shall be conflict free except as allowed
       in paragraph (b) of this subsection.
   (b1) Conflict free case management shall be a scenario in
       which the provider includes any subsidiary, partnership, not-for-
       profit, or for-profit business entity that has a business interest in the
       provider who renders case management to a participant that shall not
       also provide another 1915(c) home and community based waiver
       service to that same participant unless the provider is the only
       willing and qualified Michelle P. waiver provider within thirty (30)
       miles of the participant’s residence.
   2. An exemption to the conflict free case management
      requirement shall be granted if:
      a. A participant requests the exemption;
      b. The participant’s case manager provides documentation of
         evidence to the department that there is a lack of a qualified case
         manager within thirty (30) miles of the participant’s residence;
      c. The participant or participant’s representative and case
         manager signs a completed MAP - 531 Conflict-Free Case
         Management Exemption; and
      d. The participant’s representative, or case
         manager uploads the completed MAP - 531 Conflict-Free Case
         Management Exemption into the MWMA portal.
   3. If a case management service is approved to be provided
      despite not being conflict free, the case management provider shall
      document conflict of interest protections, separating case
      management from other functions within the provider
      entity, and demonstrate that the participant is provided with a clear
      and accessible alternative dispute resolution process.
   4. An exemption to the conflict free case management
      requirement shall be requested upon reassessment or at least
      annually.
   (c) A participant who receives Michelle P. waiver services prior
       to the effective date of this administrative regulation shall transition
       to conflict free case management when the participant’s next level
       of care determination occurs.
   (d) During the transition to conflict free case management, any
       case manager providing case management to a participant shall
       educate the participant and members of the participant’s person-
       centered team of the conflict free case management requirement
       in order to prepare the participant to decide, if necessary, to change
       the participant’s:
       1. Case manager;
       2. Provider of non-case management Michelle P. waiver
          services.
   (6) Case management shall involve:
      (a) A constant recognition of what is and is not working
          regarding a participant; and
      (b) Changing what is not working.

Section 10. Annual Expenditure Limit Per Individual. (1) The
department shall have an annual expenditure limit per individual
receiving services via this administrative regulation.
(2) The limit referenced in subsection (1) of this section shall:
   (a) Be an overall limit applied to all services whether PDS(CDO
       services), Michelle P. waiver services not provided as PDS via
       CDB, or a combination of PDS(CDO) and Michelle P. waiver
       services; and
   (b) Equal $63,000 per year.

Section 11(9). Incident Reporting Process. (1)(a) There shall
be two (2) classes of incidents:
   (b) The following shall be the two (2) classes of incidents:
       1. An incident; or
       2. A critical incident.
   (2) An incident shall be any occurrence that impacts the health,
       safety, welfare, or lifestyle choice of a participant and includes:
       (a) A minor injury;
       (b) A medication error without a serious outcome; or
       (c) A behavior or situation that is not a critical incident.
   (3) A critical incident shall be an alleged, suspected, or actual
      occurrence of an incident that:
      (a) Can reasonably be expected to result in harm to a
          participant; and
      (b) Shall include:
          1. Abuse, neglect, or exploitation;
          2. A serious medication error;
          3. Death;
          4. A homicidal or suicidal ideation;
          5. A missing person; or
          6. Other action or event that the provider determines may
             result in harm to the participant[documented on a Michelle P.
             Waiver Incident Report Form].
   (4)(a) If an incident occurs, the Michelle P. waiver provider
       shall:
       1. Report the incident by making an entry into the MWMA
          portal that includes details regarding the incident; and
       2. Immedi-ately assess for potential abuse, neglect, or
          exploitation.
   (b) If an assessment of an incident indicates that the potential
       for abuse, neglect, or exploitation exists:
       1. The individual who discovered or witnessed the incident
          shall immediately act to ensure the health, safety, or welfare of the
          at-risk participant;
       2. The incident shall immediately be considered a critical
          incident;
       3. The critical incident procedures established in subsection (5)
          of this section shall be followed; and
       4. The Michelle P. waiver provider shall report the incident to
          the participant’s case manager and participant’s guardian, if the
          participant has a guardian, within twenty-four (24) hours of
          discovery of the incident.
(5)(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident:
1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA portal by the individual who witnessed or discovered the critical incident; or
2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA portal by the individual who witnessed or discovered the critical incident within eight (8) hours of discovery;
(c) The Michelle P. waiver provider shall:
1. Conduct an immediate investigation and involve the participant’s case manager in the investigation; and
2. Prepare a report of the investigation, which shall be recorded in the MWMA portal and shall include:
   a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
   b. Details of the critical incident; and
   c. Relevant participant information including:
      (i) A listing of recent medical concerns;
      (ii) An analysis of causal factors; and
      (iii) Recommendations for preventing future occurrences.
(6)(a) Following a death of a participant receiving Michelle P. waiver services from a Michelle P. waiver provider, the Michelle P. waiver provider shall enter mortality data documentation into the MWMA portal within fourteen (14) days of the death.
(b) Mortality data documentation shall include:
1. The participant’s person-centered service plan at the time of death;
2. Any current assessment forms regarding the participant;
3. The participant’s medication administration records from all service sites for the past three (3) months along with a copy of each prescription;
4. Progress notes regarding the participant from all service elements for the past thirty (30) days;
5. The results of the participant’s most recent physical exam;
6. All incident reports, if any exist, regarding the participant for the past six (6) months;
7. Any medication error report, if any exists, related to the participant for the past six (6) months;
8. The most recent psychological evaluation of the participant;
9. A full life history of the participant including any update from the last version of the life history;
10. Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant’s life;
11. Emergency medical services notes regarding the participant if available;
12. The police report if available;
13. A copy of:
   a. The participant’s advance directive, medical order for scope of treatment, living will, or health care directive if applicable;
   b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and
   c. The cardiopulmonary resuscitation and first aid card for any Michelle P. waiver provider’s staff member who was present at the time of the incident that resulted in the participant’s death;
14. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and
15. A record of any crisis training for any staff member present at the time of the incident that resulted in the participant’s death.
(7)(a) A Michelle P. waiver provider shall report a medication error to the MWMA portal.
(b) A Michelle P. waiver provider shall document all medication error details on a medication error log retained on file at the Michelle P. waiver provider site.

1. Be minor in nature and not create a serious consequence;
2. Not require an investigation by the provider agency;
3. Be reported to the case manager or support broker within twenty-four (24) hours;
4. Be reported to the guardian as directed by the guardian; and
5. Be retained on file at the provider and case management or support brokerage agency.
(c) A class II incident which shall:
1. Be serious in nature;
2. Involve the use of physical or chemical restraints;
3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;
4. Be reported to the provider agency to:
   a. The case manager or support broker within twenty-four (24) hours;
   b. The guardian within twenty-four (24) hours;
   c. The department within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow-up; and
(c) A class III incident which shall:
1. Be grave in nature;
2. Involve suspected abuse, neglect, or exploitation;
3. Involve a medication error which requires a medical intervention; or
4. Be a death;
2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker, and
3. Be reported by the provider agency to:
   a. The case manager or support broker within eight (8) hours of discovery;
   b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209 or 620.030;
   c. The guardian within eight (8) hours of discovery; and
   d. The Department within eight (8) hours of discovery, and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.
(3) Documentation with a complete written report for a death shall include:
   (a) The recipient’s current plan of care;
   (b) The recipient’s current list of prescribed medications including pro re nata (PRN) medications;
   (c) The recipient’s current crisis plan;
   (d) Medication administration review forms for the current and previous month;
   (e) Staff notes from the current and previous month including details of physician and emergency room visits;
   (f) Any additional information requested by the department necessary to determine if a corrective action needs to be taken by the Cabinet for Health and Family Services against the provider;
   (g) A coroner’s report when received; and
   (h) If performed, an autopsy report when received.

Section 12(40) Michelle P. Waiver Program Waiting List.
(1)(a) If a slot is not available for an individual to enroll in the Michelle P. Waiver Program at the time of applying for the program, the individual shall be placed on a statewide Michelle P. Waiver Program waiting list:
1. In accordance with subsection (2) of this section; and
2. Maintained by the department.
(b) Each slot for the Michelle P. Waiver Program shall be contingent upon:
1. Biennium budget funding;
2. Federal financial participation; and
3. Centers for Medicare and Medicaid Services approval.
(2)(aa) For an individual to be placed on the Michelle P. Waiver Program waiting list, the individual or individual’s representative shall:
   (a) Apply for 1915(c) home and community based waiver services via the MWMA portal; and
(b) Complete and upload to the MWMA portal a MAP – 115 Application Intake – Participant Authorization[shall submit to the department a completed Application for MPW Waiver Waiting List.

(b1). The department shall place the individual on the waiting list if the department confirms that the MAP- 621, Application for MPW Waiver Waiting List, has been correctly completed.

2. If the department determines that a MAP- 621, Application for MPW Waiver Waiting List, has not been completed correctly, the department shall return the form to the applicant notifying the applicant of the incorrectness or missing information.

3. Individuals shall be placed on the Michelle P. Waiver Program waiting list in the chronological order that each application is received and validated by the department.

4. The department shall send a written notice of placement on the Michelle P. Waiver Program waiting list to the:

(a) Applicant; or

(b) Applicant’s legal representative.

5. At least annually, the department shall contact each individual, or individual’s legal representative, on the Michelle P. Waiver Program waiting list to:

(a) Verify the accuracy of the individual’s information; and

(b) Verify whether the individual wishes to continue to pursue enrollment in the Michelle P. Waiver Program.

6. The department shall remove an individual from the Michelle P. Waiver Program waiting list if:

(a) The individual is deceased; or

(b) The individual’s Michelle P. Waiver Program coordination provider if the individual has a Michelle P. Waiver Program coordination provider.

7. The removal of an individual from the Michelle P. Waiver Program waiting list shall not preclude the individual from applying for Michelle P. Waiver Program participation in the future.

8. An individual who is placed on the Michelle P. Waiver Program waiting list shall be informed about Early and Periodic Screening, Diagnosis, and Treatment services.

Section 13.[11] Use of Electronic Signatures. [41] 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 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

(b) 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 14.[12] Reimbursement. (1) The following Michelle P. waiver services, alone or in any combination, shall be limited to forty (40) hours per calendar week:

(a) Homemaker;

(b) Personal care;

(c) Attendant care;

(d) Supported employment;

(e) Adult day health care;

(f) Adult day training;

(g) Community living supports;

(h) Physical therapy;

(i) Occupational therapy;

(j) Speech therapy; and

(k) Behavior supports.

(2) Respite services shall not exceed $4,000 per member, per calendar year.

(3) Environmental and minor home adaptation services shall not exceed $500 per member, per calendar year.

(4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.

(b) The unit amounts following rates shall be the fixed upper payment rate limits, and other limits established by the following table shall apply:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fixed Payment Limit</th>
<th>Upper Rate</th>
<th>Unit of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Management</td>
<td>$50.00</td>
<td>$12.50</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Respite</td>
<td>$4,000 per calendar year</td>
<td>$265.00 (not to exceed eight (8) units or $100.00 per month)</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Homemaker</td>
<td>$8.50</td>
<td>$33.25</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Personal Care</td>
<td>$7.50</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Attendant Care</td>
<td>$2.90</td>
<td>$12.50</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Supported Employment</td>
<td>$5.54</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Adult Day Health Care</td>
<td>$2.75</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Adult Day Training</td>
<td>$2.75</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Community Living Supports</td>
<td>$5.54</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>$2.27</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>$2.27</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>$2.27</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Behavioral Supports</td>
<td>$33.25</td>
<td>$22.17</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Environmental and Minor Home Adaptation</td>
<td>$500 per calendar year</td>
<td>$265.00 (not to exceed eight (8) units or $100.00 per month)</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Financial Management</td>
<td>$12.50</td>
<td>$265.00</td>
<td>One (1) month</td>
</tr>
</tbody>
</table>

Section 15.[12] Federal Financial Participation and Approval. The department’s coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

1. Receipt of federal financial participation for the coverage and reimbursement; and

2. Centers for Medicare and Medicaid Services’ approval of the coverage and reimbursement.

Section 16.[14] Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a participant Michelle P. waiver recipient or a
This administrative regulation establishes the Department for Medicaid Services’ (DMS’s) coverage and reimbursement provisions requirements regarding Michelle P. waiver program services. The Michelle P. waiver program is a program which enables individuals who have care needs that qualify them for receiving services in an intermediate care facility for individuals with an intellectual disability (ICF ID) to reside in a home and receive services in a community setting rather than in an institutional setting.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program 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 and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

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

(a) How the amendment will change this existing administrative regulation. The amendments include establishing new federally-mandated case management requirements by obsoleting or amending incorporated material that is being obsoleted due to implementation of a new online portal (MWMA) to the content of the authorizing statutes by establishing DMS’s coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(b) The necessity of the amendment to this administrative regulation: The primary amendments (revising the case management requirements, establishing person-centered service plan development and entry in the MWMA portal; requiring it to be done via the new MWMA portal; incorporating new forms by reference (a MAP – 115 Application Intake – Participant Authorization) into a CMS rule published January 2015. Requiring providers to check the caregiver misconduct registry before hiring an individual and prohibits the hiring of anyone listed on the registry; requiring that a participant in the program receive (the plan is now called a person-centered service plan) requiring, as federally mandated, that an online portal (Medicaid Waiver Management Application or MWMA) be used to apply for admission to the program and to complete forms and documents associated with the program; adding new rights that must be guaranteed for individual receiving services; requiring providers to check the caregiver misconduct registry before hiring an individual and prohibits the hiring of anyone listed on the registry; requiring that a participant in the program receive (the plan is now called a person-centered service plan).

(c) How this amendment conforms to the content of the authorizing statutes: The amendments conform to the content of

---

VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(Section 17.15) Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(b) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(c) "MAP – 531 Conflict-Free Case Management Exemption", May 2015;

(d) "Person Centered Planning: Guiding Principles", March 2005;

(e) "MAP 24, Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services Memorandum", August 2008;

(f) "MAP 95 Request for Equipment Form", June 2007;

(g) "MAP – 108, Plan of Care/Prior Authorization for Waiver Services", July 2008;

(h) "MAP – 351, Department for Medicaid Services, Medicaid Waiver Assessment", July 2015[2008];

(i) "MAP – 2000, Initial/Termination of Participant-Directed Services, Consumer Directed Option (CDO)", June 2015[2008];

(j) "MAP 10, Waiver Services Physician’s Recommendation", June 2015[2014];

(k) "MAP 115, Application Intake", August 2014[2014];

(l) "Kentucky Participant-Directed Services, Consumer Directed Option Employee/Provider Contract", June 2015[2010];

(m) "Michelle P. Waiver Incident Report Form", May 2013;

(n) "MAP – 621, Application for MPW Waiver Waiting List", February 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws:

(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


LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: August 12, 2015

FILED WITH LRC: August 13, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2015, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 E Main St, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing September 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.

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) 564-7753.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This
the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the Michelle P. waiver program and by enhancing participant safety and welfare.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the Michelle P. waiver program and by enhancing participant safety and welfare.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently 284 providers participating in the Michelle P. Waiver Program and over 9,500 individuals receiving services via the program. DMS estimates that the number of individuals who could currently qualify to be placed on the program’s waiting list could be 283.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to ensure they comply with the conflict free case management 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 imposed.

(c) How could a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals receiving services will benefit from greater involvement and direction in the types of services they receive as well as when and where they receive the services which will enhance their independence as well as assimilation in their local community.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral initially.

(b) On a continuing basis: DMS anticipates that the amendments to this administrative regulation will be budget neutral on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies equally to all regulated entities/individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.730(b), and 42 C.F.R. 441.725.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate a higher level of revenues 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 response in (a) above also applies here.

(c) How much will it cost to administer this program for the first year? DMS anticipates that the amendments will be budget neutral for the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendments will be budget neutral for subsequent years.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.730(b) and 42 C.F.R. 441.725.

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. Among the mandates in 42 C.F.R. 441.730(b) are that services to waiver participants are free from conflict of interest. In the context of the Michelle P. waiver program that means that the individual who provides case management to a given waiver participant provide actual Michelle P. waiver services or work for an entity that provides actual Michelle P. waiver services or entity that has a business interest in a provider of actual Michelle P. waiver services.

42 C.F.R. 447.425 establishes the person-centered service plan requirements which are many but the underlying requirement is that the plan be customized to the individual’s needs (based on input from the individual or representatives of the individual among other parties) and promote/enhance the individual’s independence and choice in their services and activities as well as integration their community.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amendment)

907 KAR 3:090. Acquired brain injury waiver services.

RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 C.F.R. 441.300 - 310, 42 C.F.R. 455.100 - 106, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3)

Necessary, Function, and Conformity: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS
Section 1. Definitions. (1) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "ABI" means an acquired brain injury.

(3) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(4) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(5) "Acquired Brain Injury Branch" or "ABIB" means the Acquired Brain Injury Branch of the Department for Medicaid Services, Division of Community Alternatives.

(6) "Advanced practice registered nurse" is defined by KRS 314.0117.

(7) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that:

(a) Serves as the basis for completion of a MAP 351;

(b) Submitted to the department;

(c) Is submitted for a level of care determination;

(d) Is completed on a MAP 351, Medicaid Waiver Assessment that is uploaded into the MM/WMA portal; and

(e) Occurs at least once every twelve (12) months thereafter.

(8) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(9) "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 4 of this administrative regulation and participant directed(CDDO) services identified in Section 10(9) of this administrative regulation provided pursuant to a recipient's approved person-centered service plan of care.

(10) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(11) "Budget allowance" is defined by KRS 205.5605(1).

(12) "Case manager" means an individual who manages the overall development and monitoring of a recipient's person-centered service plan of care.

(13) "Consumer" is defined by KRS 205.5605(2).

(14) "Consumer directed option" or "CDDO" means an option established by KRS 205.5606 within the home and community based services waiver that allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(15) "Covered services and supports" is defined by KRS 205.5605(3).

(16) "DCBS" means the Department for Community Based Services.

(17) "DHS" means the Department for Medicaid Services or its designee.

(18) "Human rights committee" or "HRC" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(19) "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI recipient's plan of care consisting of:

(a) The ABI recipient and legal representative if appointed;

(b) A chosen ABI service provider;

(c) A case manager; and

(d) Others as designated by the ABI recipient.

(20) "Level of care certification" means verification, by the department, of ABI program eligibility for:

(a) An individual; and

(b) A specific period of time.

(21) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(22) "Licensed medical professional" means:

(a) A physician;

(b) An advanced practice registered nurse;

(c) A physician assistant;

(d) A registered nurse;

(e) A licensed practical nurse; or

(f) A pharmacist.

(23) "Medical necessity" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.


(25) "Occupational therapist" is defined by KRS 319A.010(3).

(26) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(27) "Participant directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based services waiver programs that allows recipients to receive non-medical services in which the individual:

(a) Assists with the design of the program;

(b) Chooses the providers of services; and

(c) Directs the delivery of services to meet their needs.

(28) "Patient liability of means the financial amount, determined by the department, that an individual is required to contribute towards cost of care in order to maintain Medicaid eligibility.

(29) "Person centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 4 of this administrative regulation.

(30) "Person centered team" means a participant, the participant's guardian or representative, and other individuals who are natural or paid supports and who:

(a) Recognize that evidenced based decisions are determined within the basic frame-work of what is important for the participant and within the context of what is important to the participant based on informed choice;

(b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant's needs; and
(c) Include providers who receive payment for services who shall:
1. Be active contributing members of the person centered team meetings;
2. Base their input upon evidence-based information; and
3. Not request reimbursement for person-centered team meetings.

[31][32] "Personal services agency" is defined by KRS 216.710(8).

[33] "Psychologist" is defined by KRS 319.010(9).

[34] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

[35] "Qualified mental health professional" is defined by KRS 202A.011(12).

[36] "Representative" is defined by KRS 205.5605(6).

[37] "Speech-language pathologist" is defined by KRS 334A.020(3).

[38] "Support broker" means an individual designated by the department to:
(a) Provide training, technical assistance, and support to a participant[consumer]; and
(b) Assist a participant[consumer] in any other aspects of PDS[CDO].

[39] "Support spending plan" means a plan for a participant[consumer] that identifies the:
(a) PDS[CDO] services requested;
(b) Employee name;
(c) Hourly wage;
(d) Hours per month;
(e) Monthly pay;
(f) Taxes; and
(g) Budget allowance.

[40] "Transition plan" means a plan that is developed by the person centered[interdisciplinary] team to aid an ABI recipient in exiting from the ABI program into the community.

Section 2. Non-PDS[CDO] Provider Participation Requirements. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a participant-directed[consumer directed option] service, an ABI provider shall:
(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671;
(b) Be certified by the department prior to the initiation of the service;
(c) Be recertified at least annually by the department;
(d) Have an office within the Commonwealth of Kentucky; and
(e) Complete and submit a MAP-4100a to the department.

[41] An ABI provider shall comply with:
(a) 907 KAR 1:671;
(b) 907 KAR 1:672;
(c) 907 KAR 1:673;
(d) 907 KAR 7:006;
(e) The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164; and
(f) The Department to:
(1) An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of an ABI recipient.
(2) An ABI provider shall meet the following requirements if an ABI recipient
(a) Provide training, technical assistance, and support to a participant[ABI recipient] by a staff member of the ABI provider who has one (1) of the following blood relationships to the participant[ABI recipient]:
1. Child;
2. Parent;
3. Sibling; or
4. Spouse;
(b) Not enroll a participant[ABI recipient] for whom the ABI provider cannot meet the service needs; and
(c) Have and follow written criteria that complies with this administrative regulation for determining the eligibility of an individual for admission to services.


[51] An ABI provider shall meet the following requirements if responsible for the management of a participant[ABI recipient] funds:
(a) Separate accounting shall be maintained for each participant[ABI recipient] or for his or her interest in a common trust or special account;
(b) Account balance and records of transactions shall be provided to the participant[ABI recipient] or legal representative on a quarterly basis; and
(c) The participant[ABI recipient] or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

[52] An ABI provider shall have written statement of its mission and values.

[53] An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of a participant[ABI recipient] which shall:
(a) Require a timely response to an inquiry;
(b) Require the opportunity for interaction with direct care staff;
(c) Require prompt notification of any unusual incident;
(d) Permit visitation with the participant[ABI recipient] at a reasonable time and with due regard for the participant's[ABI recipient's] right of privacy;
(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and
(f) Consider the cultural, educational, language, and socioeconomic characteristics of the participant[ABI recipient];

[54] An ABI provider shall have written policies and procedures for all settings that assure the participant has:
1. Rights of privacy, dignity, respect, and freedom from coercion and restraint;
2. Freedom of choice:
   a. As defined by the experience of independence, individual initiative, or autonomy in making life choices, both in small everyday matters (what to eat or what to wear), and in large, life-defining matters (where and with whom to live and work); and
   b. Including the freedom to choose:
      i. Services;
      ii. Providers;
      iii. Settings from among setting options including non-disability specific settings; and
      iv. Where to live with as much independence as possible and in the most community-integrated environment.

(b) The setting options and choices shall be:
1. Identified and documented in the person-centered service plan; and
2. Based on the participant's needs and preferences.

[55] For a residential setting, the resources available for room and board shall be documented in the person-centered service plan.

[56] An ABI provider shall have written policies and procedures for residential settings that assure the participant has:
(a) Privacy in the sleeping unit and living unit in a residential setting;
(b) An option for a private unit in a residential setting;
(c) A unit with lockable entrance doors and with only the participant and appropriate staff having keys to those doors;
(d) A choice of roommate or housemate;
(e) The freedom to furnish or decorate their sleeping or living units within the lease or other agreement;
(f) Visitors of the participant's choosing at any time and access to a private area for visitors;
(g) Physical accessibility, defined as being easy to approach.
enter, operate, or participate in a safe manner and with dignity by a person with or without a disability.

1. Settings considered to be physically accessible shall also meet the Americans with Disabilities Act standards of accessibility for all participants served in the setting.

2. All communal areas shall be accessible to all participants as well as have a means to enter the building (i.e. keys, security codes, etc.).

3. Bathrooms shall be accessible to the appropriate persons.

4. Any modification of an additional residential condition except for the setting being physically accessible requirement shall be supported by a specific assessed need and justified in the participant’s person-centered service plan.

5. Regarding a modification, the following shall be documented in a participant’s person-centered service plan:
   (i) That the modification is the result of an identified specific and individualized assessed need;
   (ii) Any positive intervention or support used prior to the modification;
   (iii) Any less intrusive method of meeting the participant’s need that was tried but failed;
   (iv) A clear description of the condition that is directly proportionate to the specific assessed need;
   (v) Regular collection and review of data used to measure the ongoing effectiveness of the modification;
   (vi) Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated;
   (vii) Information consent by the participant or participant’s representative for the modification; and
   (viii) An assurance that interventions and supports will cause no harm to the participant.

6. An ABI provider shall cooperate with monitoring visits to ensure the rights of an ABI recipient by:
   (a) Making available a description of the rights and the means
   by which the rights may be exercised, including:
     1. The right to time, space, and opportunity for personal privacy;
     2. The right to retain and use personal possessions; and
     3. For a supervised residential care, personal care, companion or respite provider, the right to communicate, associate and meet privately with a person of the ABI recipient’s choice, including:
        a. The right to send and receive unopened mail; and
        b. The right to private, accessible use of the telephone;
   (b) Maintaining a grievance and appeals system;
   (c) Complying with the Americans with Disabilities Act (28 C.F.R. Part 35); and
   (d) Contain no blank lines between each entry.

7. An ABI provider shall maintain a record for each participant[ABI recipient] who is served shall:
   (a) Be cumulative;
   (b) Be readily available;
   (c) Contain a legend that identifies any symbol or abbreviation used in making a record entry and
   (d) Contain the following specific information:
     1. The participant’s[ABI recipient’s] name and Medical Assistance Identification Number (MAID);
     2. An assessment summary relevant to the service area;
     3. The person-centered service plan[MAP-109];
     4. The crisis prevention and response plan that shall include:
        a. A list containing emergency contact telephone numbers; and
        b. The participant’s[ABI recipient’s] history of any allergies with appropriate allergy alerts for severe allergies;
     5. The transition plan that shall include:
        a. Skills to be obtained from the ABI waiver program;
        b. A listing of the on-going formal and informal community services available to be accessed[and]
        c. A listing of additional services needed; and
        d. Expected date of transition from the ABI waiver program;
     6. The training objective for any service that[which] provides skills training to the participant[ABI recipient];
     7. The participant’s[ABI recipient’s] medication record, including a copy of the prescription or the signed physician’s order and the medication log if medication is administered at the service site;
     8. Legally-adequate consent for the provision of services or other treatment including a consent for emergency attention, which shall be located at each service site;
     9. The MAP-350, Long Term Care Facilities and Home and Community Based Program Certification form,[MAP-350] updated at recertification; and
     10. Current level of care certification;
     (e) Be maintained by the provider in a manner to ensure the confidentiality of the participant’s[ABI recipient’s] record and other personal information and to allow the participant[ABI recipient] or legal representative to determine when to share the information as provided by law;
     (f) Be secured against loss, destruction, or use by an unauthorized person ensured by the provider;
     (g) Be available to the participant[ABI recipient] or legal representative[guardian] according to the provider’s written policy and procedures, which shall address the availability of the record.

8. An ABI provider[shall]:
   (a) Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;
   2. Maintain, for existing staff, documentation of each staff person’s or, if a volunteer performs a direct care or a supervisory function, the volunteer’s annual TB risk assessment performed by a licensed medical professional and;
   3. Ensure that an employee or volunteer who tests positive for TB or has a history of a positive TB skin test shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;
   4. Before allowing a staff person or volunteer determined to have signs or symptoms of active disease to work, ensure that follow-up testing is administered by a physician with the test results indicating the person does not have active TB disease; and
   5. Maintain annual documentation for an employee or volunteer with a positive TB test to ensure no active disease symptoms are present;

9. An ABI provider shall maintain a record for each participant[ABI recipient] served that shall:
   (a) Be recorded in permanent ink;
   (b) Be free from correction fluid;
   (c) Have a strike through each error which is initialed and dated; and
   ([a]) A criminal record check from the Administrative Office of
the Courts or equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service; [and]

(a) A Nurse Aide Abuse Registry check as described in 906 KAR 1:100; and

(b) A Caregiver Misconduct Registry check as described in 922 KAR 5:120.

(2) Obtain within thirty (30) days of the date of hire or date of service as a volunteer, the results of a Central Registry check as described in 922 KAR 1:470; or

2. May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph;

(c) Shall not employ or permit an individual to serve as an ABI recipient if:

1. The individual has a conviction of a felony that would disqualify a person from employment as a nurse, pharmacist, or medical doctor; and

2. The individual has been convicted of trafficking, manufacturing, or possessing an illegal drug during the past five (5) years; or

3. The individual has a conviction of any offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

4. The individual has a conviction of abuse, neglect, or exploitation;

5. The individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

6. The individual has a conviction of a felony that would disqualify a person from employment as a public employee, including an employee of a public hospital or other health care facility.

3. Annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;

(d) Shall not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(e) Shall not permit an employee or volunteer to transport an ABI recipient if the employee or volunteer:

1. Does not possess a valid operator's license issued pursuant to KRS 186.410; or

2. Has a conviction of Driving Under the Influence (DUI) during the past year;

(f) Shall not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has possession of an illegal drug during the past five (5) years; or

(g) Shall not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of abuse, neglect, or exploitation; or

(h) Shall not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction,

(i) Shall not employ an individual to serve as a Caregiver Misconduct Registry or a Nurse Aide Abuse Registry participant; or

1. Does not possess a valid operator's license issued pursuant to KRS 186.410; or

2. Has a conviction of Driving Under the Influence (DUI) during the past year;

(j) Shall evaluate and document the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter;

(k) Shall conduct and document periodic and regularly-scheduled supervisory visits of all professional and paraprofessional direct-service staff at the service site in order to ensure that high quality, appropriate services are provided to the participants;

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(1) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department prior to working independently with a participant.

(2) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department prior to working independently with a participant.
of continuing education in brain injury annually;

(e) Not be required to receive the training specified in paragraph (c)(1) of this subsection if the provider is a professional who has, within the prior five (5) years, 2,000 hours of experience in serving a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;
2. A psychologist or psychologist with autonomous functioning providing psychological services;
3. A speech-language pathologist providing speech-language pathology services[therapy]; or
4. A board certified behavior analyst; and

(f) Ensure that prior to the date of service as a volunteer, an individual receives training which shall include:
1. Required orientation in brain injury as specified in paragraph (c)(1), 2, 3, and 4 of this subsection;
2. Orientation to the agency;
3. A confidentiality statement; and
4. Individualized instruction on the needs of the participant[ABI recipient] to whom the volunteer will provide services.

(19) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each participant[ABI recipient] served by the provider.

(20) A case management provider shall meet the requirements established in Section 5 of this administrative regulation;

(a) Establish a human rights committee which shall:
1. Include an:
   a. Individual with a brain injury or a family member of an individual with a brain injury;
   b. Individual not affiliated with the ABI provider; and
   c. Individual who has knowledge and experience in human rights issues;
2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months; and
3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that contain human rights restrictions; and
4. Review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis; and

(b) Establish a behavior intervention committee which shall:
1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;
2. Be separate from the human rights committee; and
3. Review and approve, prior to implementation and at a minimum of every six (6) months, in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:
1. Within thirty (30) days of the recipient's admission into the ABI program;
2. Annually thereafter; and
3. Upon discharge from the ABI waiver program.

Section 3. Participant[ABI Recipient] Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program:

(a) An individual shall:
1. Be at least eighteen (18) years of age;
2. Have acquired a brain injury of the following nature, to the central nervous system:
   a. An injury from physical trauma;
   b. Damage from anoxia or from a hypoxic episode; or
   c. Damage from an allergic condition, toxic substance, or another acute medical incident; and
3. Apply to be placed on the ABI waiting list in accordance with Section 3(2) of this administrative regulation; and
4. Be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for

ABl waiver services:

(b) An individual or the individual's representative shall:
1. Apply for 1915(c) home and community based waiver services via the MWMA portal; and

2. Complete and upload to the MWMA portal a MAP - 115 Application Intake - Participant Authorization;

(c) A care manager or support broker, on behalf of an applicant, shall enter into the MWMA portal[submit] a certification packet[the department] containing the following:
1. A copy of the allocation letter;
2. A MAP 351, Medicaid Waiver Assessment[MAP 351];
3. A statement for the need for ABI waiver services which shall be signed and dated by a physician on a MAP-10, Waiver Services Physician's Recommendation;
4. A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification form[MAP 350]; and
5. A person-centered service plan[MAP 109]; and
6. The MAP – 24C, Admission, Discharge or Transfer of an Individual in the ABI/SCL Program;

(c) An individual shall receive notification of potential funding allocated for ABI services for the individual;

(d) An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022 including nursing facility services for a brain injury;

(e) An individual shall meet the following conditions:
1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;
2. Be medically stable;
3. Meet Medicaid eligibility requirements established in 907 KAR 20:010;
4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and
5. Have a rating of at least four (4) on the Family Guide to the Rancho Levels of Cognitive Functioning; and

(f) An individual shall receive notification of approval from the department:
1. An individual shall not remain in the ABI waiver program for an indefinite period of time.

The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The person-centered service plan[of care] goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

(f) The cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(4) An ABI waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility or an intermediate care facility for individuals with an intellectual[mental retardation or a developmental] disability; or

(b) Receiving a service in another 1915(c) home and community based services waiver program.

(5) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility patient status criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI waiver program.

(6) To maintain eligibility as a participant[an ABI recipient]:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 20:010; and

(b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(7) An ABI case management provider shall notify the local DCBS office, ABIB, and the department via a MAP - 24C, Admission, Discharge or Transfer of an Individual in the ABI/SCL Program if the ABI recipient:

(a) Admitted to the ABI waiver program;

(b) Discharged from the ABI waiver program;
The department may exclude an individual from receiving ABI waiver services if the projected cost of ABI waiver services for the individual is reasonably expected to exceed the cost of nursing facility services for the individual.

(8)[(9)] Involuntary termination of [and] loss of an ABI waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to initiate an ABI waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the participant[recipient] or legal representative;
2. Copies of letters to providers; and
3. Copies of letters from providers;
(b) A participant[An ABI recipient] or legal representative fails to access the required service as outlined in the person-centered service plan[at case] for a period greater than sixty (60) consecutive days without good cause shown.

1. The participant[recipient] or legal representative shall have the burden of providing documentation of good cause including:
   - a. A statement signed by the participant[recipient] or legal representative;
   - b. Copies of letters to providers; and
   - c. Copies of letters from providers;
   2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:
      - a. Sixty (60) days for an individual who does not reside in a facility; and
      - b. For an individual who resides in a facility, the length of the transition plan and contingent upon continued active participation in the transition plan;
   (c) A participant[An ABI recipient] changes residence outside the Commonwealth of Kentucky;

(d) A participant[An ABI recipient] does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022;

(e) A participant[An ABI recipient] is no longer able to be safely served in the community;

(f) The participant[ABI recipient] has reached maximum rehabilitation potential; or

(g) The participant[ABI recipient] is no longer actively participating in services within the approved person-centered service plan[at case] as determined by the person-centered team[interdisciplinary team].

(9)[(10)] Involuntary termination of a service to a participant[an ABI recipient] by an ABI provider shall require:

(a) Simultaneous notice to the department, the participant[ABI recipient] or legal representative and the case manager at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;
2. The basis for the intended action;
3. The authority by which the action is taken; and
4. The participant[ABI recipient]'s right to appeal the intended action through the provider's appeal or grievance process; and
(b) The case manager in conjunction with the provider to:
1. Provide the participant[ABI recipient] with the name, address and telephone number of each current ABI provider in the state;
2. Provide assistance to the participant[ABI recipient] in making contact with another ABI provider;
3. Arrange transportation for a requested visit to an ABI provider site;
4. Provide a copy of pertinent information to the participant[ABI recipient] or legal representative;
5. Ensure the health, safety and welfare of the participant[ABI recipient] until an appropriate placement is secured;
6. Continue to provide supports until alternative services or another placement is secured; and
7. Provide assistance to ensure a safe and effective service transition.

(10)[(11)] Voluntary termination and loss of an ABI waiver program placement shall be initiated if a participant[an ABI recipient] or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and
(b) The participant[ABI recipient] or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Person-centered Service Plan Requirements. (1) A person-centered service plan shall be established:

(a) For each participant; and

(b) By the participant's person-centered service plan team.

(2) A participant's person-centered service plan shall:

(a) Be developed by:

1. The participant, the participant's guardian, or the participant's representative;

2. The participant's case manager;

3. The participant's person-centered team; and

4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(b) Use a process that:

1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:
   - a. Using plain language in accordance with 42 C.F.R. 435.905(b); and
   - b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding of the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:
   - a. Learns;
   - b. Makes decisions; and
   - c. Chooses to live and work in the participant's community;

8. Discovers the participant's needs, likes, and dislikes;

9. Empowers the participant's person-centered team to create a person-centered service plan that:

   a. Is based on the participant's:
      - (i) Assessed clinical and support needs;
      - (ii) Strengths;
      - (iii) Preferences; and
      - (iv) Ideas;
   b. Encourages and supports the participant's:
      - (i) Rehabilitative needs; and
      - (ii) Habilitative needs; and
      - (iii) Long term satisfaction;
   c. Is based on reasonable costs given the participant's support needs;

   d. Includes:
      - (i) The participant's goals;
      - (ii) The participant's desired outcomes; and
      - (iii) Matters important to the participant;

   e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;
f. Includes:
   (i) Information necessary to support the participant during times of crisis; and
   (ii) Risk factors and measures in place to prevent crises from occurring;
   g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;
   h. Records the alternative home and community-based settings that were considered by the participant;
   i. Reflects that the setting in which the participant resides was chosen by the recipient;
   j. Is understandable to the participant and to the individuals who are important in supporting the participant;
   k. Identifies the individual or entity responsible for monitoring the person-centered service plan;
   l. Is finalized and agreed to with the informed consent of the participant or recipient’s legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;
   m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;
   n. Includes those services which the individual elects to self direct; and
   o. Prevents the provision of unnecessary or inappropriate services and supports; and
   (c) Includes in all settings the ability for the participant to:
      1. Have access to make private phone calls, texts, or emails at the participant’s preference or convenience; and
      2. a. Choose when and what to eat;  
         b. Have access to food at any time; 
         c. Choose with whom to eat or whether to eat alone; and
         d. Choose appropriating clothing according to the: 
            (i) Participant’s preference;  
            (ii) Weather; and  
            (iii) Activities to be performed.
   (d) If a participant’s person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.
   (4) A participant’s person-centered service plan shall be:
      1. Entered into the MWMA portal by the participant’s case manager; and
      2. Updated in the MWMA portal by the participant’s case manager;
   (b) A participant or participant’s authorized representative shall complete and upload into the MWMA portal a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA portal.

Section 5. Case Management Requirements.  (1) A case manager shall:
   (a) Be a registered nurse;  
   2. Be a licensed practical nurse; or
   3. Be an individual with a bachelor’s degree or master’s degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:
      a. Psychology;  
      b. Sociology; 
      c. Social work;  
      d. Rehabilitation counseling; or
      e. Occupational therapy;
   (b) Be independent as defined as not being employed by an agency that is providing ABI waiver services to the participant; or
   2. Be employed by or work under contract with a free-standing case management agency; and
   (c) Have completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services.
   (2) A case manager shall:
      (a) Communicate in a way that ensures the best interest of the participant;
      (b) Be able to identify and meet the needs of the participant;  
      (c1) Be competent in the participant’s language either through personal knowledge of the language or through interpretation; and
      2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;
   (d) Ensure that:
      1. The participant is educated in a way that addresses the participant’s:
         a. Need for knowledge of the case management process;  
         b. Personal rights; and
         c. Risks and responsibilities as well as awareness of available services; and
      2. All individuals involved in implementing the participant’s person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;
   (e) Have a code of ethics to guide the case manager in providing case management, which shall address:
      1. Advocating for standards that promote outcomes of quality;
      2. Ensuring that no harm is done;
      3. Respecting the rights of others to make their own decisions;
      4. Treating others fairly; and
      5. Being faithful and following through on promises and commitments;
   (f) Lead the person-centered service planning team;
   2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant’s person-centered service plan;
   (g) Include the participant’s participation or legal representative’s participation in the case management process; and
   2. Make the participant’s preferences and participation in decision making a priority;
   (h) Document:
      1. A participant’s interactions and communications with other agencies involved in implementing the participant’s person-centered service plan; and
      2. Personal observations;
   (i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant’s person-centered service plan;
   (j) Be accountable to:
      1. A participant to whom the case manager providers case management in ensuring that the participant’s needs are met;
      2. A participant’s person-centered service plan team and provide leadership to the team and follow through on commitments made; and
      3. The case manager’s employer by following the employer’s policies and procedures;
   (k) Stay current regarding the practice of case management and case management research;
   (l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant’s person-centered service plan is successful and done so in a way that is efficient regarding the participant’s financial assets and benefits;
   (m) Document services provided to a participant by entering the following into the MWMA portal:
      1. A monthly department-approved person centered monitoring tool; and
      2. A monthly entry, which shall include:
         a. The month and year for the time period the note covers;  
         b. An analysis of progress toward the participant’s outcome or outcomes;
         c. Identification of barriers to achievement of outcomes;  
         d. A projected plan to achieve the next step in achievement of outcomes; and
         e. The signature and title of the case manager completing the note; and
      1. The date the note was generated;
   (n) Document via an entry into the MWMA portal if a participant is:
      1. Admitted to the ABI long term care waiver program;  
      2. Terminated from the ABI long term care waiver program;  
      3. Temporarily discharged from the ABI long term care waiver program;
4. Admitted to a hospital;
5. Admitted to a nursing facility;
6. Changing the primary ABI provider;
7. Changing the case management agency;
8. Transferred to another Medicaid 1915(c) home and community based waiver service program; or
9. Relocated to a different address; and
(c) In conjunction with the changes in the participant’s case management provider, the participant’s next level of care determination occurs.
(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant’s personal-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant’s:
1. Case manager; or
2. Provider of non-case management ABI waiver services.
(e) Case management shall:
1. Be initially developed with the participant and legal representative if appointed prior to the level of care determination;
2. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and
3. Include the person-centered service plan being sent to the department or its designee prior to the implementation of the effective date of the change occurs with the participant;
(f) Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs, and updated thirty (30) days prior to discharge, and shall include:
1. The skills or service obtained from the ABI waiver program upon transition into the community;
2. A listing of the community supports available upon the transition; and
3. The expected date of transition from the ABI waiver program;
(g) Be provided by a case manager who:
1. Is a registered nurse;
2. Is a licensed practical nurse;
3. Is an individual who has a bachelor’s or master’s degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;
4. Is an independent case manager; or
5. Is employed by a free-standing case management agency;
(h) Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;
(i) Shall provide a participant and legal representative with a listing of each available ABI provider in the service area;
4. Shall maintain documentation signed by a participant or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;
5. Shall provide a distribution of the crisis prevention and response plan, transition plan, person-centered service plan, and other documents within the first thirty (30) days of service to the chosen ABI service provider and as information is updated;
6. Shall provide twenty-four (24) hour telephone access to a participant and chosen ABI provider;
7. Shall work in conjunction with an ABI provider selected by a participant to develop a crisis prevention and response plan, which shall be:
8. Transferred to another Medicaid 1915(c) home and community based waiver service program; or
9. Relocated to a different address; and
a. Individual-specific; and
b. Updated as a change occurs and at each recertification;
8. Shall assist a participant in planning resource use and assuring protection of resources;
9.a. Shall conduct two (2) face-to-face meetings with a participant within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the participant’s residence; and
b. For a participant receiving supervised residential care, shall conduct at least one (1) of the two (2) monthly visits at the participant’s supervised residential care provider site;
10. Shall ensure twenty-four (24) hour availability of services; and
11. Shall ensure that the participant’s health, welfare, and safety needs are met and
   (h) Be documented by a detailed staff note, which shall include:
   1. The participant’s health, safety, and welfare;
   2. Progress toward outcomes identified in the approved person-centered service plan;
   3. The date of the service;
   4. The beginning and ending times;
   5. The signature and title of the individual providing the service; and
   6. A quarterly summary, which shall include:
      (1) Documentation of monthly contact with each chosen ABI provider; and
      (b) Evidence of monitoring of the delivery of services approved in the participant’s person-centered service plan and of the effectiveness of the person-centered service plan.
(6) Case management shall involve:
   (a) A constant recognition of what is and is not working regarding a participant; and
   (b) Changing what is not working.
Section 6. Covered Services. (1) An ABI waiver service shall:
   (a) Not be covered unless it has been[Be] prior-authorized by the department; and
   (b) Be provided pursuant to the participant’s person-centered service plan.
(2) The following services shall be provided to a participant an ABI recipient by an ABI waiver provider:
   (a) Case management services, in accordance with Section 4 of this administrative regulation, which shall:
        1. Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process;
        2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and (interdisciplinary team meetings);
        3. Assist an ABI recipient and the interdisciplinary team to develop an individualized plan of care and update it as necessary based on changes in the recipient’s medical condition and supports;
        4. Include monitoring of the delivery of services and the effectiveness of the plan of care, which shall:
            a. Be initially developed with the ABI recipient and legal representative if appointed prior to the level of care determination;
            b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and
            c. Include the MAP-109 being sent to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;
        5. Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs, updated thirty (30) days prior to discharge, and shall include:
            a. The skills or service obtained from the ABI waiver program upon transition into the community; and
            b. A listing of the community supports available upon the transition;
        6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;
   7. Be provided by a case manager who:
      a.(i) is a registered nurse;
      (ii) is a licensed practical nurse;
      (iii) is an individual who has a bachelor’s or master’s degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, counseling, social work, rehabilitation counseling, or occupational therapy;
      (iv) is an independent case manager; or
      (v) is employed by a free standing case management agency;
   b. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;
   c. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area; and
   d. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;
   e. Shall provide a distribution of the crisis prevention and response plan, transition plan, plan of care, and other documents in the first thirty- (30) days of the service to the chosen ABI service provider and as information is updated;
   f. Shall provide twenty-four (24) hour telephone access to an ABI recipient and chosen ABI provider;
   g. Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:
      (1) Individual-specific; and
      (b) Updated as a change occurs and at each recertification;
   h. Shall assist an ABI recipient in planning resource use and assuring protection of resources;
   i. Shall conduct two (2) face-to-face meetings with an ABI recipient within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the ABI recipient’s residence; and
   (ii) For an ABI recipient receiving supervised residential care, shall conduct at least one (1) of the two (2) monthly visits at the ABI recipient’s supervised residential care provider site;
   j. Shall ensure twenty-four (24) hour availability of services; and
   k. Shall ensure that the ABI recipient’s health, welfare, and safety needs are met; and
   l. Be documented by a detailed staff note which shall include:
        1. The ABI recipient’s health, safety, and welfare;
        2. Progress toward outcomes identified in the approved plan of care;
        3. The date of the service;
        4. The beginning and ending times;
        5. The signature and title of the individual providing the service; and
        6. A quarterly summary, which shall include:
           (a) Documentation of monthly contact with each chosen ABI provider; and
           (b) Evidence of monitoring of the delivery of services approved in the participant’s person-centered service plan and of the effectiveness of the person-centered service plan.
   (6) Case management shall involve:
      (a) A constant recognition of what is and is not working regarding a participant; and
      (b) Changing what is not working.
a. Be developed by the behavioral specialist;
b. Not be implemented by the behavior specialist who wrote the plan;
c. Be revised as necessary;
d. Define the techniques and procedures used;
e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
f. Reflect the use of positive approaches; and
g. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;
5. Include the monitoring of a participant’s progress which shall be accomplished through:
   a. The analysis of data concerning the frequency, intensity, and duration of a behavior;
   b. Reports involved in implementing the behavioral service plan; and
   c. A monthly summary which assesses the participant’s status related to the plan of care;
6. Be provided by a behavior specialist who shall:
a. (i) Be a psychologist;
   (ii) Be a psychologist with autonomous functioning;
   (iii) Be a licensed psychological associate;
   (iv) Be a psychiatrist;
   (v) Be a licensed clinical social worker;
   (vi) Be a clinical nurse specialist with a master’s degree in psychiatric nursing or rehabilitation nursing;
   (vii) Be an advanced practice registered nurse (APRN);
   (viii) Be a board certified behavior analyst; or
   (ix) Be a licensed professional clinical counselor; and
b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and
7. Be documented by a detailed staff note which shall include:
   a. The date of the service;
   b. The beginning and ending time; and
   c. The signature and title of the behavioral specialist;
   (c) Companion services, which shall:
      1. Include a nonmedical service, supervision or socialization as indicated in the recipient’s plan of care;
      2. Include assisting with but not performing meal preparation, laundry and shopping;
      3. Include light housekeeping tasks which are incidental to the care and supervision of a participant;
      4. Include services provided according to the approved plan of care which are therapeutic and not diversional in nature;
      5. Include accompanying and assisting a participant while utilizing transportation services;
      6. Include documentation by a detailed staff note which shall include:
         a. Progress toward goal and objectives identified in the approved plan of care;
         b. The date of the service;
         c. Beginning and ending time; and
         d. The signature and title of the individual providing the service;
      7. Not be provided to a participant who receives supervised residential care; and
5. Be provided by:
   a. A home health agency licensed and operating in accordance with 902 KAR 20:081; and
   b. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department;
   c. A community habilitation program certified by the department; or
   d. A supervised residential care provider;
   (d) Supervised residential care level I services, which:
      1. Shall be provided by:
         a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or
         b. An ABI provider;
      2. Shall not be provided to a participant unless the participant has been authorized to receive residential care by the department’s residential review committee, which shall:
         a. Consider applications for residential care in the order in which the applications are received;
         b. Base residential care decisions on the following factors:
            (i) Whether the applicant resides with a caregiver or not;
            (ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant’s behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or
            (iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;
         c. Be comprised of three (3) Cabinet for Health and Family Services employees:
            (i) With professional or personal experience with brain injury or other cognitive disabilities; and
            (ii) None of whom shall be supervised by the manager of the acquired brain injury branch; and
      d. Only consider applications at a monthly committee meeting if the applications were received at least three (3) business days before the committee convenes;
      3. Shall not have more than three (3) participants simultaneously in a residence rented or owned by the ABI provider;
      4. Shall provide twenty-four (24) hours of supervision daily unless the provider implements, pursuant to subparagraph 5 of this paragraph, an individualized plan allowing for up to five (5) unsupervised hours per day;
      5. May include the provision of up to five (5) unsupervised hours per day per participant if the provider develops an individualized plan for the participant to promote increased independence. The plan shall:
         a. Contain provisions necessary to ensure the participant’s health, safety, and welfare;
         b. Be approved by the participant’s treatment team, with the approval documented by the provider; and
         c. Contain periodic reviews and updates based on changes, if any, in the participant’s status;
      6. Shall include assistance and training with daily living skills including:
         a. Ambulating;
         b. Dressing;
         c. Grooming;
         d. Eating;
         e. Toileting;
         f. Bathing;
         g. Meal planning;
         h. Grocery shopping;
         i. Meal preparation;
         j. Laundry;
         k. Budgeting and financial matters;
         l. Home care and cleaning;
         m. Leisure skill instruction; or
         n. Self-medication instruction;
      7. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the participant’s person-centered service plan;
      8. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;
      9. Shall include accompanying or assisting a participant while utilizing transportation services as specified in the participant’s person-centered service plan;
      10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;
      11. Shall be documented by a detailed staff note which shall
document:
a. Progress toward goals and objectives identified in the approved person-centered service plan of care;
b. The date of the service;
c. The beginning and ending time of the service; and
d. The signature and title of the individual providing the service;
12. Shall not include the cost of room and board;
13. Shall be provided to a participant an ABI recipient who:
a. Does not reside with a caregiver;
b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or
c. Demonstrates behavior that may result in potential legal problems if not ameliorated;
14. May utilize a modular home only if the:
a. Wheels are removed;
b. Home is anchored to a permanent foundation; and
c. Windows are of adequate size for an adult to use as an exit
in an emergency;
15. Shall not utilize a motor home;
16. Shall provide a sleeping room which ensures that a participant an ABI recipient:
a. Does not share a room with an individual of the opposite gender who is not the participant s ABI recipient s spouse;
b. Does not share a room with an individual who presents a potential threat; and
c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the participant s ABI recipient s health and comfort; and
17. Shall provide service and training to obtain the outcomes for the participant ABI recipient as identified in the approved person-centered service plan of care:
(e) Supervised residential care level II services, which:
1. Meet the requirements established in paragraph (d) of this subsection, except for the requirements established in paragraph (d) 4 and 5;
2. Shall be provided by:
   a. A community mental health center licensed and operating in accordance with 902 KAR 20.091 and certified at least annually by the department; or
   b. An ABI provider;
2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department s residential review committee which shall a. Consider applications for residential care in the order in which the applications are received;
b. Base residential care decisions on the following factors:
   (i) Whether the applicant resides with a caregiver or not;
   (ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant s behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or
   (iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;
   c. Be comprised of three (3) Cabinet for Health and Family Services employees:
      (i) With professional or personal experience with brain injury or other cognitive disabilities; and
      (ii) None of whom shall be supervised by the manager of the acquired brain injury branch; and
   d. Only consider applications at a monthly committee meeting if the applications were received at least three (3) business days before the committee convenes;
3. Shall not have more than three (3) ABI recipients simultaneously in a residence rented or owned by the ABI provider;
4. Shall Provide: (12) to eighteen (18) hours of daily supervision, the amount of which shall:
a. Be based on the participant s needs;
   b. Be approved by the participant s treatment team; and
   c. Be documented in the participant s person-centered service plan of care which shall also contain periodic reviews and updates based on changes, if any, in the participant s status; and
3. Shall include assistance and training with daily living skills including:
   a. Ambulating;
   b. Dressing;
   c. Grooming;
   d. Eating;
   e. Toileting;
   f. Bathting;
   g. Meal planning;
   h. Grocery shopping;
   i. Meal preparation;
   j. Laundry;
   k. Budgeting and financial matters;
   l. Home care and cleaning;
   m. Leisure skill instruction;
   n. Self-medication instruction;
6. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual s plan of care;
7. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;
8. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient s plan of care;
9. Shall include participation in medical appointments or follow up care as directed by the medical staff;
10. Shall include provision of twenty-four (24) hour on-call support;
11. Shall be documented by a detailed staff note which shall:
   a. Progress toward goals and objectives identified in the approved plan of care;
   b. The date of the service;
   c. The beginning and ending time of the service; and
d. The signature and title of the individual providing the service;
12. Shall not include the cost of room and board;
13. Shall be provided to an ABI recipient who:
a. Does not reside with a caregiver;
b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or
c. Demonstrates behavior that may result in potential legal problems if not ameliorated;
14. May utilize a modular home only if the:
a. Wheels are removed;
b. Home is anchored to a permanent foundation; and
c. Windows are of adequate size for an adult to use as an exit
in an emergency;
15. Shall not utilize a motor home;
16. Shall provide a sleeping room which ensures that an ABI recipient:
a. Does not share a room with an individual of the opposite gender who is not the ABI recipient s spouse;
b. Does not share a room with an individual who presents a potential threat; and
c. Demonstrates behavior that may result in potential legal problems if not ameliorated;
17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;
(f) Supervised residential care level III services, which:
1. Meet the requirements established in paragraph (d) of this subsection except for the requirements established in paragraph (d) 4 and 5;
2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:
   a. Consider applications for residential care in the order in which the applications are received;
   b. Base residential care decisions on the following factors:
      (i) Whether the applicant resides with a caregiver or not;
      (ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or
      (iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;
   c. Be comprised of three (3) Cabinet for Health and Family Services employees:
      (i) With professional or personal experience with brain injury or other cognitive disabilities; and
      (ii) None of whom shall be supervised by the manager of the acquired brain injury branch; and
   d. Only consider applications at a monthly committee meeting if the applications were received at least three (3) business days before the committee convenes; and

3. Shall be provided in a single family home, duplex, or apartment building to a participant who lives alone or with an unrelated roommate;

4. Shall not be provided to more than two (2) participants simultaneously in one (1) apartment or home;

5. Shall provide less than twelve (12) hours of supervision or support in the residence based on an individualized plan that shall:
   a. Contain provisions necessary to ensure the participant's health, safety, and welfare;
   b. Be approved by the participant's treatment team, with the approval documented by the provider; and
   c. Contain periodic reviews and updates based on changes, if any, in the participant's status;

8. Shall include assistance and training with daily living skills including:
   a. Ambulating;
   b. Dressing;
   c. Grooming;
   d. Eating;
   e. Toileting;
   f. Bathing;
   g. Meal planning;
   h. Grocery shopping;
   i. Meal preparation;
   j. Laundry;
   k. Budgeting and financial matters;
   l. Home care and cleaning;
   m. Leisure skill instruction; or
   n. Self-medication instruction;

9. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

10. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed.

11. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;

12. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

13. Shall be documented by a detailed staff note which shall document:
   a. Progress toward goals and objectives identified in the approved plan of care;
   b. The date of the service;
   c. The beginning and ending time of the service;
   d. The signature and title of the individual providing the service; and
   
   Evidence of at least one (1) daily face-to-face contact with the ABI recipient;

14. Shall not include the cost of room and board;

15. Shall be provided to an ABI recipient who:
   a. Does not reside with a caregiver;
   b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or
   c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

16. May utilize a modular home only if the:
   a. Wheels are removed;
   b. Home is anchored to a permanent foundation; and
   c. Windows are of adequate size for an adult to use as an exit in an emergency;

17. Shall not utilize a motor home;

18. Shall provide a sleeping room which ensures that an ABI recipient:
   a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;
   b. Does not share a room with an individual who presents a potential threat; and
   c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

19. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care.

(g) Counseling services, which:
   a. Shall be designed to help a participant resolve personal issues or interpersonal problems resulting from his or her ABI;
   b. Shall assist a family member in implementing an approved person-centered service plan;
   c. In a severe case, shall be provided as an adjunct to behavioral programming;
   d. Shall include substance abuse or chemical dependency treatment, if needed;
   e. Shall include building and maintaining healthy relationships;
   f. Shall develop social skills or the skills to cope with and adjust to the brain injury;
   g. Shall increase knowledge and awareness of the effects of an ABI;
   h. May include a group therapy service if the service is:
      a. Provided to a minimum of two (2) and a maximum of eight participants; and
      b. Included in the participant's approved person-centered service plan for:
         (i) Substance abuse or chemical dependency treatment, if needed;
         (ii) Building and maintaining healthy relationships;
         (iii) Developing social skills;
         (iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and
         (v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the participant functioning and social interactions;
   h. Shall be provided by:
a. A psychiatrist;
b. A psychologist;
c. A psychologist with autonomous functioning;
d. A licensed psychological associate;
e. A licensed clinical social worker;
f. A clinical nurse specialist with a master's degree in psychiatric nursing;
g. An advanced practice registered nurse[APRN]; or
h. A certified alcohol and drug counselor;
i. A licensed marriage and family therapist;[oc]
j. A licensed professional clinical counselor;
k. A licensed clinical alcohol and drug counselor associate effective and contingent upon approval by the Centers for Medicare and Medicaid Services; or
l. A licensed clinical alcohol and drug counselor effective and contingent upon approval by the Centers for Medicare and Medicaid Services; and
10. Shall be documented by a detailed staff note, which shall include:
   a. Progress toward the goals and objectives established in the person-centered service plan[of care];
      b. The date of the service;
      c. The beginning and ending time; and
      d. The signature and title of the individual providing the service;
   (n) Occupational therapy which shall be:
      1. A physician-ordered evaluation of a participant[an ABI recipient] level of functioning by applying diagnostic and prognostic tests;
      2. Physician-ordered services in a specified amount and duration to guide a participant[an ABI recipient] in the use of therapeutic, creative, and self-care activities to assist the participant[ABI recipient] in obtaining the highest possible level of functioning;
   3. Exclusive of maintenance or the prevention of regression;
   4. Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupational[occupation] therapist in accordance with 201 KAR 28:130; and
   5. Documented by a detailed staff note, which shall include:
      a. Progress toward goal and objectives identified in the approved person-centered service plan[of care];
         b. The date of the service;
         c. The beginning and ending [time]; and
         d. The signature and title of the individual providing the service;
      (o) Personal care services, which shall:
         1. Include the retraining of a participant[an ABI waiver service recipient] in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;
         2. Be provided by:
            a. An adult day health care center licensed and operating in accordance with 902 KAR 20:066;
            b. A home health agency licensed and operating in accordance with 902 KAR 20:081;
            c. A personal services agency; or
            d. Another ABI provider;
         3. Include the following activities of daily living:
            a. Eating, bathing, dressing or personal hygiene;
            b. Meal preparation; and
            c. Housekeeping chores including bed-making, dusting and vacuuming;
         4. Be documented by a detailed staff note which shall include:
            a. Progress toward goal and objectives identified in the approved person-centered service plan[of care];
               b. The date of the service;
               c. Beginning and ending time; and
               d. The signature and title of the individual providing the service; and
         5. Not be provided to a participant[an ABI recipient] who receives supervised residential care
            (1) A respite service, which shall:
               1. Be provided only to a participant[an ABI recipient] unable to administer self-care;
               2. Be provided by:
                  a. Nursing facility; b. Community mental health center;
                  c. Home health agency;
                  d. Supervised residential care provider; or
                  e. Community habilitation program;
         3. Be provided on a short-term basis due to absence or need for relief of a non-paid primary caregiver[an individual providing care to an ABI recipient];
         4. Be limited to 336 hours per one (1) year authorized person-centered service plan[in a twelve (12) month] period unless an individual's non-paid[normal] caregiver is unable to provide care due to a:
            a. Death in the family;
            b. Serious illness; or
            c. Hospitalization;
         5. Not be provided to a participant[an ABI recipient] who receives supervised residential care;
         6. Not include the cost of room and board if provided in a nursing facility; and
         7. Be documented by a detailed staff note, which shall include:
            a. Progress toward goals and objectives identified in the approved person-centered service plan[of care];
               b. The date of the service;
               c. The beginning and ending time; and
               d. The signature and title of the individual providing the service;
         (p) Speech-language pathology services, which shall be:
         1. A physician-ordered evaluation of a participant[an ABI recipient] with a speech, hearing or language disorder;
         2. Provided by a speech language pathologist; and
         3. Be provided by:
            a. An adult day health care center[that which] is certified by the department and licensed and operating in accordance with 902 KAR 20:066;
            b. An outpatient rehabilitation facility[that which] is certified by the department and licensed and operating in accordance with 902 KAR 20:190;
            c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;
            d. A community habilitation program;
            e. A sheltered employment program; or
            f. A therapeutic rehabilitation program;
         2. Rehabilitate, retrain and reintegrate a participant[an individual] into the community;
         3. Not exceed a staffing ratio of five (5) participants[ABI recipients] per one (1) staff person, unless a participant[an ABI recipient] requires individualized special service;
         4. Include the following services:
            a. Social skills training related to problematic behaviors identified in the participant’s person-centered service[recipient's] plan[of care];
               b. Sensory or motor development;
               c. Reduction or elimination of a maladaptive behavior;
               d. Vocational; or
               e. Teaching concepts and skills to promote independence including:
                  (i) Following instructions;
                  (ii) Attendance and punctuality;
                  (iii) Task completion;
                  (iv) Budgeting and money management;
                  (v) Problem solving; or
                  (vi) Safety;
5. Be provided in a nonresidential setting;
6. Be developed in accordance with a participant’s [an ABI waiver service recipient’s] overall approved person-centered service plan [of care];
7. Reflect the recommendations of a participant’s [an ABI waiver service recipient’s] interdisciplinary team;
8. Be appropriate:
   a. Given a participant’s [an ABI waiver service recipient’s] age, level of cognitive and behavioral function and interest;
   b. Given a participant’s [an ABI waiver service recipient’s] ability prior to and since his or her injury; and
   c. According to the approved person-centered service plan [of care] and be therapeutic in nature and not diversional;
9. Be coordinated with occupational, speech, or other rehabilitation therapy included in a participant’s person-centered service plan [of care];
10. Provide a participant’s [an ABI waiver service recipient’s] with an organized framework within which to function in his or her daily activities;
11. Entail frequent assessments of a participant’s [an ABI waiver service recipient’s] progress and be appropriately revised as necessary; and
12. Be documented by a detailed staff note, which shall include:
   a. Progress toward goal and objectives identified in the participant’s [an ABI waiver service recipient’s] person-centered service plan [of care];
   b. The date of the service;
   c. The beginning and ending time;
   d. The signature and title of the individual providing the service; and
   e. A monthly summary that assesses the participant’s status related to the approved person-centered service plan [of care];
   m. Supported employment services, which shall be:
   1. Intensive, ongoing services for a participant’s [an ABI waiver service recipient’s] to maintain paid employment in an environment in which an individual without a disability is employed;
   2. Provided by a:
      a. Supported employment provider;
      b. Sheltered employment provider; or
      c. Structured day program provider;
   3. Provided one-on-one;
   4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant’s [an ABI recipient’s] file;
5. Limited to forty (40) hours per week alone or in combination with structured day services;
6. An activity needed to sustain paid work by a participant’s [an ABI recipient’s] receiving waiver services including supervision and training;
7. Exclusive of work performed directly for the supported employment provider; and
8. Documented by a time and attendance record, which shall include:
   a. Progress towards the goals and objectives identified in the participant’s person-centered service plan [of care];
   b. The date of service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;
   n. Specialized medical equipment and supplies, which shall:
   1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;
   2. Enable a participant’s [an ABI recipient’s] to increase his or her ability to perform daily living activities or to perceive, control, or communicate with the environment;
   3. Be ordered by a physician, documented in a participant’s person-centered service plan, and entered into the MWMA portal by the participant’s case manager or support broker, and submitted on a Request for Equipment form, MAP-95, and include three (3) estimates if the equipment is needed for vision and hearing;
   4. Include equipment necessary to the proper functioning of specialized items;
5. Not be available through the department’s durable medical equipment, vision or hearing programs;
6. Not be necessary for life support;
7. Meet applicable standards of manufacture, design and installation; and
8. Exclude those items which are not of direct medical or remedial benefit to a participant [an ABI recipient];
   o. Environmental modifications, which shall:
   1. Be provided in accordance with applicable state and local building codes;
   2. Be provided to a participant [an ABI recipient] if:
      a. Ordered by a physician;
      b. Prior-authorized by the department;
      c. Specified in the participant’s approved person-centered service plan and entered into the MWMA portal; and
   d. [Specified in an ABI recipient’s approved plan of care—e] Necessary to enable a participant [an ABI recipient] to function with greater independence within his or her home; and
   e. [L] Without the modification, the participant [an ABI recipient] would require institutionalization;
3. Not include a vehicle modification;
4. Be limited to no more than $2,000 for a participant [an ABI recipient] in a twelve (12) month period; and
5. If entailing:
   a. Electrical work, be provided by a licensed electrician; or
   b. Plumbing work, be provided by a licensed plumber;
   (p) An assessment, which shall:
   1. Be a comprehensive assessment which shall identify:
      a. A participant’s [an ABI waiver service recipient’s] needs; and
      b. Services that a participant’s [an ABI waiver service recipient’s] family cannot manage or arrange for the participant [an ABI recipient];
   2. Evaluate a participant’s [an ABI waiver service recipient’s] physical health, mental health, social supports, and environment;
3. Be requested by:
   a. An individual requesting ABI waiver services;
   b. A family member of the individual requesting ABI services; or
   c. A legal representative of the individual requesting ABI services;
4. Be conducted:
   a. By an ABI case manager or support broker; and
   b. Within seven (7) calendar days of receipt of the request for an assessment;
5. Include at least one (1) face-to-face contact in the participant’s [an ABI waiver recipient’s] home between the assessor, the participant [an ABI waiver recipient], and, if appropriate, the participant’s [an ABI recipient’s] family; and
6. Not be reimbursable if the individual no longer meets ABI program eligibility requirements; or
   (g) A reassessment, which shall:
   1. Be performed at least once every twelve (12) months;
   2. Be conducted:
      a. Using the same procedures as for an assessment; and
      b. By an ABI case manager or support broker;
      3. Be timely conducted to enable the results to be submitted to the department within three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
   4. Not be reimbursable if the individual no longer meets ABI program eligibility requirements; and
   5. Not be retroactive.

Section 7.[5] Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:
(1) A stroke treatable in a nursing facility providing routine rehabilitation services;
(2) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;
(3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature,
including senile dementia, organic brain disorder, Alzheimer’s Disease, alcoholism or another addiction;
(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
(5) A birth defect;
(6) An intellectual disability [Mental retardation] without an etiology to an acquired brain injury;
(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community; or
(8) Determination that the participant (recipient) has met his or her maximum rehabilitation potential.

Section 8(4) Incident Reporting Process. (1)(a) There shall be two (2) classes of incidents.
(b) The following shall be the two (2) classes of incidents:
1. An incident; or
2. A critical incident.
(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
(a) A minor injury;
(b) A medication error without a serious outcome; or
(c) A behavior or situation which is not a critical incident.
(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
(a) Can reasonably be expected to result in harm to a participant; and
(b) Shall include:
1. Abuse, neglect, or exploitation;
2. A serious medication error;
3. Death;
4. A homicidal or suicidal ideation;
5. A missing person; or
6. Other action or event that the provider determines may result in harm to the participant.
(4)(a) If an incident occurs, the ABI provider shall:
1. Report the incident by making an entry into the MWMA portal that includes details regarding the incident; and
2. Be immediately assessed for potential abuse, neglect, or exploitation.
(b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:
1. The individual who discovered or witnessed the incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant;
2. The incident shall immediately be considered a critical incident;
3. The critical incident procedures established in subsection (5) of this section shall be followed; and
4. The ABI provider shall report the incident to the participant’s case manager and participant’s guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.
(5)(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant.
(b) If the critical incident:
1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA portal by the individual who witnessed or discovered the critical incident; or
2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA portal by the individual who witnessed or discovered the critical incident within eight (8) hours of discovery.
(c) The ABI provider shall:
1. Conduct an immediate investigation and involve the participant’s case manager in the investigation; and
2. Prepare a report of the investigation, which shall be recorded in the MWMA portal and shall include:
   a. Identification of the participant involved in the critical incident and the person reporting the critical incident.
   b. Details of the critical incident; and
   c. Relevant participant information including:
      i. Axis I diagnosis or diagnoses;
      ii. Axis II diagnosis or diagnoses;
      iii. Axis III diagnosis or diagnoses;
      iv. A listing of recent medical concerns;
      v. An analysis of causal factors; and
      vi. Recommendations for preventing future occurrences.
(6) If a critical incident does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA portal within eight (8) hours of discovery.
(7)(a) Following a death of a participant receiving ABI services from an ABI provider, the ABI provider shall enter mortality data documentation into the MWMA portal within fourteen (14) days of the death.
(b) Mortality data documentation shall include:
1. The participant’s person-centered service plan at the time of death;
2. Any current assessment forms regarding the participant;
3. The participant’s medication administration records from all service sites for the past three (3) months along with a copy of each prescription;
4. Progress notes regarding the participant from all service elements for the past thirty (30) days;
5. The results of the participant’s most recent physical exam;
6. All incident reports, if any exist, regarding the participant for the past six (6) months;
7. Any medication error report, if any exists, related to the participant for the past six (6) months;
8. The most recent psychological evaluation of the participant;
9. A full life history of the participant including any update from the last version of the life history;
10. Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant’s life;
11. Emergency medical services notes regarding the participant if available;
12. The police report if available;
13. A copy of:
   a. The participant’s advance directive, medical order for scope of treatment, living will, or health care directive if applicable;
   b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and
   c. The cardiopulmonary resuscitation and first aid card for any ABI provider’s staff member who was present at the time of the incident that resulted in the participant’s death;
14. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months;
15. A record of any crisis training for any staff member present at the time of the incident that resulted in the participant’s death.
(8)(a) An ABI provider shall report a medication error to the MWMA portal.
(b) An ABI provider shall document all medication error details on a medication error log retained on file at the ABI provider site documented on an Incident Report form.
10. There shall be three (3) classes of incidents as follows:
(a) A Class I incident which shall:
1. Be minor in nature and not create a serious consequence;
2. Not require an investigation by the provider agency;
3. Be reported to the case manager or support broker within twenty-four (24) hours.
4. Be reported to the guardian as directed by the guardian; and
5. Be retained on file by the provider and case management or support brokerage agency.
(b) A Class II incident which shall:
1. a. Be serious in nature; or
   b. Include a medication error;
2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager or support broker; and
3. Be reported to the following by the provider agency:
   a. The case manager or support broker within twenty-four (24) hours;
hours of discovery;

b. **The guardian within twenty-four (24) hours of discovery; and**

c. BISB within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and

c. **A Class III incident which shall:**

1. Be grave in nature;
2. **Involve suspected abuse, neglect or exploitation;**
3. **Involve a medication error which requires a medical intervention or hospitalization;**
4. **Be an admission to an acute or psychiatric hospital;**
5. **Involve the use of a chemical or physical restraint; or**
6. **Be a death;**

**The emergency review committee shall:**

1. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and
2. **Be reported by the provider agency to:**

a. **The case manager or support broker within eight (8) hours of discovery;**

b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 208;

c. **The guardian within eight (8) hours of discovery; and**

d. **BISB within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery.** If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to BISB shall occur on the following business day.

2. **In order to be placed on the ABI waiting list, an individual or an individual’s legal representative shall:**

(a) **Apply for 1915(c) home and community based waive**;

(b) **Submit to the department a completed MAP** – 115 Application Intake – Participant Authorization; and

(c) **Upload to the MWMA portal a completed MAP – 115 Application Intake – Participant Authorization and a completed MAP-10, Waiver Services Program, and a completed MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program, and a completed MAP-10, Waiver Services – Physician’s Recommendation, for an ABI waiting list applicant shall be submitted to the department no later than three (3) business days prior to the fourth (4th) week of each month in order to be considered by the emergency review committee during that month’s emergency review committee meeting.**

**An applicant shall meet the emergency category of need if the applicant is currently demonstrating behavior related to his or her acquired brain injury:**

1. **That places the individual, caregiver, or others at risk of significant harm; or**
2. **Which has resulted in the applicant being arrested.**

3. **An applicant who does not meet the emergency category of need criteria established in subsection (8) of this subsection shall be considered to be in the nonemergency category of need.**

4. **In determining chronological status of an applicant, the original date of the individual’s complete application information being entered into the MWMA portal** shall be considered to be in the nonemergency category of need.

(a) A written statement by a physician or other qualified mental health professional shall be required to support the validation of a history of significant harm to an individual; and

(b) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.)

(If an individual is removed from the ABI waiting list, written notification shall be mailed to the individual or his or her legal representative and case management provider if identified.)

**Maintenance of the ABI waiting list shall occur as follows:**

(a) **The department shall, at a minimum, annually update the waiting list during the birth month of the individual:**

(b) **If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual and his or her legal representative and also the ABI case manager; and**

(c) **The requested data shall be received by the department within thirty (30) days from the date on the written notice required by subsection (13) of this section.**

**Reassignment of an applicant’s category of need shall be completed based on the updated information and validation process.**

**An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time that an individual’s status changes.**

**An individual shall be removed from the ABI waiting list if:**

(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;

(b) The individual is deceased;

(c) The individual or individual’s legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list; or

(d) An ABI placement for services offer is refused by the individual or legal representative; or

(e) The individual and he or she does not access services without demonstration of good cause;
1. The individual or individual’s legal representative shall have the burden of providing documentation of good cause including:
   a. A signed statement by the individual or the legal representative;
   b. Copies of letters to providers; and
   c. Copies of letters from providers.
2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.
(18)(19) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or individual’s legal representative and the ABI case manager.
(19)(20) The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.
(20)(21) Potential funding allocated for services for an individual shall be based upon:
   a. The individual’s category of need; and
   b. The individual’s chronological date of placement on the waiting list.

Section 10. Participant-Consumer Directed Services[Option]. (1) Covered services and supports provided to a participant receiving PDS[an ABI recipient participating in CDO] shall include:
   a. Home and community support services;
   b. Community day support services;
   c. Goods or services; or
   d. Financial management.
   (2) A home and community support service shall:
   a. Be available only as a participant-[under the consumer directed service[option];]
   b. Be provided in the participant’s home or in the community;
   c. Be based upon therapeutic goals;
   d. Not be diversional in nature;
   e. Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS[CDO] ABI services; and
   (5) Be respite for the primary caregiver; or
   2. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:
   a. Routine household tasks and maintenance;
   b. Activities of daily living;
   c. Personal hygiene;
   d. Shopping;
   e. Money management;
   f. Medication management;
   g. Socialization;
   h. Relationship building;
   i. Meal planning;
   j. Meal preparation;
   k. Grocery shopping; or
   l. Participation in community activities.
   (3) A community day support service shall:
   a. Be available only as a participant-directed service[under the consumer directed option];
   b. Be provided in a community setting;
   c. Be based upon therapeutic goals;
   d. Not be diversional in nature;
   e. Be tailored to the participant’s specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant for:
   1. Work;
   2. Community activities;
   3. Socialization;
   4. Leisure; or
   5. Retirement activities; and
   f. Not be provided to an individual if the same or similar
   service is being provided to the individual via non-PDS[CDO] ABI services.
   (4) Goods or services shall:
   a. Be individualized;
   b. Be utilized to:
      1. Reduce the need for personal care; or
      2. Enhance independence within the participant’s home or community;
   c. Not include experimental goods or services; and
   d. Not include chemical or physical restraints.
   (5) To be covered, a PDS[CDO] service shall be specified in a participant’s personal-centered service[consumer’s plan[al case];]
   (6) Reimbursement for a PDS[CDO] service shall not exceed the department’s allowed reimbursement for the same or a similar service provided in a non-PDS[CDO] ABI setting.
   (7) A participant[consumer], including a married participant[consumer], shall choose providers and the choice of PDS[CDO] provider shall be documented in his or her personal-centered service[consumer’s plan[al case];]
   (8)(a) A participant[consumer] may designate a representative to act on the participant’s behalf.
       (b) The PDS[CDO] representative shall:
          1[a] Be twenty-one (21) years of age or older;
          2[b] Not be monetarily compensated for acting as the PDS[CDO] representative or providing a PDS[CDO] service; and
          3[c] Be appointed by the participant[consumer] on a MAP-2000 form.
   (9) A participant[consumer] may voluntarily terminate PDS[CDO] services by completing a MAP-2000 and submitting it to the support broker.
   (10) The department shall immediately terminate a participant[consumer] from CDO services if:
   a. Imminent danger to the participant’s health, safety, or welfare exists;
   b. The recipient’s personal-centered service[plan[al case]] indicates he or she requires more hours of service than the program can provide, thus jeopardizing the recipient’s safety or welfare due to being left alone without a caregiver present; or
   c. The recipient, caregiver, family member, or guardian threatens or intimidates a support broker or other PDS[CDO] staff.
   (11) The department may terminate a participant[consumer] from PDS[CDO] services if it determines that the participant’s PDS[CDO] provider has not adhered to the personal-centered service[plan[al case];]
   (12) Prior to a participant[consumer’s] termination from PDS[CDO] services, the support broker shall:
       a. Notify the assessment or reassessment service provider of potential termination;
       b. Assist the participant in developing a resolution and prevention plan;
       c. Allow at least thirty (30), but no more than ninety (90), days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS[CDO] representative;
       d. Complete and submit to the department a MAP-2000 form terminating the participant[consumer] from PDS[CDO] services if the participant[consumer] fails to meet the requirements in paragraph (c) of this subsection; and
       e. Assist the participant in transitioning back to traditional ABI services.
   (13) Upon an involuntary termination of PDS[CDO] services, the department shall:
       a. Notify a participant[consumer] in writing of its decision to terminate the participant’s PDS[CDO] participation; and
       b. Inform the participant[consumer] of the right to appeal the department’s decision in accordance with Section 10 of this administrative regulation.
   (14) A PDS[CDO] provider:
       a. Shall be selected by the participant[consumer];
       b. Shall submit a completed Kentucky Participant[Consumer]
          Directed Services[Option] Employee Provider Contract to the support broker.
(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Shall be able to communicate effectively with the participant, participant’s[consumer’s] representative, or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the participant[consumer];

(h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of PDS[CD] services;

(i) Shall submit to a check of the Central Registry maintained in accordance with 922 KAR 1:470 and not be found on the registry:

1. A participant[consumer] may employ a provider prior to a Central Registry check result being obtained for up to thirty (30) days; and

2. If a participant[consumer] does not obtain a Central Registry check result within thirty (30) days of employing a provider, the participant[consumer] shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the:

1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry; and

2. Background Registry maintained in accordance with 922 KAR 5:120 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165 (1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant[consumer];

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant[consumer];

15. A PDS provider may use Kentucky’s national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subsection (14) of this section.

16. A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

17.[141][141] The department shall establish a budget for a participant[consumer] based on the individual’s historical costs minus five (5) percent to cover costs associated with administering the participant[consumer] directed services[option].

2. If no historical cost exists for the participant[consumer], the participant[consumer]’s budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual’s prior year person-centered service plan[care] but not utilized may be added to the budget if necessary to meet the individual’s needs.

(c) The department may adjust a participant[consumer]’s budget based on the participant[consumer]’s needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A participant[consumer]’s budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The participant[consumer]’s support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed increase is necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the participant[consumer]’s health, safety, and welfare; and

4. If a significant change has occurred in the recipient’s:

a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement resulting in the recipient’s relocation.

(f) A participant[consumer]’s budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

18.[171][171] Unless approved by the department pursuant to subsection (16)(b) through (e) of this section, if a PDS[CD] service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-PDS[CD]) waiver service provider.

19.[141] A support broker shall:

(a) Provide needed assistance to a participant[consumer] with any aspect of PDS[CD] or blended services;

(b) Be available to a participant[consumer] by phone or in person:

1. Twenty-four (24) hours per day, seven (7) days per week; and

2. To assist the participant[consumer] in obtaining community resources as needed;

(c) Comply with applicable federal and state laws and requirements;

(d) Continuously monitor a participant[consumer]’s health, safety, and welfare; and

(e) Complete or revise a person-centered service plan in accordance with Section 4 of this administrative regulation[care using the Person Centered Planning: Guiding Principles].

20.[141] For a PDS[CD] participant, a support broker may conduct an assessment or reassessment:

21.[201] Financial management shall:

(a) Include managing, directing, or dispersing a participant[consumer]’s funds identified in the participant[consumer]’s approved PDS[CD] budget;

(b) Include payroll processing associated with the individual hired by a participant[consumer] or the participant[consumer]’s representative;

(c) Include:

1. Withholding local, state, and federal taxes; and

2. Making payments to appropriate tax authorities on behalf of a participant[consumer];

(d) Be performed by an entity that:

1. Is enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

2. Is currently compliant with 907 KAR 1:671;

3. Has at least two (2) years of experience working with individuals with an acquired brain injury; and

(e) Include preparation of fiscal accounting and expenditure reports for:

1. A participant[consumer] or participant[consumer]’s[consumer’s] representative; and

2. The department.

Section 11[9] Electronic Signature Usage.[44] The creation, transmission, storage, or other use of electronic signatures and documents shall comply with the requirements established in KRS 389.101 to 389.120.[2] An ABI provider which chooses to use electronic signatures shall:

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

1. Be adhered to by each of the provider’s employees, agents, and 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 which shall:
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

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
4. Submit the letter, immediately upon request, with:
   1. A copy of the provider’s electronic signature policy;
   2. The signed consent form; and
   3. The original filed signature.

Section 12[10] Appeal Rights. (1) An appeal of a department decision regarding a participant[recipient] or applicant based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.
(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.
(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 13[11] Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) “MAP 109, Prior Authorization for Waiver Services”, July 2008 edition;
   (b) “MAP 24C, Admission, Discharge or Transfer of an Individual in the ABI/SCL Program” August 2010 edition;
   (c) “MAP 26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program”, July 2008 edition;
   (d) “MAP 95, Request for Equipment Form”, May 2010 edition;
   (g) “MAP – 116 Service Plan – Participant Authorization”, May 2015;
   (h) “MAP – 531 Conflict-Free Case Management Exemption”, May 2015;
   (k) “MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form”, June 2015[July 2008 edition];
   (m) “MAP-351, Medicaid Waiver Assessment”, July 2015[2008 edition];
   (n) “Mayo-Portland Adaptability Inventory-4”, March 2003[edition];
   (o) “Person-Centered Planning: Guiding Principles”, March 2006[edition];
   (p) “MAP-4100a, September 2010 [edition]; and

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

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 5, 2015
FILED WITH LRC: August 7, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2015 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing September 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 September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.
   (b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for the Medicaid ABI waiver program.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid ABI coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.
   (d) Whether this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation. The amendments include establishing new federally-mandated case management requirements (that case management be free from conflict of interest); establishing federally-mandated requirements regarding the plan - the new term is person-centered service plan and the prior term was plan of care - that is used to identify the amount, duration, and types of services that a participant in the program receives (the plan is now called a person-centered service plan); requiring, as federally mandated, that an online portal (Medicaid Waiver Management Application or MMWA) be used to apply for admission to the program and to complete forms and documents associated with the program; adding new rights that must be guaranteed for individuals receiving services; requiring providers to check the Caregiver Misconduct Registry before hiring an individual and prohibits the hiring of anyone listed on the registry; narrowing the types of incidents to be reported from three (3) classes to two (2) and revising the incident reporting process by requiring incidents to be documented online in the new MMWA portal; and revising the application process by requiring it to be done via the new MMWA portal.

(3) The necessity of the amendment to this administrative regulation: The primary amendments (revising the case management requirements, establishing person-centered service
plan requirements, and requiring a new online portal (MWMA) to be used) are mandated by the Centers for Medicare and Medicaid Services (CMS) via a CMS rule published January 2015. Requiring providers to check the Caregiver Misconduct Registry regarding potential staff and to not hire anyone listed on the registry is a safeguard to enhance participant safety and welfare. Reducing the classes of incidents is an effort to synchronize incident reporting requirements among DMS’s 1915(c) home and community based waiver services programs.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the ABI waiver program and by enhancing participant safety and welfare.

(d) How the amendment will assist in the effective administration of the authorizing statutes: The amendments will assist in the effective administration of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the ABI waiver program and by enhancing participant safety and welfare.

4. List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects individuals receiving ABI waiver program services (participants) as well as providers of these services. Currently, there are 179 individuals receiving services, 263 on the waiting list to receive services, and twenty-eight (28) providers enrolled in the program.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to ensure they comply with the conflict free case management 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 imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals receiving services will benefit from greater involvement and direction in the types of services they receive as well as when and where they receive the services which will enhance their independence as well as assimilation in their local community.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral initially.

(b) On a continuing basis: DMS anticipates that the amendments to this administrative regulation will be budget neutral 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 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:

(a) An increase in fees nor funding is necessary to implement the amendment.

(b) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

(a) The amendment 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.730(b) and 42 C.F.R. 441.725.

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. Among the mandates in 42 C.F.R. 441.730(b) are the requirements a waiver participant provide actual ABI waiver services or work for an entity that provides actual ABI waiver services or entity that has a business interest in a provider of actual ABI waiver services.

42 C.F.R. 447.425 establishes the person-centered service plan requirements which are many but the underlying requirement is that the plan be customized to the individual's needs (based on input from the individual, representatives of the individual among other parties) and promote/enhance the individual's independence and choice in their services and activities as well as integration their community.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services and the Department for Behavioral Health, Intellectual and Developmental Disabilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation, KRS 194A.090(4), 194A.090(1), 205.520(3), 42 C.F.R. 441.730(b), and 42 C.F.R. 441.725.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 will it cost this administrative regulation generate for the state, counties, fire departments, or school districts for a one year period starting in the current year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much will it cost this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year.

(c) How much will it cost this administrative regulation generate for the state or local government for the first year? The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will not increase costs in the first year.

(d) How much will it cost this administrative regulation generate for subsequent years? DMS anticipates that the amendments to this administrative regulation will not increase costs in subsequent years.

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

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


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.560(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity provided on a regular law to comply for Federal Medicaid funds by the provision of medical assistance to Kentucky’s indigent citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a participant [consumer]-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a participant [consumer]-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury long term care waiver services is to provide an alternative to institutional care to individuals with an acquired brain injury who require maintenance services.

Section 1. Definitions. (1) “1915(c) home and community based services waiver program” means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) “ABI” means an acquired brain injury.

(3) “ABI provider” means an entity that meets the criteria established in Section 2 of this administrative regulation. [2] “ABI recipient” means an individual who meets the criteria established in Section 3 of this administrative regulation.

(4) “ABIB” means the Acquired Brain Injury Branch in the Division of Community Alternatives, in the Cabinet for Health and Family Services.

(5) “Acquired brain injury long term care waiver service” means a home and community based waiver service for an individual who requires long term maintenance and has acquired a brain injury involving the central nervous system that resulted from:

(a) An injury from a physical trauma;
(b) Anoxia or a hypoxic episode; or
(c) Allergic condition, toxic substance, or another acute medical incident.

(6) “ADHC services” means adult day health care services provided on a regularly scheduled basis that ensure optimal functioning of a participant [an ABI recipient] who does not require twenty-four (24) hour care in an institutional setting.

(7) “Assessment” or “reassessment” means a comprehensive evaluation of abilities, needs, and services that:

(a) Serves as the basis for a participant [an ABI recipient] to receive the services they need and desires;
(b) Is completed on a MAP 351, Medicaid Waiver Assessment that is uploaded into the MMVA portal; and
(c) Occurs at least once [2 No less than] every twelve (12) months thereafter.

(8) “Axis I diagnosis” means a clinical disorder or other condition which may be a focus of clinical attention.

(9) “Behavior intervention committee” or “BIC” means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for a participant [an ABI recipient].

(10) “Blended services” means a nonduplicative combination of ABI waiver services identified in Section 6(4) of this administrative regulation and participant [consumer]-directed [option] services identified in Section 10(8) of this administrative regulation provided in accordance with the participant [recipient’s] approved person-centered service plan [of case].

(11) “Board certified behavior analyst” means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(12) “Case manager” means an individual who manages the overall development and monitoring of a participant’s person-centered service [recipient’s] plan [of case].

(13) “Consumer” is defined by KRS 205.5605(2).

(14) “Consumer directed option” or “CDO” means an option established by KRS 205.5606 within the home and community based services waiver that allows a recipient to:

(a) Assist with the design of their program;
(b) Choose a provider of services; and
(c) Direct the delivery of services to meet the recipient’s needs.

(15) “Covered services and supports” is defined by KRS 205.5605(3).

(16) “Crisis prevention and response plan” means a plan developed to identify any potential risk to a participant [recipient] and to detail a strategy to minimize the risk.

(17) “DBCS” means the Department for Community Based Services.

(18) “Department” means the Department for Medicaid Services or its designee.

(19) “Family training” means providing to the family or another responsible person:

(a) Interpretation or explanation of medical examinations and procedures;
(b) Treatment regimens;
(c) Use of equipment specified in the person-centered service plan [of case]; or
(d) Advising the family how to assist the participant.

(20) “Good cause” means a circumstance beyond the control of an individual which affects the individual’s ability to access funding or services, including:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;
(b) Death or incapacitation of the primary caregiver;
(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or
(d) The individual not having been accepted for services or placement by a potential provider despite the individual or individual’s legal representative having made diligent contact with the potential provider to secure placement or access services within sixty (60) days.

(21) “Human rights committee” means a group of individuals established to protect the rights and welfare of a participant [an ABI recipient].

(22) “Human rights restriction” means the denial of a basic right or freedom to which all humans are entitled, including the right to life and physical safety, civil and political rights, freedom of expression, equality before the law, social and cultural justice, the right to participate in culture, the right to food and water, the right to work, and the right to education.

(23) “Interdisciplinary team” means a group of individuals that assist in the development and implementation of an ABI recipient’s plan of care consisting of:

(a) The ABI recipient and legal representative if appointed;
(b) A chosen ABI service provider;
(c) A case manager; and
(d) Others as designated by the ABI recipient.

(24) “Licensed marriage and family therapist” or “LMFT” is defined by KRS 335.300(2).

(25) “Licensed medical professional” means:

(a) A physician;
(b) An advanced practice registered nurse; or
(c) A physician assistant;
(d) A registered nurse;  
(e) A licensed practical nurse; or  
(f) A pharmacist.  

23[(23)] 25[(25)] "Licensed practical nurse" or "LPN" means a person who:  
(a) Meets the definition of KRS 314.011(9); and  
(b) Works under the supervision of a registered nurse.  

24[(24)] 26[(26)] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(1).  

27[(27)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.  


29[(29)] "Nursing supports" means training and monitoring of services by a registered nurse or a licensed practical nurse.  

30[(30)] 31[(31)] "Occupational therapist" is defined by KRS 319A.010(3).  

32[(32)] 33[(33)] "Occupational therapy assistant" is defined by KRS 319A.010(4).  

34[(34)] "Participant" means an individual who meets the criteria established in Section 3 of this administrative regulation.  

35[(35)] "Participant-directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs which allows participants to receive non-medical services in which the individual:  
(a) Assists with the design of the program;  
(b) Chooses the providers of services; and  
(c) Directs the delivery of services to meet their needs.  

36[(36)] "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 4 of this administrative regulation.  

37[(37)] "Person-centered team" means the participant, the participant's guardian or representative, and other individuals who are natural or paid supports, and who:  
(a) Recognize that evidenced based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice;  
(b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant's needs; and  
(c) Include providers who receive payment for services who shall:  
1. Be active contributing members of the person centered team meetings;  
2. Base their input upon evidence-based information; and  
3. Not request reimbursement for person centered team meetings.  

38[(38)] "Physical therapist" is defined by KRS 327.010(2).  

39[(39)] "Physical therapist assistant" means a skilled health care worker who:  
(a) Is certified by the Kentucky Board of Physical Therapy; and  
(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.  

40[(40)] "Pro re nata" or "PRN" means as needed.  

41[(41)] "Psychologist" is defined by KRS 319.010(8).  

42[(42)] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.  

43[(43)] "Qualified mental health professional" is defined by KRS 202A.011(12).  

44[(44)] "Registered nurse" or "RN" means a person who:  
(a) Meets the definition established in KRS 314.011(5); and  
(b) Has one (1) year or more experience as a professional nurse.  

45[(45)] "Representative" is defined by KRS 205.5605(6).  

46[(46)] "Speech-language pathologist" is defined by KRS 334A.020(1).  

47[(47)] "Support broker" means an individual designated by the department to:  
(a) Provide training, technical assistance, and support to a participant[consumer]; and  
(b) Assist a participant[consumer] in any other aspects of participant-directed services[DOD].  

Section 2. Non-PDS[DOD] Provider Participation Requirements. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a participant[consumer]-directed[option] service, an ABI provider shall:  
(a) Be enrolled as a Medicaid provider in accordance with KAR 1.671;  
(b) Be located within an office in the Commonwealth of Kentucky; and  
(c) Be a licensed provider in accordance with:  
   a. 902 KAR 20:086, if a home health care provider;  
   b. 902 KAR 20:081, if a home health service provider; or  
   c. 902 KAR 20:091, if a community mental health center; or  
   2. Be certified by the department in accordance with 907 KAR 12.010[1145], Section 3, or 907 KAR 3:90, Section 2, if a provider type is not listed in subparagraph 1. of this paragraph; and  
(d) Complete and submit a MAP-4100a to the department.  

2 An ABI provider shall comply with:  
(a) 907 KAR 1.671;  
(b) 907 KAR 1.672;  
(c) 907 KAR 1.673;  
(d) 907 KAR 7:005;  
(e) The Health Insurance Portability and Accountability Act, 21 U.S.C. 1320d-1 to 1320d-8, and 45 C.F.R. Parts 160, 162, and 164; and  
(f) 42 U.S.C. 1320d to 1320d-8.  

3 An ABI provider shall have a governing body that shall be:  
(a) A legally-constituted entity within the Commonwealth of Kentucky; and  
(b) Responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety, and welfare of a participant[an ABI recipient] served by the agency.  

4 An ABI provider shall:  
(a) Unless providing participant-directed services[participating in the CDO program], ensure that an ABI waiver service is not provided to a participant[an ABI recipient] by a staff member of the ABI provider who has one (1) of the following blood relationships to the participant[ABI recipient]:  
   1. Child;  
   2. Parent;  
   3. Sibling; or  
   4. Spouse;  
   (b) Not enroll a participant[an ABI recipient] for whom the ABI provider cannot meet the service needs; and  
   (c) Have and follow written criteria in accordance with this administrative regulation for determining the eligibility of an individual for admission to services.  

5 An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 pursuant to 42 U.S.C. 1320d to 1320d-8.  

6 An ABI provider shall meet the following requirements if responsible for the management of a participant[an ABI recipient] funds:  
(a) Separate accounting shall be maintained for each participant[ABI recipient] or for the participant[s][recipient[s] interest in a common trust or special account;  
(b) Account balance and records of transactions shall be provided to the participant[ABI recipient] or legal representative on a quarterly basis; and  
(c) The participant[ABI recipient] or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.  

7[(27)] An ABI provider shall have a written statement of its mission and values.  

8[(28)] An ABI provider shall have written policies and procedures for communication and interaction with a family and legal representative of a participant[an ABI recipient] which shall:  
(a) Require a timely response to an inquiry;
(b) Require the opportunity for interaction with direct care staff; 
(c) Require prompt notification of any unusual incident; 
(d) Permit visitation with the participant[ABI recipient] at a reasonable time and with due regard for the participant’s[ABI recipient’s] right of privacy; 
(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and 
(f) Consider the cultural, educational, language, and socioeconomic characteristics of the participant[ABI recipient].

8(a)(9) An ABI provider shall have written policies and procedures for all settings that assure the participant has:

1. Rights of privacy, dignity, respect, and freedom from coercion and restraint; and 
2. Freedom of choice: 
   a. As defined by the experience of independence, individual initiative, or autonomy in making life choices, both in small everyday matters (what to eat or what to wear), and in large, life-defining matters (where and with whom to live and work); and 
   b. Including the freedom to choose: 
      (i) Services; 
      (ii) Providers; 
      (iii) Settings from among setting options including non-disability specific settings; and 
   (iv) Where to live with as much independence as possible and in the most community-integrated environment. 
(b) The setting options and choices shall be: 
1. Identified and documented in the person-centered service plan; and 
2. Based on the participant’s needs and preferences. 
(c) For a residential setting, the resources available for room and board shall be documented in the person-centered service plan. 
9. An ABI provider shall have written policies and procedures for residential settings that assure the participant has: 
(a) Privacy in the sleeping unit and living unit in a residential setting; 
(b) An option for a private unit in a residential setting; 
(c) A unit with lockable entrance doors and with only the participant and appropriate staff having keys to those doors; 
(d) A choice of roommate or housemate; 
(e) The freedom to furnish or decorate the sleeping or living units within the lease or other agreement; 
(f) Visitors of the participant’s choosing at any time and access to a private area for visitors; and 
(g) Physical accessibility, defined as easy to approach, enter, operate, or participate in a safe manner and with dignity by a person with or without a disability. 
1. Settings considered to be physically accessible shall also meet the Americans with Disabilities Act standards of accessibility for all participants served in the setting. 
2. All communal areas shall be accessible to all participants as well as have a means to enter the building (i.e., keys, security codes, etc.). 
3. Bedrooms shall be accessible to the appropriate persons. 
   a. Any modification of an additional residential condition except for the setting being physically accessible requirement shall be supported by a specific assessed need and justified in the participant’s person-centered service plan; 
   b. Regarding a modification, the following shall be documented in a participant’s person-centered service plan: 
      (i) That the modification is the result of an identified specific and individualized assessed need; 
      (ii) Any positive intervention or support used prior to the modification; 
      (iii) Any less intrusive method of meeting the participant’s need that was tried but failed; 
   (iv) A clear description of the condition that is directly proportionate to the specific assessed need; 
   (v) Regular collection and review of data used to measure the ongoing effectiveness of the modification; and 
   (vi) Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated; 

10. An assurance that interventions and supports will cause no harm to the participant. 
10(9) An assurance that the right of an ABI recipient by: 
(a) Making available a description of the rights and the means by which the rights may be exercised, including the right: 
   1. To time, space, and opportunity for personal privacy; 
   2. To retain and use personal possessions; and 
   3. For a supervised residential care, personal care, companion, or respite provider to communicate, associate and meet privately with a person of the ABI recipient’s choice, including: 
      a. The right to send and receive unopened mail; and 
      b. The right to private, accessible use of the telephone; 
   (b) Maintaining a grievance and appeals system; 
   (c) Complying with the Americans with Disabilities Act pursuant to 28 C.F.R. Part 36; and 
   (d) Prohibiting the use of: 
      1. Prone or supine restraint; 
      2. Corporal punishment; 
      3. Seclusion; 
      4. Verbal abuse; or 
   5. Any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility.

9. Current level of care certification;
   (e) Be maintained by the provider in a manner to ensure the confidentiality of the participant[ABI recipient]'s record and other personal information and to allow the participant[ABI recipient] or legal representative to determine when to share the information;
   (f) Be secured against loss, destruction, or use by an unauthorized person ensured by the provider; and
   (g) Be available to the participant[ABI recipient] or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(13) An ABI provider shall:

(a) Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;

(b) Maintain documentation of the annual TB risk assessment or negative TB test result described in paragraph (a) of this subsection for:
   1. Existing staff; or
   2. A volunteer, if the volunteer performs direct care or a supervisory function;

(c) Ensure that an employee or volunteer who tests positive for TB, or has a history of a positive TB skin test, or has a conviction of abuse, neglect, or exploitation; or

(d) Evaluate the performance of each employee upon completion of the agency’s designated probationary period, and at a minimum, annually thereafter;

(i) Conduct and document periodic and regularly scheduled supervisory visits of all professional and paraprofessional direct service staff at the service site in order to ensure that high quality, appropriate services are provided to the participant[ABI recipient];

(ii) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(iii) Not employ an employee or volunteer to transport a participant[ABI recipient], if the employee or volunteer has a conviction of Driving under the Influence (DUI) during the past year;

(iv) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse or sale of illegal drugs during the past five (5) years;

(v) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of neglect, or exploitation;

(vi) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a Cabinet for Health and Family Services finding of:
   1. Child abuse or neglect pursuant to the Central Registry; or
   2. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry; and

(vii) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual is listed on the
   1. Nurse Aide Abuse Registry pursuant to 906 KAR 1:100; or
   2. Kentucky Caregiver Misconduct Registry pursuant to 922 KAR 5:120.

(14) An ABI provider shall:

(a) Have an executive director who:
   1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and
   2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct contact staff who:
   1. Is eighteen (18) years of age or older and has a high school diploma or GED; and
   2. Has a minimum of two (2) years of experience in providing a service to an individual with a disability or has successfully completed a formalized training program approved by the department.

(15) An ABI provider shall establish written guidelines which:

(a) Ensure the health, safety, and welfare of the participant[ABI recipient];

(b) Address maintenance of sanitary conditions;

(c) Ensure each site operated by the provider is equipped with:
   1. Operational smoke detectors placed in strategic locations; and
   2. A minimum of two (2) correctly charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and with a rating of 1A10BC; and

(d) Ensure the availability of a supply of fresh and cold running water with the water temperature at a tap, for water used by the participant[ABI recipient], not exceeding 120 degrees Fahrenheit, for a Supervised Residential Care, Adult Day Training, or Adult Day Health provider;

(e) Ensure that the nutritional needs of the participant[ABI recipient] are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(f) Ensure that staff who supervise waiver participants in medication administration:
   1. Unless the employee is a licensed or registered nurse, have been provided specific training by a licensed medical professional and competency has been documented on cause and effect and proper administration and storage of medication. The training shall be provided by a nurse, pharmacist, or medical doctor; and
   2. Document on a medication log all medication administered, including:
      a. Self-administered and over-the-counter drugs; and
      b. The date, time, and initials of the person who administered the medication;

(g) Conduct and document periodic and regularly scheduled supervisory visits of all professional and paraprofessional direct service staff at the service site in order to ensure that high quality, appropriate services are provided to the participant[ABI recipient].
3. Carried in a proper container labeled with medication, dosage, and time of administration, if administered to the participant[ABI recipient] or self-administered at a program site other than the participant[recipient]'s residence;
4. Documented on a medication administration form; and
5. Properly disposed of if it is discontinued; and

(h) Establish policy and procedures for monitoring of medication administration, which shall be approved by the department before services begin to ensure that medication administration will be properly monitored under the policies and procedures as approved by the department.

(16)[(17)] An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:
(a) Be readily accessible on site;
(b) Include an evacuation drill:
1. To be conducted and documented at least quarterly; and
2. For a residential setting, scheduled to include a time when a participant[an ABI recipient] is asleep;
(c) Mandate:
1. That the result of an evacuation drill be evaluated and modified as needed; and
2. That results of the prior years' evacuation drills be maintained on site.

(17)[(18)] An ABI provider shall:
(a) Provide orientation for each new employee which shall include the agency's:
1. Mission;
2. Goals;
3. Organization; and
4. Policies and procedures;
(b) Require documentation of all training provided which shall include the:
1. Type of training;
2. Name and title of the trainer;
3. Length of the training;
4. Date of completion; and
5. Signature of the trainee verifying completion;
(c) Ensure that each employee completes ABI training consistent with the curriculum that has been approved by the department, prior to working independently with a participant[an ABI recipient], which shall include:
1. Required orientation in brain injury;
2. Identifying and reporting:
   a. Abuse;
   b. Neglect; and
   c. Exploitation;
3. Unless the employee is a licensed or registered nurse, first aid provided by an individual certified as a trainer by:
   a. The American Red Cross; or
   b. Other nationally accredited organization; and
4. Coronary pulmonary resuscitation provided by an individual certified as a trainer by:
   a. The American Red Cross; or
   b. Other nationally accredited organization;
(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually, following the first year of service:
(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, attained 2,000 hours of experience providing services to a person with a primary diagnosis of a brain injury including:
1. An occupational therapist or occupational therapy assistant providing occupational therapy;
2. A psychologist or psychologist with autonomous functioning providing psychological services;
3. A speech-language pathologist providing speech therapy;
4. A board certified behavior analyst; or
5. A physical therapist or physical therapist assistant providing physical therapy; and
(f) Ensure that prior to the date of service as a volunteer, an individual receives training which shall include:
1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;
2. Orientation to the agency;
3. A confidentiality statement; and
4. Individualized instruction on the needs of the participant[ABI recipient] to whom the volunteer shall provide services.

(18)[(19)] An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each participant[ABI recipient] served by the provider.

(20) A case management provider shall:
(a) Establish a human rights committee which shall:
1. Include an individual:
   a. With a brain injury or a family member of an individual with a brain injury;
   b. Not affiliated with the ABI provider; and
   c. Who has knowledge and experience in human rights issues;
2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months;
3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that contain human rights restrictions; and
4. Review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis;
(b) Establish a behavior intervention committee which shall:
1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;
2. Be separate from the human rights committee; and
3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that contain human rights restrictions; and
(c) Mandate:
3. Upon discharge from the ABI Waiver program.

Section 3. Participant[ABI Recipient] Eligibility, Enrollment, and Termination. (1)(a) To be eligible to receive a service in the ABI long term care waiver program, an[and] individual shall:
1. Be at least eighteen (18) years of age;
2. Have an ABI which necessitates:
   a. [1] Supervision;
   b. [2] Rehabilitative services; and
   c. [3] Long term supports; and
3. Have an ABI that involves:
   a. [1] Cognition;
   b. [2] Behavior; or
   c. [3] Physical function; and
4. Be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for ABI waiver services.
(b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection, the individual or a representative on behalf of the individual shall:
1. Apply for [15] home and community based waiver services via the MMMA portal; and
2. Complete and upload into the MWMA portal a MAP - 115 Application Intake - Participant Authorization.
(2)(a) From inception of the ABI long term care waiver through June 30, 2009, the department shall enroll an individual on a first priority basis, if the individual:
   a. Is currently being served in the ABI waiver as established in 907 KAR 3:090 and has reached maximum rehabilitation potential; or
   b. Has previously received ABI waiver services as established in 907 KAR 3:090 and is currently in a nursing facility or ICEMR/DD and meets the eligibility criteria established in this section.
(2)(b) From inception through June 30, 2009, after all first priority basis individuals outlined in subsection (2)(a) and (b) of this Section have been enrolled, the department shall enroll the
remaining ABI rehabilitation waiver waiting list individuals as described in 907 KAR 3:090, Section 7, who meet the eligibility criteria established in this section.

(4) After all individuals have been enrolled pursuant to subsections (2)(a), (2)(b), and (3) of this section. The department shall utilize a first come, first serve priority basis to enroll an individual who meets the eligibility criteria established in this section.

(3)[(5)] If funding is not available, an individual shall be placed on the ABI long term care waiting list in accordance with Section 9[2] of this administrative regulation.

(4)[(a)][(b)] A certification packet shall be entered into the MWMA portal[submitted to the department] by a case manager or support broker on behalf of the applicant.

(b) The packet shall contain:
1. A copy of the allocation letter sent to the applicant at the time funding was allocated for the applicant's participation in the ABI Long Term Care Waiver program;
2. A[(b)] An Assessment form, MAP-351. Medicaid Waiver Assessment:
   A statement of the need for ABI long term care waiver services which shall be signed and dated by a physician on a MAP 10. Waiver Services Physician's Recommendation form;
   A[(c)] A MAP-350. Long Term Care Facilities and Home and Community Based Program Certification Form,[MAP-350]; and
   A[(d)] A person-centered service plan[ of Care form, MAP-109; and
   [(e)] The ABI recipient's [MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program form].

(5)[(2)] An individual shall receive notification of potential funding allocated for the ABI long term care waiver services for the individual in accordance with this section.

(6)[(1)] An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022, including nursing facility services for a brain injury.

(7)[(1)] An individual shall:
   (a) Have a primary diagnosis that indicates an ABI with structural, non-degenerative brain injury;
   (b) Be medically stable;
   (c) Meet Medicaid eligibility requirements established in 907 KAR 20:010(1:605);
   (d) Exhibit:
      1. Cognitive damage;
      2. Behavioral damage;
      3. Motor damage; or
      4. Sensory damage;
   (e) Have a rating of at least four (4) or above on the Family Guide to the Rancho Levels of Cognitive Functioning,[The Revised Levels - Third Edition]; and
   (f) Receive notification of approval from the department.

(8)[(10)] The basis of an eligibility determination for participation in the ABI long term care waiver program shall be the:
   (a) Presenting problem;
   (b) Person-centered service plan[of care goal];
   (c) Expected benefit of the admission;
   (d) Expected outcome;
   (e) Service required; and
   (f) Cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(9)[(4)] An ABI long term care waiver service shall not be furnished to an individual if the individual is:
   (a) An inpatient of a hospital, nursing facility, or an intermediate care facility for individuals with an intellectual/mental retardation or a developmental disability; or
   (b) Receiving a service in another 1915(c) home and community based services waiver program.

(10)[(2)] The department shall make:
   (a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and
   (b) A determination of whether to admit an individual into the ABI long term care waiver program.

(11)[(3)] To maintain eligibility as a participant[an ABI recipient]:
   (a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 20:010(1:605);
   (b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022; and
   (c) Progress toward outcomes identified in the approved person-centered service plan[of care] shall not be required.

(12)[(14)] An ABI case manager or support broker provider shall notify the local DCBS office and the department using a MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program form, if the ABI recipient is:
   (a) Admitted to the ABI long term care waiver program;
   (b) Discharged from the ABI long term care waiver program;
   (c) Temporarily discharged from the ABI long term care waiver program;
   (d) Admitted to a nursing facility;
   (e) Changing the primary provider; or
   (f) Changing the case management agency.

(13)[(16)] Involuntary termination and loss of an ABI long term care waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:
   (a) An individual fails to initiate an ABI long term care waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:
      1. A statement signed by the participant[recipient] or legal representative;
      2. Copies of letters to providers; and
      3. Copies of letters from providers;
   (b) A participant[An ABI recipient] or legal representative fails to access the required service as outlined in the person-centered service plan[of care] for a period greater than sixty (60) consecutive days without good cause shown.
      1. The participant[recipient] or legal representative shall have the burden of providing documentation of good cause including:
         a. A statement signed by the participant[recipient] or legal representative;
         b. Copies of letters to providers; and
         c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension period, which shall not exceed sixty (60) days, to the participant[participant] during which time period the participant[recipient] shall initiate the ABI long term care waiver services or access the required services as outlined in the person-centered service plan[of care]. The extension shall be in writing;
   (c) A participant[An ABI recipient] changes residence outside the Commonwealth of Kentucky;
   (d) A participant[An ABI recipient] does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022;
   (e) A participant[An ABI recipient] is no longer able to be safely served in the community; or
   (f) A participant[An ABI recipient] is no longer actively participating in services within the approved person-centered service plan[of care] as determined by the person-centered interdisciplinary team.

(14)[(12)] Involuntary termination of a service to a participant[an ABI recipient] by an ABI provider shall require:
   (a) Simultaneous notice, which shall:
      1. Be sent at least thirty (30) days prior to the effective date of the action, to the:
         a. Department;
         b. Participant[ABI recipient] or legal representative; and
         c. Case manager; and
      2. Include:
a. A statement of the intended action;  
b. The basis for the intended action;  
c. The authority by which the action is taken; and  
   (b) The case manager in conjunction with the provider to:  
1. Provide the participant (ABI recipient) with the name, address, and telephone number of each current ABI provider in the state;  
2. Provide assistance to the participant (ABI recipient) in making contact with another ABI provider;  
3. Arrange transportation for a requested visit to an ABI provider site;  
4. Provide a copy of pertinent information to the participant (ABI recipient) or legal representative;  
5. Ensure the health, safety, and welfare of the participant (ABI recipient) until an appropriate placement is secured;  
6. Continue to provide supports until alternative services or another placement is secured; and  
7. Provide assistance to ensure a safe and effective service transition.

(15)(4) Voluntary termination and loss of an ABI long term care waiver program placement shall be initiated if a participant (an ABI recipient) or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.  
(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and  
(b) The participant (ABI recipient) or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Person-centered Service Plan Requirements. (1) A person-centered service plan shall be established:  
(a) For each participant; and  
(b) By the participant's person-centered service plan team.  
(2) A participant's person-centered service plan shall:  
(a) Be developed by:  
1. The participant, the participant's guardian, or the participant's representative;  
2. The participant's case manager;  
3. The participant's person-centered team; and  
4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;  
(b) Use a process that:  
1. Provides the necessary information and support to empower the participant, the participant's guardian, or the participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;  
2. Is timely and occurs at times and locations convenient for the participant;  
3. Reflects cultural considerations of the participant;  
4. Provides information:  
   a. Using plain language in accordance with 42 C.F.R. 435.905(b); and  
   b. In a way that is accessible to an individual with a disability or who has limited English proficiency;  
5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;  
6. Includes a method for the participant to request updates to the person-centered service plan as needed;  
7. Enables all parties to understand how the participant:  
   a. Learns;  
   b. Makes decisions; and  
   c. Chooses to live and work in the participant's community;  
8. Discovers the participant's needs, likes, and dislikes;  
9. Empowers the participant's person-centered team to create a person-centered service plan that:  
   a. Is based on the participant's:  
      i. Assessed clinical and support needs;  
      ii. Strengths;  
      iii. Preferences; and  
      iv. Ideas;  
   b. Encourages and supports the participant's:  
      i. Rehabilitative needs;  
      ii. Habilitative needs; and  
      iii. Long term satisfaction;  
   c. Is based on reasonable costs given the participant's support needs;  
   d. Includes:  
      i. The participant's goals;  
      ii. The participant's desired outcomes; and  
      iii. Matters important to the participant;  
   e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;  
   f. Includes:  
      i. Information necessary to support the participant during times of crisis; and  
      ii. Risk factors and measures in place to prevent crises from occurring;  
   g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;  
   h. Records the alternative home and community-based settings that were considered by the participant;  
1. Reflects the setting in which the participant resides was chosen by the participant;  
2. Is understandable to the participant and to the individuals who are important in supporting the participant;  
3. Identifies the individual or entity responsible for monitoring the person-centered service plan;  
4. Is finalized and agreed to with the informed consent of the participant or participant's legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;  
5. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;  
6. Includes those services which the individual elects to self direct; and  
7. Prevents the provision of unnecessary or inappropriate services and supports; and  
(c) Includes in all settings the ability for the participant to:  
1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience; and  
2. a. Choose when and what to eat;  
   b. Have access to food at any time;  
   c. Choose with whom to eat or whether to eat alone; and  
   d. Choose appropriating clothing according to the:  
      i. Participant's preference;  
      ii. Weather; and  
      iii. Activities to be performed;  
3. If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.  
   (a) A participant's person-centered service plan shall be:  
1. Entered into the MMWA portal by the participant's case manager; and  
2. Updated in the MMWA portal by the participant's case manager.  
   (b) A participant or participant's authorized representative shall complete and upload into the MMWA portal a MAP – 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MMWA portal.

Section 5. Case Management Requirements. (1) A case manager shall:  
   (a) 1. Be a registered nurse;  
   2. Be a licensed practical nurse; or  
   3. Be an individual with a bachelor's degree or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:
a. Psychology; 
b. Sociology;  
c. Social work;  
d. Rehabilitation counseling; or  
e. Occupational therapy;  
(b) Be independent as defined as not being employed by an  
agency that is providing ABI waiver services to the participant; or  
2. Be employed by or work under contract with a free-standing  
    case management agency; and  
(c) Have completed case management training that is  
    consistent with the curriculum that has been approved by the  
    department prior to providing case management services.  
(2) A case manager shall:  
(a) Communicate in a way that ensures the best interest of the  
    participant;  
(b) Be able to identify and meet the needs of the participant;  
(c) Be competent in the participant’s language either through  
    personal knowledge of the language or through interpretation; and  
2. Demonstrate a heightened awareness of the unique way in  
    which the participant interacts with the world around the  
    participant;  
(d) Ensure that:  
1. The participant is educated in a way that addresses the  
    participant’s:  
   a. Need for knowledge of the case management process;  
   b. Personal rights; and  
   c. Risks and responsibilities as well as awareness of available  
      services; and  
2. All individuals involved in implementing the participant’s  
    person-centered service plan are informed of changes in the scope  
    of work related to the person-centered service plan as applicable;  
(e) Have a code of ethics to guide the case manager in  
    providing case management which shall address:  
   1. Advocating for standards that promote outcomes of quality;  
   2. Ensuring that no harm is done;  
   3. Respecting the rights of others to make their own decisions;  
   4. Treating others fairly; and  
   5. Being faithful and following through on promises and  
      commitments;  
(l) Lead the person-centered service planning team; and  
2. Take charge of coordinating services through team meetings  
    with representatives of all agencies involved in implementing a  
    participant’s person-centered service plan;  
(g) Include the participant’s participation or legal  
    representative’s participation in the case management process; and  
2. Make the participant’s preferences and participation in  
    decision making a priority;  
(h) Document:  
1. A participant’s interactions and communications with other  
    agencies involved in implementing the participant’s person-  
    centered service plan; and  
2. Personal observations;  
(i) Advocate for a participant with service providers to ensure  
    that services are delivered as established in the participant’s  
    person-centered service plan;  
(j) Be accountable to:  
1. A participant to whom the case manager provides case  
    management in ensuring that the participant’s needs are met;  
2. A participant’s person-centered service plan team and  
    provide leadership to the team and follow through on commitments  
    made; and  
3. The case manager’s employer by following the employer’s  
    policies and procedures;  
(k) Stay current regarding the practice of case management  
    and case management research;  
(l) Assess the quality of services, safety of services, and cost  
    effectiveness of services being provided to a participant in order to  
    ensure that implementation of the participant’s person-centered  
    service plan is successful and done so in a way that is efficient  
    regarding the participant’s financial assets and benefits;  
(m) Document services provided to a participant by entering  
    the following into the MWMA portal:  
1. A monthly department-approved person centered monitoring  
    tool; and  
2. A monthly entry which shall include:  
   a. The month and year for the time period the note covers;  
   b. An analysis of progress toward the participant’s outcome or  
      outcomes;  
   c. Identification of barriers to achievement of outcomes;  
   d. A projected plan to achieve the next step in achievement of  
      outcomes;  
   e. The signature and title of the case manager completing the  
      note; and  
1. The date the note was generated;  
(n) Document via an entry into the MWMA portal if a participant  
   is:  
1. Admitted to the ABI long term care waiver program;  
2. Terminated from the ABI long-term care waiver program;  
3. Temporarily discharged from the ABI long term care waiver  
    program;  
4. Admitted to a hospital;  
5. Admitted to a nursing facility;  
6. Changing the primary ABI provider;  
7. Changing the case management agency;  
8. Transferred to another Medicaid 1915(c) home and  
    community based waiver service program; or  
9. Relocated to a different address; and  
(o) Provide information about participant-directed services to  
    the participant or the participant’s guardian;  
1. At the time the initial person-centered service plan is  
    developed; and  
2. At least annually thereafter and upon inquiry from the  
    participant or participant’s guardian.  
(3) A case management provider shall:  
(a) Establish a human rights committee which shall:  
1. Include an:  
   a. Individual with a brain injury or a family member of an  
      individual with a brain injury;  
   b. Individual not affiliated with the ABI provider; and  
   c. Individual who has knowledge and experience in human  
      rights issues;  
2. Review and approve each person-centered service plan with  
    human rights restrictions at a minimum of every six (6) months;  
3. Review and approve, in conjunction with the participant’s  
    team, behavior intervention plans that contain human rights  
    restrictions; and  
4. Review the use of a psychotropic medication by a participant  
    without an Axis I diagnosis; and  
(b) Establish a behavior intervention committee which shall:  
1. Include one (1) individual who has expertise in behavior  
    intervention and is not the behavior specialist who wrote the  
    behavior intervention plan;  
2. Be separate from the human rights committee; and  
3. Review and approve, prior to implementation and at a  
    minimum of every six (6) months in conjunction with the  
    participant’s team, an intervention plan that includes highly  
    restrictive procedures or contain human rights restrictions; and  
4. Complete and submit a Mayo-Portland Adaptability  
    Inventory-4 to the department for each participant:  
1. Within thirty (30) days of the participant’s admission into the  
    ABI program;  
2. Annually thereafter; and  
3. Upon discharge from the ABI waiver program.  
4(a) Case management for any participant who begins  
    receiving ABI waiver services after the effective date of this  
    administrative regulation shall be conflict free.  
(b) Conflict free case management shall be a scenario in  
    which a provider including any subsidiary, partnership, not-for- 
    profit, or for-profit business entity that has a business interest in the  
    provider who renders case management to a participant shall not  
    also provide another 1915(c) home and community based waiver  
    service to that same participant unless the provider is the only  
    willing and qualified ABI waiver services provider within thirty (30)  
    miles of the participant’s residence.  
2. An exemption to the conflict free case management
distribution of the crisis prevention and crisis response plan, and service obtained from the ABI waiver program.

The crisis prevention and response plan defines the participant’s next level of care determination or safety planning, document conflict of interest protections, separating case management and service provision functions within the provider entity and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

A participant who receives ABI waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant’s next level of care determination occurs.

During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant’s person-centered team on the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant’s:

1. Case manager; or
2. Provider of non-case management ABI waiver services.

Case management shall:
(a) Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process; and
(b) Assist a participant in the identification, coordination, and facilitation of the person centered team and person centered team meetings;
(c) Assist a participant and the person centered team to develop an individualized person-centered service plan and update it as necessary based on changes in the participant’s medical condition and supports;
(d) Include monitoring of the delivery of services and the effectiveness of the person-centered service plan, which shall:
1. Be initially developed with the participant and legal representative if appointed prior to the level of care determination;
2. Be updated within the first thirty (30) days of service and as changes or recertification occur; and
3. Include the person-centered service plan being sent to the department or its designee prior to the implementation of the effective date the change occurs with the participant;
(e) Include a transition plan that shall:
1. Be:
   a. Developed within the first thirty (30) days of service;
   b. Updated as changes or recertification occur; and
   c. Updated thirty (30) days prior to discharge;
   2. Include:
      a. The skills or service obtained from the ABI waiver program upon transition into the community; and
      b. A listing of the community supports available upon the transition;
   (f) Assist a participant in obtaining a needed service outside the plan of care available by the ABI waiver;
   (g) Be provided by a case manager who:
      1. Is a registered nurse;
      2. Is a licensed practical nurse;
      3. Is an individual who has a bachelor’s or master’s degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:
         (i) Psychology;
         (ii) Sociology;
         (iii) Social work;
         (iv) Rehabilitation counseling; or
         (v) Occupational therapy;
      4. Is employed by a free-standing case management agency;
      5. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;
      6. Shall provide a participant and legal representative with a listing of each available ABI provider in the service area;
      7. Shall maintain documentation signed by a participant or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;
      8. Shall provide a distribution of the crisis prevention and response plan, transition plan, person-centered service plan, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;
      9. Shall provide twenty-four (24) hour telephone access to a participant and chosen ABI provider;
      10. Shall ensure twenty-four (24) hour availability of services; and
      11. Shall ensure that the participant’s health, welfare, and safety needs are met; and
      (h) Be documented by a detailed staff note which shall include:
         1. The participant’s health, safety and welfare;
         2. Progress toward outcomes identified in the approved person-centered service plan;
         3. The date of the service;
         4. Beginning and ending time;
         5. The signature and title of the individual providing the service; and
         6. A quarterly summary which shall include:
            a. Documentation of monthly contact with each chosen ABI provider, and
            b. Evidence of monitoring of the delivery of services approved in the participant’s person-centered service plan and of the effectiveness of the person-centered service plan;
      (i) Case management shall involve:
         (a) A constant recognition of what is and is not working regarding a participant; and
         (b) Changing what is not working.

Section 6. Covered Services. (1) An ABI waiver service shall:
(a) Not be covered unless it has been authorized by the department; and
(b) Be provided pursuant to the participant’s person-centered service plan.
(2) An ABI waiver provider shall provide the following services to a participant:
(a) Case management services in accordance with Section 4 of this administrative regulation, which shall:
1. Include initiation, coordination, implementation, monitoring of the assessment, reassessment, and intake and eligibility process;
2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;
3. Assist an ABI recipient and the interdisciplinary team with the development of an individualized plan of care and with updating the plan of care as necessary based on changes in the recipient’s medical condition and supports;
4. Include monitoring the delivery of services and the
effectiveness of the plan of care, which shall:

a. Be initially developed with the ABI recipient and legal representative, if appointed prior to the level of care determination;
b. Be updated within the first thirty (30) days of service and as changes or recertification occur; and
c. Include sending the ABI Plan of Care form, MAP-109, to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;
5. Assist an ABI recipient in obtaining a needed service outside those available by the ABI long term care waiver;
6. Be provided by a case manager who:
a. Is a registered nurse;
b. Is a licensed practical nurse;
c. Has a bachelor’s or master’s degree in a human services field and meets all applicable requirements of the individual's particular field, including a degree in:
   (i) Psychology;
   (ii) Sociology;
   (iii) Social work;
   (iv) Rehabilitation counseling; or
   (v) Occupational therapy;
   d. Is an independent care manager; or
e. Is employed by a free-standing case management agency;
7. Be provided by a case manager who:
   a. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;
   b. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;
   c. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;
   d. Shall, within the first thirty (30) days of the service and as information is updated, provide to the chosen ABI service provider a distribution of the:
      (i) Crisis prevention and response plan;
      (ii) Transition plan;
      (iii) Plan of care; and
      (iv) Other pertinent documents;
   e. Shall provide twenty-four (24) hour telephone access to the ABI recipient and chosen ABI provider;
   f. Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:
      (i) Individual specific; and
      (ii) Updated as a change occurs and at each recertification;
   g. Shall assist an ABI recipient in planning resource use and assure protection of resources;
   h. Shall conduct one (1) face-to-face meeting with an ABI recipient within a calendar month occurring at a covered service site, with one (1) visit quarterly occurring at the ABI recipient’s residence;
   i. Shall ensure twenty-four (24) hour availability of services; and
   j. Shall ensure that the ABI recipient’s health, welfare, and safety needs are met; and
8. Be documented by a detailed staff note which shall include:
   a. A quarterly summary including documentation of:
      (i) Monthly contact with each chosen ABI provider;
      (ii) Evidence of monitoring of the delivery of services approved in the recipient’s plan of care; and
      (iii) Effectiveness of the plan of care;
   b. A description of the ABI recipient’s health, safety, and welfare;
   c. Progress toward outcomes identified in the approved plan of care;
   d. The date of the service;
   e. Beginning and ending time; and
   f. The signature and title of the individual providing the service;
   (b) Behavioral services, which shall:
   1. Be a systematic application of techniques and methods to influence or change a behavior in a desired way;
hours per day per participant[recipient] if the provider develops an individualized plan for the participant[recipient] to promote increased independence which shall:

a. Contain provisions necessary to ensure the participant[recipient]’s health, safety, and welfare;
b. Be approved by the participant[recipient]’s treatment team, with the approval documented by the provider; and
c. Contain periodic reviews and updates based on changes, if any, in the participant[recipient]’s status;

6. Shall include assistance and training with daily living skills including:

a. Ambulating;
b. Dressing;
c. Grooming;
d. Eating;
e. Toileting;
f. Bathing;
g. Meal planning;
h. Grocery shopping;
i. Meal preparation;
j. Laundry;
k. Budgeting and financial matters;
l. Home care and cleaning;
m. Leisure skill instruction; or
n. Self-medicating instruction;

7. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual’s person-centered service plan[plan];

8. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

9. Shall include accompanying or assisting a participant[an ABI recipient] while the participant[recipient] utilizes transportation services as specified in the participant’s person-centered service[participant’s plan];

10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

11. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved person-centered service plan[plan];
b. Date of the service;
c. Beginning and ending time; and
d. Signature and title of the individual providing the service.

12. The participant’s behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

13. The participant’s behavior or the risk it poses, resulting in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:

a. Wheels are removed;
b. Home is anchored to a permanent foundation; and
c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that a participant[an ABI recipient]:

a. Does not share a room with an individual of the opposite gender who is not the participant[recipient]’s spouse;
b. Does not share a room with an individual who presents a potential threat; and
c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the participant[recipient]’s health and comfort; and

17. Shall provide service and training to obtain the outcomes for the participant[recipient] as identified in the approved person-centered service plan[plan];

(e) Supervised residential care level II, which—[L_] shall;

1. Meet the requirements established in paragraph (d) of this
subsection except for the requirements established in paragraph (d)(4) and (5):

2. Be provided by:
   a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or
   b. An approved waiver provider certified at least annually by the department.

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:
   a. Consider applications for residential care in the order in which the applications are received;
   b. Base residential care decisions on the following factors:
      (i) Whether the applicant resides with a caregiver or not;
      (ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting;
      (iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;
   c. Be comprised of three (3) Cabinet for Health and Family Services employees:
      (i) With professional or personal experience with brain injury or other cognitive disabilities; and
      (ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and
   d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. Shall not have more than three (3) ABI recipients simultaneously in a home rented or owned by the ABI provider;

4. Shall provide twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:
   a. Be based on the participant's needs;
   b. Be approved by the participant's treatment team; and
   c. Be documented in the participant's person-centered service plan (of care) which shall also contain periodic reviews and updates based on changes, if any, in the participant's status; and

3. shall include assistance and training with daily living skills including:
   a. Ambulating;
   b. Dressing;
   c. Grooming;
   d. Eating;
   e. Toileting;
   f. Bathing;
   g. Meal planning;
   h. Meal preparation;
   i. Laundry;
   j. Budgeting and financial matters;
   k. Home care and cleaning;
   l. Leisure skill instruction; or
   m. Self-medication instruction;

6. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

7. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

8. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care.

9. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

10. Shall include provision of twenty-four (24) hour on-call support;

11. Shall be documented by a detailed staff note which shall document:
   a. Progress toward goals and objectives identified in the approved plan of care;
   b. The date of the service;
   c. The beginning and ending time of the service; and
   d. The signature and title of the individual providing the service;

12. Shall not include the cost of room and board;

13. Shall be provided to an ABI recipient who:
   a. Does not reside with a caregiver;
   b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting;
   c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:
   a. Wheels are removed;
   b. Home is anchored to a permanent foundation; and
   c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that an ABI recipient:
   a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;
   b. Does not share a room with an individual who presents a potential threat; and
   c. Is provided with a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort;

17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(f) Supervised residential care level III, which shall:
1. Meet the requirements established in paragraph (d) of this subsection except for the requirements established in paragraph (d)(4) and (5):

2. Be provided by:
   a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or
   b. An approved waiver provider certified at least annually by the department;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:
   a. Consider applications for residential care in the order in which the applications are received;
   b. Base residential care decisions on the following factors:
      (i) Whether the applicant resides with a caregiver or not;
      (ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting;
      (iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;
   c. Be comprised of three (3) Cabinet for Health and Family Services employees:
      (i) With professional or personal experience with brain injury or other cognitive disabilities; and
      (ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and
   d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. May be provided in a single family home, duplex, or apartment building to a participant (an ABI recipient) who lives alone or with an unrelated roommate;

4. Shall not be provided to more than two (2) participants (ABI recipients) simultaneously in one (1) apartment or home;

5. Shall not be provided in more than two (2) apartments in
one (1) building;
5.6. Shall] If provided in an apartment building, have staff:
a. Available twenty-four (24) hours per day and seven (7) days per week; and
b. Who do not reside in a dwelling occupied by a participant[an ABI recipient]; and
6.7. Shall Provide less than twelve (12) hours of supervision or support in the home based on an individualized plan developed by the provider to promote increased independence which shall:
a. Contain provisions necessary to ensure the participant[recipient's] health, safety, and welfare;
and
b. Be approved by the participant[recipient's] treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the participant[recipient's] status.[8] Shall include assistance and training with daily living skills including:
- Ambulating;
- Dressing;
- Grooming;
- Eating;
- Toileting;
- Bathing;
- Meal planning;
- Grocery shopping;
- Meal preparation;
- Laundry;
- Budgeting and financial matters;
- Home care and cleaning;
- Leisure skill instruction; or
- Self-medication instruction;
9. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;
10. Shall include provision or arrangement of transportation to social activities, or medical appointments as needed;
11. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;
12. Shall include participation in medical appointments or follow-up care as directed by the medical staff;
13. Shall be documented by a detailed staff note which shall document:
a. Progress toward goals and objectives identified in the approved plan of care;
b. The date of the service;
c. The beginning and ending time of the service;
d. The signature and title of the individual providing the service; and
and
e. Evidence of at least one (1) daily face-to-face contact with the ABI recipient;
14. Shall not include the cost of room and board;
15. Shall be provided to an ABI recipient who:
a. Does not reside with a caregiver;
b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk if presents, resulting in the need for removal from the home to a more structured setting; or
and
c. Demonstrates behavior that may result in potential legal problems if not ameliorated;
16. May utilize a modular home only if the:
a. Wheels are removed;
and
b. Home is anchored to a permanent foundation; and
c. Windows are of adequate size for an adult to use as an exit in an emergency;
17. Shall not utilize a motor home;
18. Shall provide a sleeping room which ensures that an ABI recipient:
a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;
and
b. Does not share a room with an individual who presents a potential threat; and
and
c. Has a separate bed equipped with substantial springs, a

6 clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and
19. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;
(g) Counseling services which:
1. Shall be designed to help a participant[an ABI long-term care waiver recipient] resolve personal issues or interpersonal problems resulting from the participant[recipient's] ABI;
2. Shall assist a family member in implementing a participant[an ABI long-term care waiver recipient's] approved person-centered service plan(of care);
3. In a severe case, shall be provided as an adjunct to behavioral programming;
4. Shall include substance abuse or chemical dependency treatment, if needed;
5. Shall include building and maintaining healthy relationships;
6. Shall develop social skills or the skills to cope with and adjust to the brain injury;
7. Shall increase knowledge and awareness of the effects of an ABI;
8. May include group counseling if the service is:
a. Provided to a maximum of twelve (12) participants[ABI recipients]; and
b. Included in the participant[recipient’s] approved person-centered service plan[of care] for:
   (i) Substance abuse or chemical dependency treatment;
   (ii) Building and maintaining healthy relationships;
   (iii) Developing social skills;
   (iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and
   (v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the participant[recipient's] functioning and social interactions;
9. Shall be provided by:
   a. A psychiatrist;
   b. A psychologist;
   c. A psychologist with autonomous functioning;
   d. A licensed psychological associate;
   e. A licensed social worker;
   f. A clinical nurse specialist with a master's degree in psychiatric nursing;
   g. An advanced practice registered nurse(practitioner (ARNP));
   h. A certified alcohol and drug counselor;
   i. A licensed marriage and family therapist[er]; and
   j. A licensed professional clinical counselor;
   k. A licensed alcohol and drug counselor associate effective and contingent upon approval by the Centers for Medicare and Medicaid Services; or
   l. A licensed clinical alcohol and drug counselor effective and contingent upon approval by the Centers for Medicare and Medicaid Services; and
10. Shall be documented by a detailed staff note which shall include:
a. Progress toward the goals and objectives established in the person-centered service plan[of care];
b. The date of the service;
c. The beginning and ending time; and
d. The signature and title of the individual providing the service;
(h) Family training which shall:
1. Provide training and counseling services for the families of individuals served in the ABI long term care waiver. Training to family or other responsible persons shall include:
   a. Interpretation or explanation of medical examinations and procedures;
   b. Treatment regimens;
   c. Use of equipment specified in the person-centered service plan[of care]; or
   d. Advising how to assist the participant;
2. Include updates as needed to safely maintain the participant at home;
3. Include specified goals in the participant's person-centered
service[ABI recipient's] plan[of care];
4. Be training provided to family that may include a person
   a. Lives with, or provides care to, a participant[and ABI long
term care waiver recipient]; and
   b. Is a:
      (i) Parent;
      (ii) Spouse;
      (iii) Child;
      (iv) Relative;
      (v) Foster family; or
   (vi) In-law;
5. Not include an individual who is employed to care for the
   participant[consumer];
6. Be provided by an approved ABI waiver provider that is
certified at least annually and which may include:
   a. An occupational therapist;
   b. A certified occupational therapy assistant;
   c. A licensed practical nurse;
   d. A physical therapist;
   e. A physical therapist assistant;
   f. A registered nurse;
   g. A speech-language pathologist;
   h. A psychologist;
   i. A psychologist with autonomous functioning;
   j. A licensed psychological associate;
   k. A clinical nurse specialist with a master's degree in:
      (i) Psychiatric nursing; or
      (ii) Rehabilitative nursing;
   l. An advanced practice registered nurse[practitioner
   (APRN)];
   m. A certified alcohol and drug counselor;
   n. A certified alcohol and drug counselor;
   o. A licensed professional clinical counselor;
   p. A board certified behavior analyst;
   q. A licensed clinical social worker[es];
   r. A licensed marriage and family therapist;
   s. A licensed clinical alcohol and drug counselor associate
effective and contingent upon approval by the Centers for
Medicare and Medicaid Services; or
   t. A licensed clinical alcohol and drug counselor effective
and contingent upon approval by the Centers for Medicare
and Medicaid Services;
   7. Be documented by a detailed staff note which shall include:
   a. Progress toward the goals and objectives established in the
   person-centered service plan[of care];
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;
   (i) Nursing support, which shall include:
      1. A physician order to monitor medical conditions; or
      2. A physician order for training and oversight of medical
procedures;
   2. The monitoring of specific medical conditions;
   3. Services that shall be provided by:
      a. A registered nurse who meets the definition established in
KRS 314.011(5); or
      b. A licensed practical nurse as defined by KRS 314.011(9)
who works under the supervision of a registered nurse; and
   4. Documentation by a detailed staff note which shall include:
      a. Progress toward the goals and objectives established in the
person-centered service plan[of care];
      b. The date of the service;
      c. The beginning and ending time; and
      d. The signature and title of the individual providing the service;
   (j) Occupational therapy, which shall be:
      1. A physician-ordered evaluation of a participant's[an ABI
recipient's] level of functioning by applying diagnostic and
prognostic tests;
      2. Physician-ordered services in a specified amount and
duration to guide the participant[an ABI recipient] in the use of
therapeutic, creative, and self-care activities to assist the
participant[ABI recipient] in obtaining the highest possible level of
functioning;
   3. Provided by an occupational therapist or an occupational
therapy assistant if supervised by an occupational therapist in
accordance with 201 KAR 28:130; and
   4. Documented by a detailed staff note which shall include:
      a. Progress toward goals and objectives identified in the
approved person-centered service plan[of care];
      b. The date of the service;
      c. The beginning and ending time; and
d. The signature and title of the individual providing the service;
   (k) A physical therapy service, which shall be:
      1. A physician-ordered evaluation of a participant[an ABI
recipient] by applying muscle, joint, and functional ability tests;
      2. Physician-ordered treatment in a specified amount and
duration to assist a participant[an ABI recipient] in obtaining the
highest possible level of functioning;
   3. Training of another ABI provider to improve the level of
functioning of the participant[recipient] in that provider's service
setting;
   4. Provided by a physical therapist or a physical therapist
assistant supervised by a physical therapist in accordance with 201
KAR 22:01 and 201 KAR 22:02; and
   5. Documented by a detailed staff note, which shall include:
      a. Progress made toward outcomes identified in the person-
centered service plan[of care];
      b. The date of the service;
      c. The beginning and ending time of the service; and
      d. The signature and title of the individual providing the service;
   (l) A respite service, which shall:
      1. Be provided only to a participant[an ABI long term care
waiver recipient] unable to administer self-care;
      2. Be provided by:
         a. Nursing facility;
         b. Community mental health center;
         c. Home health agency;
         d. Supervised residential care provider;
         e. Adult day training provider; or
         f. Adult day health care provider;
      3. Be provided on a short-term basis due to the absence or
need for relief of a non-paid primary caregiver[an individual
providing care to an ABI long term care waiver recipient];
      4. Be limited to 5,760 fifteen (15) minute units per one
(1) calendar year authorized person-centered service plan period
unless an individual's non-paid primary[usual] caregiver is unable
to provide care due to:
         a. Death in the family;
         b. Serious illness; or
         c. Hospitalization;
      5. Not be provided to a participant[an ABI long term care
waiver recipient] who receives supervised residential care;
      6. Not include the cost of room and board if provided in a
nursing facility; and
   7. Be documented by a detailed staff note, which shall include:
      a. Progress toward goals and objectives identified in the
approved person-centered service plan[of care];
      b. The date of the service;
      c. The beginning and ending time; and
d. The signature and title of the individual providing the service;
   (m) Speech-language pathology[therapy] services, which shall be:
      1. A physician-ordered evaluation of a participant[an ABI
recipient] with a speech, hearing, or language disorder;
      2. A physician-ordered habilitative service in a specified
amount and duration to assist a participant[an ABI recipient] with a
speech and language disability in obtaining the highest possible
level of functioning;
      3. Provided by a speech-language pathologist; and
   4. Documented by a detailed staff note, which shall include:
      a. Progress toward goals and objectives identified in the
approved person-centered service plan[of care];
      b. The date of the service;
      c. The beginning and ending time; and
d. The signature and title of the individual providing the service;
(n) Adult day training services, which shall:

1. Be provided by:
   a. An adult day training center that is certified at least annually by the department;
   b. An outpatient rehabilitation facility that is licensed and operating in accordance with 902 KAR 20:190; or
   c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;

2. Focus on enabling the participant to attain or maintain the maximum functional level and reintegrate the participant into the community;

3. Not exceed a staffing ratio of five (5) participants per one (1) staff person unless a participant requires individualized special service;

4. Include the following services:
   a. Social skills training related to problematic behaviors identified in the participant’s person-centered service plan;
   b. Sensory or motor development;
   c. Reduction or elimination of a maladaptive behavior;
   d. Prevocational; or
   e. Teaching concepts and skills to promote independence including:
      (i) Following instructions;
      (ii) Attention and punctuality;
      (iii) Task completion;
      (iv) Budgeting and money management;
      (v) Problem solving; or
      (vi) Safety;

5. Be provided in a nonresidential setting;

6. Be developed in accordance with an ABI long term care waiver recipient’s overall approved person-centered service plan;

7. Reflect the recommendations of a participant’s interdisciplinary team;

8. Be appropriate:
   a. Given a participant’s ability prior to and after the participant’s injury; and
   b. According to the approved person-centered service plan and be therapeutic in nature and not diversional;

9. Be coordinated with the occupational, speech, or other rehabilitation therapy included in a participant’s person-centered service plan;

10. Provide a participant’s overall approved person-centered service plan with an organized framework within which to function in the participant’s daily activities;

11. Entail frequent assessments of a participant’s progress and be appropriately revised as necessary; and

12. Be documented by a detailed staff note, which shall include:
   a. Progress toward goals and objectives identified in the approved person-centered service plan;
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;

(o) Adult day health care services, which shall:

1. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20:066; and

2. Include the following basic services and necessities provided to a participant during the posted hours of operation:
   a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:
      (i) Ostomy care;
      (ii) Urinary catheter care;
      (iii) Decubitus care;
      (iv) Tube feeding;
   b. Given a participant’s need;
   c. Meals; and
   d. Included in the approved person-centered service plan.

(p) Inpatient rehabilitation care services, which shall:

1. Be rehabilitative in nature;

2. Be provided in an inpatient rehabilitation facility;

3. Be provided in accordance with Medicare, Medicaid, or private insurances;

4. Be provided for a minimum of one (1) meal per day and therapeutic diets as required;

5. Be provided for a minimum of one (1) meal per day and therapeutic diets as required;

6. Be provided in a nonresidential setting;

7. Be developed in accordance with a participant’s plan of care;

8. Reflect the recommendations of a participant’s interdisciplinary team;

9. Be appropriate:
   a. Given a participant’s ability prior to and after the participant’s injury; and
   b. According to the approved person-centered service plan and be therapeutic in nature and not diversional;

10. Be coordinated with the occupational, speech, or other rehabilitation therapy included in a participant’s person-centered service plan;

11. Provide a participant’s overall approved person-centered service plan with an organized framework within which to function in the participant’s daily activities;

12. Entail frequent assessments of a participant’s progress and be appropriately revised as necessary; and

13. Be documented by a detailed staff note, which shall include:
   a. Progress toward goals and objectives identified in the approved person-centered service plan;
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;

14. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20:066; and

15. Include the following basic services and necessities provided to a participant during the posted hours of operation:
   a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:
      (i) Ostomy care;
      (ii) Urinary catheter care;
      (iii) Decubitus care;
      (iv) Tube feeding;
   b. Given a participant’s need;
   c. Meals; and
   d. Included in the approved person-centered service plan.

16. Be provided in an inpatient rehabilitation facility;

17. Be provided in accordance with Medicare, Medicaid, or private insurances;

18. Be provided for a minimum of one (1) meal per day and therapeutic diets as required;

19. Be provided for a minimum of one (1) meal per day and therapeutic diets as required;

20. Be provided in a nonresidential setting;

21. Be developed in accordance with a participant’s plan of care;

22. Reflect the recommendations of a participant’s interdisciplinary team;

23. Be appropriate:
   a. Given a participant’s ability prior to and after the participant’s injury; and
   b. According to the approved person-centered service plan and be therapeutic in nature and not diversional;

24. Be coordinated with the occupational, speech, or other rehabilitation therapy included in a participant’s person-centered service plan;

25. Provide a participant’s overall approved person-centered service plan with an organized framework within which to function in the participant’s daily activities;

26. Entail frequent assessments of a participant’s progress and be appropriately revised as necessary; and

27. Be documented by a detailed staff note, which shall include:
   a. Progress toward goals and objectives identified in the approved person-centered service plan;
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;

28. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20:066; and

29. Include the following basic services and necessities provided to a participant during the posted hours of operation:
   a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:
      (i) Ostomy care;
      (ii) Urinary catheter care;
      (iii) Decubitus care;
      (iv) Tube feeding;
   b. Given a participant’s need;
   c. Meals; and
   d. Included in the approved person-centered service plan.

30. Be provided in an inpatient rehabilitation facility;

31. Be provided in accordance with Medicare, Medicaid, or private insurances;

32. Be provided for a minimum of one (1) meal per day and therapeutic diets as required;

33. Be provided for a minimum of one (1) meal per day and therapeutic diets as required;

34. Be provided in a nonresidential setting;

35. Be developed in accordance with a participant’s plan of care;

36. Reflect the recommendations of a participant’s interdisciplinary team;

37. Be appropriate:
   a. Given a participant’s ability prior to and after the participant’s injury; and
   b. According to the approved person-centered service plan and be therapeutic in nature and not diversional;

38. Be coordinated with the occupational, speech, or other rehabilitation therapy included in a participant’s person-centered service plan;

39. Provide a participant’s overall approved person-centered service plan with an organized framework within which to function in the participant’s daily activities;

40. Entail frequent assessments of a participant’s progress and be appropriately revised as necessary; and

41. Be documented by a detailed staff note, which shall include:
   a. Progress toward goals and objectives identified in the approved person-centered service plan;
   b. The date of the service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;

42. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20:066; and

43. Include the following basic services and necessities provided to a participant during the posted hours of operation:
   a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:
      (i) Ostomy care;
      (ii) Urinary catheter care;
      (iii) Decubitus care;
      (iv) Tube feeding;
   b. Given a participant’s need;
   c. Meals; and
   d. Included in the approved person-centered service plan.
language pathology service[therapy] requirements established in[Technical Criteria for Reviewing Ancillary Services for Adults in accordance with] 907 KAR 1:030, Section[Sections] 3 [and 6];

9. Be provided to a participant[an ABI long term care waiver recipient] by the health team in an adult day health care center, which may include:
   a. A physician;
   b. A physician assistant;
   c. An advanced practice registered nurse[practitioner (APRN)];
   d. A registered nurse;
   e. A licensed practical nurse;
   f. An activities director;
   g. A physical therapist;
   h. A physical therapist assistant; and
   i. An occupational therapist.

10. Be provided pursuant to a plan of treatment and developed annually in accordance with 902 KAR 20:066 and from information in the MAP 351 Medicaid Waiver Assessment and revised as needed and:
11. Be documented by a detailed staff note, which shall include:
   a. Progress toward goals and objectives identified in the approved person-centered service plan[of care];
   b. The date of the service;
   c. The beginning and ending time;
   d. The signature and title of the individual providing the service; and
   e. A monthly summary that assesses the participant's status related to the approved person-centered service plan[of care].

(p) Supported employment, which shall be:
1. Intensive, ongoing services for a participant[an ABI long term care waiver recipient] to maintain paid employment in an environment in which an individual without a disability is employed;
2. Provided by a:
   a. Supported employment provider;
   b. Sheltered employment provider; or
   c. Structured day program provider;
3. Provided one-on-one;
4. Unavailable under a program funded by either the
5. Limited to forty (40) hours per week alone or in combination with adult day training or adult day health services;
6. An activity needed to support paid work by a participant[an ABI long term care waiver recipient] receiving waivers services, including:
   a. Supervision; and
   b. Training;
   7. Exclusive of work performed directly for the supported employment provider; and
8. Documented by a time and attendance record, which shall include:
   a. Progress toward the goals and objectives identified in the person-centered service plan[of care];
   b. The date of service;
   c. The beginning and ending time; and
   d. The signature and title of the individual providing the service;
(q) Specialized medical equipment and supplies, which shall:
1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;
2. Enable a participant[an ABI recipient] to increase his or her ability to perform daily living activities or to perceive, control, or communicate with the environment;
3. Be ordered by a physician, documented in a participant's person-centered service plan, entered into the MMWA portal by the participant's case manager or support broker, and submitted on a Request for Equipment Form, MAP 95, and include three (3) estimates if the equipment is needed for vision and hearing;
4. Include equipment necessary for the proper functioning of specialized items;
5. Not be available through the department's durable medical equipment, vision, or hearing programs;
6. Not be necessary for life support;
7. Meet applicable standards of manufacture, design, and installation; and
8. Exclude those items which are not of direct medical or remedial benefit to a participant[an ABI recipient];
   (r) Environmental and minor home adaptations, which shall:
   1. Be provided in accordance with applicable state and local building codes;
   2. Be provided to a participant[an ABI recipient] if:
   a. Ordered by a physician;
   b. Prior-authorized by the ABI;
   c. Specified in the participant's approved person-centered service plan and entered into the MMWA portal[Submitted on a Request for Equipment Form, MAP 95], by the participant's case manager or support broker;
   d[Specified in an ABI long term care waiver recipient's approved plan of care.]
   Necessary to enable the participant[an ABI recipient] to function with greater independence within the participant's[recipient's] home and;
   e[Specified in an ABI long term care waiver recipient's approved plan of care.]
   Without the modification, the participant[ABI recipient] requires institutionalization;
   3. Not include a vehicle modification;
   4. Be limited to no more than $2,000 for a participant[an ABI recipient] in a twelve (12) month period; and
5. If entail:
   a. Electrical work, be provided by a licensed electrician; or
   b. Plumbing work, be provided by a licensed plumber;
   (s) Assessment services, which shall:
   1. Be a comprehensive assessment[which] shall identify a participant's[an ABI long term care waiver recipient's] needs and the services that the participant's[recipient's] family cannot manage or arrange for the participant[recipient];
   2. Evaluate a participant's[an ABI long term care waiver recipient's] physical health, mental health, social supports, and environment;
   3. Be requested by an individual requesting ABI services or a family or legal representative of the individual;
   4. Be conducted by an ABI case manager or support broker;
   5. Be conducted within seven (7) calendar days of receipt of the request for assessment; and
   6. Include at least one (1) face-to-face contact with the participant[ABI long term care waiver recipient] and, if appropriate, the participant's[recipient's] family by the assessor in the participant's[ABI long term care waiver recipient's] home;
7. Not be reimbursable if the individual does not receive a level of care certification; or
   (t) Reassessment services, which shall:
   1. Be performed at least every twelve (12) months;
   2. Be conducted using the same procedures as for an assessment service;
   3. Be conducted by an ABI case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
   4. Not be reimbursable if conducted during a period that the participant[ABI long term care waiver recipient] is not covered by a valid level of care certification; and
5. Not be retroactive.

Section 7.5. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:
(1) A stroke treatable in a nursing facility providing routine
rehabilitation services;
(2) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;
(3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including:
(a) Senile dementia;
(b) Organic brain disorder;
(c) Alzheimer’s disease;
(d) Alcoholism; or
(e) Another addiction;
(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
(5) A birth defect;
(6) An intellectual disability (Mental Retardation) without an etiology to an acquired brain injury; or
(7) A condition which causes an individual to pose a level of danger or an aggression that is unable to be managed and treated in a community.

Section 8(6) Incident Reporting Process. (1)(a) There shall be two (2) classes of incidents.

(b) The following shall be the two (2) classes of incidents:
   1. An incident; or
   2. A critical incident.
   (2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
      (a) A minor injury;
      (b) A medication error without a serious outcome; or
      (c) A behavior or situation that is not a critical incident.
   (3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
      (a) Can reasonably be expected to result in harm to a participant; and
      (b) Shall include:
         1. Abuse, neglect, or exploitation;
         2. A serious medication error;
         3. Death;
         4. A homicidal or suicidal ideation;
         5. A missing person; or
         6. Other action or event that the provider determines may result in harm to the participant.

   (4)(a) If an incident occurs, the ABI provider shall:
      1. Report the incident by making an entry into the MWMA portal that includes details regarding the incident; and
      2. Be immediately assessed for potential abuse, neglect, or exploitation.
   (b) If an assessment of an incident indicates that the potential for or actual abuse, neglect, or exploitation exists:
      1. The individual who discovered or witnessed the incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant;
      2. The incident shall immediately be considered a critical incident;
      3. The critical incident procedures established in subsection (5) of this section shall be followed; and

   (5)(a) If a critical incident occurs, the individual who witnessed the incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant;
   (b) If the critical incident:
      1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA portal by the individual who witnessed or discovered the critical incident; or
      2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA portal by the individual who witnessed or discovered the critical incident within eight (8) hours of discovery.
   (c) The ABI provider shall:

1. Conduct an immediate investigation and involve the participant’s case manager in the investigation; and
2. Prepare a report of the investigation, which shall be recorded in the MWMA portal and shall include:
   a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
   b. Details of the critical incident; and
   c. Relevant participant information including:
      i. Axis I diagnosis or diagnoses;
      ii. Axis II diagnosis or diagnoses;
      iii. Axis III diagnosis or diagnoses;
      iv. A listing of recent medical concerns;
      v. An analysis of causal factors; and
      vi. Recommendations for preventing future occurrences.
   (d) If a critical incident does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA portal within eight (8) hours of discovery.

(7)(a) Following a death of a participant receiving ABI services from an ABI provider, the ABI provider shall enter mortality data documentation into the MWMA portal within fourteen (14) days of the death.

(b) Mortality data documentation shall include:
   1. The participant’s person-centered service plan at the time of death;
   2. Any current assessment forms regarding the participant;
   3. The participant’s medication administration records from all service sites for the past three (3) months along with a copy of each prescription;
   4. Progress notes regarding the participant from all service elements for the past thirty (30) days;
   5. The results of the participant’s most recent physical exam;
   6. All incident reports, if any exist, regarding the participant for the past six (6) months;
   7. Any medication error report, if any exists, related to the participant for the past six (6) months;
   8. The most recent psychological evaluation of the participant;
   9. A full life history of the participant including any update from the last version of the life history;
   10. Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant’s life;
   11. Emergency medical services notes regarding the participant if available;
   12. The police report if available;
   13. A copy of:
      a. The participant’s advance directive, medical order for scope of treatment, living will, or health care directive if applicable;
      b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and
      c. The cardiopulmonary resuscitation and first aid card for any ABI provider’s staff member who was present at the time of the incident that resulted in the participant’s death.
   14. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and
   15. A record of any training for any staff member present at the time of the incident which resulted in the participant’s death.

(8)(a) An ABI provider shall report a medication error to the MWMA portal.

(b) An ABI provider shall document all medication error details on a medication error log retained on file at the ABI provider site documented on an Incident Report form, MAP-045.

(c) There shall be three (3) classes of incidents as follows:
   a. A class I incident which shall:
      1. Be minor in nature and not create a serious consequence;
      2. Not require an investigation by the provider agency;
      3. Be reported within twenty-four (24) hours to:
         a. Case manager; or
         b. Support broker;
      4. Be reported to the guardian as directed by the guardian; and
      5. Be retained on file at:
         a. Provider and case management agency; or
b. Support brokerage agency;  
   (b) A class II incident which shall:  
      1. Be serious in nature;  
      b. Include a medication error; or  
   c. Involve the use of a physical or chemical restraint;  
   2. Require an investigation which shall:  
      a. Be initiated by the provider agency within twenty-four (24) 
         hours of discovery; and  
      b. Involve the case manager or support broker; and  
      3. Be reported to the following by the provider agency:  
         a. The case manager or support broker within twenty-four (24) 
            hours of discovery;  
         b. The guardian within twenty-four (24) hours of discovery; and  
         c. ABIB within twenty-four (24) hours of discovery followed by:  
            (i) A complete written report of the incident investigation; and  
            (ii) Follow-up within ten (10) calendar days of discovery; and  
      (d) A class III incident which shall:  
         a. Be grave in nature;  
         b. Involve suspected:  
            (i) Abuse;  
            (ii) Neglect; or  
            (iii) Exploitation;  
      c. Involve a medication error which requires a medical intervention; or  
      d. Be a death.  
   2. Be immediately investigated by the provider agency, and the 
      investigation shall involve the case manager or support broker; and  
   3. Be reported to the provider agency by:  
      a. The case manager or support broker within eight (8) hours 
         of discovery;  
      b. DCBS immediately upon discovery, if involving suspected 
         abuse, neglect, or exploitation in accordance with KRS Chapter 
         208;  
      c. The guardian within eight (8) hours of discovery; and  
      d. ABIB within eight (8) hours of discovery followed by:  
         (i) A complete written report of the incident investigation; and  
         (ii) Follow-up within seven (7) calendar days of discovery.  
      4. If an incident occurs after 5 p.m. EST on a weekday or occurs 
         on a weekend or holiday, notification to ABIB shall occur on the 
         following business day.  
   (3) The following documentation with a complete written report 
      shall be submitted for a death:  
      (a) A current plan of care;  
      (b) A current list of prescribed medications including PRN 
         medications;  
      (c) A current crisis plan;  
      (d) Medication administration documentation for the current 
         and previous month;  
      (e) Staff notes from the current and previous month including 
         details of physician and emergency room visits;  
      (f) Any additional information requested by the department;  
      (g) A coroner’s report; and  
      (h) If performed, an autopsy report.  

Section 9[7] ABI Long Term Care Waiver Waiting List. (1) An 
individual eighteen (18) years of age or older applying for an ABI 
long term care waiver service shall be placed on a statewide ABI 
long term care waiver waiting list that which shall be maintained 
by the department.  
(2) In order to be placed on the ABI long term care waiver 
waiting list, an individual or the individual’s representative shall:  
(a) Apply for 1915(c) home and community based waiver 
   services via the MWMA portal;  
(b) Complete and upload into the MWMA portal a MAP – 115 
   Application Intake – Participant Authorization; and  
(c) Upload into the MWMA portal[submit to the department] a 
   completed[-(a)] MAP-26, Program Application Kentucky Medicaid 
   Program Acquired Brain Injury (ABI) Waiver Services Program; 
   and (b)] MAP 10, Waiver Services Physician’s Recommendation 
   form that has been signed by a physician.  
(3) The order of placement on the ABI long term care waiver 
waiting list shall be determined by the:  
(a) Chronological date of complete application information 
   regarding the individual being entered into the MWMA 
   portal[receipt of the MAP 10, Waiver Services Physician’s 
   Recommendation form];  
(b) Category of need of the individual as follows:  
   1. Emergency. An emergency shall exist if an immediate 
      service is indicated as determined by:  
      a. The individual currently is demonstrating behavior related to 
         the individual’s acquired brain injury that places the 
         participant[recipient], caregiver, or others at risk of significant 
         harm; or  
      b. The individual is demonstrating behavior related to the 
         individual’s acquired brain injury which has resulted in the 
         individual’s arrest; or  
   2. Nonemergency; and  
   (c)[12a] Emergency Committee, which shall consider 
   applications for the Acquired Brain Injury long term care waiver 
   program for emergency placement. The Emergency Committee 
   meetings shall regularly occur during the fourth week of each 
   month. To be considered at the monthly committee meeting, an 
   application shall be received by the department no later than three 
   (3) business days before the scheduled committee meeting.  
   1. The Emergency Review Committee shall be comprised of 
      three (3) program staff of the cabinet.  
      a. Each member shall have professional or personal 
         experience with brain injuries or other cognitive disabilities.  
      b. At least two (2) members shall not be supervised by the 
         branch manager of the Acquired Brain Injury Branch.  
      c. In determining a program need, the original date of the 
         individual’s complete application information being entered into the 
         MWMA portal[receipt of the MAP 26, Program Application 
         Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver 
         Services Program form, and the MAP 10, Waiver Services 
         Physician’s Recommendation form[,] shall;  
         (a) Be maintained; and  
         (b) Not changed[changed] if an individual is moved from one (1) 
            category of need to another.  
      (5) A written statement by a physician or other qualified mental 
         health professional shall be required to support the validation of 
         the risk of significant harm to an individual or caregiver, or the nature 
         of the individual’s medical need.  
   (6) Written documentation by law enforcement or court 
      personnel shall be required to support the validation of a history of 
      an incident.  
   (7)[If multiple applications are received on the same date, 
      a lottery shall be held to determine placement on the waiting list 
      within each category of need.  
   (8) A written notification of placement on the waiting list shall 
      be mailed to the individual or the individual’s legal representative 
      and case management provider if identified.  
   (9)[10] Maintenance of the ABI long term care waiver 
      waiting list shall occur as follows:  
      (a) The department shall, at a minimum, update the waiting list 
         annually; and  
      (b) If an individual is removed from the ABI long term care 
         waiver waiting list, written notification shall be mailed by 
         the department to the:  
         1. Individual;  
         2. Individual’s legal representative; and  
         3. ABI case manager.  
   (9)[14] Reassignment of category of need shall be completed 
      based on the updated information and validation process.  
   (10)[14] An individual or legal representative may submit a 
      request for consideration of movement from one (1) category of 
      need to another at any time an individual’s status changes.  
   (11)[14] An individual shall be removed from the ABI long term 
      care waiver waiting list if:  
      (a) After a documented attempt, the department is unable to 
         locate the individual or the individual’s legal representative;  
      (b) The individual is deceased[dead];  
      (c) The individual or individual’s legal representative refuses 
         the offer of ABI long term care waiver services and does not 
         request to be maintained on the ABI long term care waiver waiting 
         list;
An ABI placement for services offer is refused by the individual or legal representative; or
(e) The individual does not access services without demonstration of good cause within sixty (60) days of the placement allocation date.

1. The individual or individual’s legal representative shall have the burden of providing documentation of good cause including:
   a. A signed statement by the individual or the legal representative;
   b. Copies of letters to providers; and
   c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(12) If an individual is removed from the ABI long term care waiver waiting list, written notification shall be mailed by the department to the:
   a. Individual or to the individual’s legal representative; and
   b. ABI case manager.

(13)(14) The removal of an individual from the ABI long term care waiver waiting list shall not prevent the submittal of a new application.

(14)(15) Potential funding allocated for services for an individual shall be based upon:
   a. The individual’s category of need; and
   b. The individual’s chronological date of placement on the ABI long term care waiver waiting list.

Section 10 Participant[Consumer] Directed Services[Option]. (1) Covered services and supports provided to a participant receiving PDS[an ABI long term care waiver recipient participating in CDO] shall include:
   a. A home and community support service, which shall:
      1. Be available only as a participant[under the consumer’s] directed service[option];
      2. Be provided in the participant’s[consumer’s] home or in the community;
      3. Be based upon therapeutic goals and not be diversional in nature;
      4. Not be provided to an individual if the same or similar service is being provided to the individual by a non-PDS[CDO] acquired brain injury service; and
   5. Be respite for the primary caregiver; or
   6. Supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in the individual’s own home or the home of a family member and may include:
      (i) Routine household tasks and maintenance;
      (ii) Activities of daily living;
      (iii) Personal hygiene;
      (iv) Shopping;
      (v) Money management;
      (vi) Medication management;
      (vii) Socialization;
      (viii) Relationship building;
      (ix) Meal planning;
      (x) Meal preparation;
      (xi) Grocery shopping; or
      (xii) Participation in community activities;
   b. Goods and services, which shall:
      1. Be individualized;
      2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the participant[recipient];
      3. Not include experimental goods or services; and
      4. Not include chemical or physical restraints; and
   c. A community day support service, which shall:
      1. Be available only as a participant-directed service[under the consumer-directed option];
      2. Be provided in a community setting;
      3. Be tailored to the participant[consumer’s] specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant[consumer] for:
         a. Work or community activities;
         b. Socialization; and
         c. Leisure or retirement activities;
      4. Be based upon therapeutic goals and not be diversional in nature; and
      5. Not be provided to an individual if the same or similar service is being provided to the individual by a non-PDS[CDO] acquired brain injury service.

(2) To be covered, a PDS[CDO] service shall be specified in a participant’s person-centered service[consumer’s] plan[of care].

(3) Reimbursement for a PDS[CDO] service shall not exceed the department’s allowed reimbursement for the same or similar service provided in a non-PDS[CDO] ABI setting.

(4) A participant[consumer], including a married participant[consumer], shall choose a provider and the choice of PDS[CDO] provider shall be documented in the participant’s person-centered service[consumer’s] plan[of care].

(5) A participant[consumer] may designate a representative to act on the participant[consumer’s] behalf.

(b) The PDS[CDO] representative shall:
   1. Be twenty-one (21) years of age or older; and
   2. Not be monetarily compensated for acting as the PDS[CDO] representative or providing a PDS[CDO] service; and

(6) A participant[consumer] may voluntarily terminate PDS[CDO] services by completing a MAP-2000, Initiation/Termination of Participant-Directed Services and submitting it to the support broker.

(7) The department shall immediately terminate a participant[consumer] from receiving PDS[CDO] services if:
   a. Imminent danger to the participant[consumer’s] health, safety, or welfare exists;
   b. The participant[consumer] fails to pay patient liability;
   c. The participant[consumer’s] person-centered service[consumer’s] plan[of care] indicates the participant[consumer] requires more hours of service than the program can provide, jeopardizing the participant[consumer’s] safety and welfare due to being left alone without a caregiver present; or
   d. The participant[consumer], caregiver, family, or guardian threatens or intimidates a support broker or other PDS[CDO] staff.

(8) The department may terminate a participant[consumer] from receiving PDS[CDO] services if the department determines that the participant’s PDS[consumer’s] CDO provider has not adhered to the person-centered service plan[of care].

(9) Except as provided in subsection (7) of this section, prior to a participant[consumer’s] termination from receiving PDS[CDO services], the support broker shall:
   a. Notify the assessment or reassessment service provider of potential termination;
   b. Assist the participant[consumer] in developing a resolution and prevention plan;
   c. Allow at least thirty (30), but no more than ninety (90), days for the participant[consumer] to resolve the issue, develop and implement a prevention plan, or designate a PDS[CDO] representative;
   d. Complete and submit to the department a MAP-2000, Initiation/Termination of Participant-Directed Services[form] terminating the participant[consumer] from receiving PDS[CDO services] if the participant[consumer] fails to meet the requirements in paragraph (c) of this subsection; and
   e. Assist the participant[consumer] in transitioning back to traditional ABI services.

(10) Upon an involuntary termination of PDS[CDO services], the department shall:
   a. Notify a participant[consumer] in writing of its decision to terminate the participant’s PDS[consumer’s] CDO participation; and
   b. Except if the participant[consumer] failed to pay patient liability, inform the participant[consumer] of the right to appeal the department’s decision in accordance with Section 10(4) of this administrative regulation.

(11) A PDS[CDO] provider shall:

1026
(a) Be selected by the participant[consumer];
(b) Submit a completed Kentucky Participant[Consumer] Directed Services[Option] Employee Provider Contract to the support broker;
(c) Be eighteen (18) years of age or older;
(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;
(e) Be able to communicate effectively with the participant[consumer], participant[consumer]representative, or family;
(f) Be able to understand and carry out instructions;
(g) Be able to keep records as required by the participant[consumer];
(h) Submit to a criminal background check conducted by:
   1. The Administrative Office of the Courts if the individual is a Kentucky resident;
   or
   2. An equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of PDS[CDD]services;
   (i) Submit to a check of the Central Registry maintained in accordance with 596 KAR 1:470 and not be found on the registry;
   1. A participant[consumer] may employ a provider prior to a Central Registry check result being obtained for up to thirty (30) days.
   2. If a participant[consumer] does not obtain a Central Registry check result within thirty (30) days of employing a provider, the participant[consumer] shall cease employment of the provider until a favorable result is obtained;
   (j) Submit to a check of the:
      1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry; and
      2. Caregiver Misconduct Registry in accordance with 922 KAR 5:120 and not be found on the registry;
   (k) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3); and
   (l) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant[consumer];
   (m) Be approved by the department;
   (n) Maintain and submit timesheets documenting hours worked; and
   (o) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant[consumer].
12. A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.
13.(a) The department shall establish a budget for a participant[consumer] based on the individual's historical costs in any Medicaid waiver program minus five (5) percent to cover costs associated with administering participant[the consumer] directed services[option].
(b) If no historical cost exists for the participant[consumer], the participant[consumer]'s budget shall equal the average per capita historical costs of a participant[an ABI waiver recipient] participating in the ABI waiver program established by 907 KAR 3:090 minus five (5) percent.
(c)(b) Cost of services authorized by the department for the participant[consumer]'s prior year person-centered service plan [of care] but not utilized may be added to the budget if necessary to meet the individual's needs.
(d)(c) The department may adjust a participant[consumer]'s budget based on the participant[consumer]'s needs and in accordance with paragraph[d] and [e] and [f] of this subsection.
(e)(d) A participant[consumer]'s budget shall not be adjusted to a level higher than established in paragraph [a] of this subsection unless:
   1. The participant[consumer]'s support broker requests an adjustment to a level higher than established in paragraph [a] of this subsection;
   and
   2. The department approves the adjustment.
(f)(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:
   1. If the proposed services are necessary to prevent imminent institutionalization;
   2. The cost effectiveness of the proposed services;
   3. Protection of the participant[consumer]'s health, safety, and welfare; or
   4. If a significant change has occurred in the participant[recipient]'
      a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;
      b. Natural support system; or
      c. Environmental living arrangement resulting in the participant[recipient]'
      (11) A participant[consumer]'s budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.
14. Unless approved by the department pursuant to subsection [13][12] through [11][10] of this section, if a PDS[CDD] service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-PDS[CDD]) waiver service provider.
15. A support broker shall:
   (a) Provide needed assistance to a participant[consumer] with any aspect of PDS[CDD] or blended services;
   (b) Be available by phone or in person to a participant[consumer] twenty-four (24) hours per day, seven (7) days per week to assist the participant[consumer] in obtaining community resources as needed;
   (c) Comply with applicable federal and state laws and requirements;
   (d) Continually monitor a participant[consumer]'s health, safety, and welfare; and
   (e) Complete or revise a person-centered service plan[of care] using person-centered planning principles.
16. For a(CDD) participant receiving PDS, a support broker may conduct an assessment or reassessment.
17. Financial management services shall:
   (a) Include managing, directing, or dispersing a participant[consumer]'s funds identified in the participant[consumer]'s approved PDS[CDD] budget;
   (b) Include payroll processing associated with an individual hired by a participant[consumer] or the participant[consumer]'s representative;
   (c) Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a participant[consumer];
   (d) Be performed by an entity:
      1. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
      2. With at least two (2) years of experience working with acquired brain injury; and
   (e) Include preparing fiscal accounting and expenditure reports for:
      1. A participant[consumer] or participant[consumer]'s representative; and
      2. The department.
Section 11. Reimbursement and Coverage. (1) The department shall reimburse a participating provider for a service provided to a Medicaid eligible person who meets the ABI long term care waiver program requirements as established in this administrative regulation.
(2) The department shall reimburse an ABI participating long term waiver provider for a prior-authorized ABI long term waiver service[] if the service is:
   (a) Included in the person-centered service plan;
   (b) [of care and is] Medically necessary; and
   (c)(b) Essential to provide an alternative to institutional care to an individual with an acquired brain injury who[that] requires maintenance services;
   (d) Exclusions to acquired brain injury long term care waiver program. Under the ABI long term care waiver program, the
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

department shall not reimburse a provider for a service provided:
(a) To an individual who does not meet the criteria established
in Section 3 of this administrative regulation; or
(b) Which has not been prior authorized as a part of the
person-centered service plan of care.
(4) Payment Amounts:
(a) A participating ABI long term care waiver service provider
shall be reimbursed a fixed rate for reasonable and medically
necessary services for a prior-authorized unit of service provided to
a participant.
(b) A participating ABI long term care waiver service provider
certified in accordance with this administrative regulation shall be
reimbursed at the lesser of:
1. The provider’s usual and customary charge; or
2. The Medicaid fixed upper payment limit per unit of service
as established in subsection (5) of this section.
(5) [Fixed upper payment limits:]
(a) The unit amounts, fixed upper payment limits, and other
limits established in the following table shall apply:
(b) Specialized medical equipment and supplies shall be
reimbursed on a per item basis based on a reasonable cost as
negotiated by the department if they meet the following criteria:
1. They are not covered through the Medicaid durable medical
equipment program established in 907 KAR 1:479; and
2. They are provided to an individual participating in the ABI
waiver program.
(c) Respite care may exceed 1,440 hours in a twelve (12)
month period if an individual’s usual caregiver is unable to provide

<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Service</th>
<th>Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Management</td>
<td>1 month</td>
<td>$375.00 - limited to one (1) unit per member per month</td>
</tr>
<tr>
<td>Community Living Supports</td>
<td>15 minutes</td>
<td>$5.56 - limited to 160 units per member, per calendar week</td>
</tr>
<tr>
<td>Respite Care</td>
<td>5 minutes</td>
<td>$4.00 - limited to 5,760 units, equal to 1440 hours, per member, per calendar year, except as provided in paragraph (c) of this subsection</td>
</tr>
<tr>
<td>Adult Day Health Care</td>
<td>15 minutes</td>
<td>$3.19 - limited to 160 units per member, per calendar week</td>
</tr>
<tr>
<td>Adult Day Training</td>
<td>15 minutes</td>
<td>$4.03 - limited to 160 units per member, per calendar week alone or in combination with supported employment services</td>
</tr>
<tr>
<td>Supported Employment</td>
<td>15 minutes</td>
<td>$7.98 - limited to 160 units per member, per calendar week alone or in combination with adult day training</td>
</tr>
<tr>
<td>Behavior Programming</td>
<td>15 minutes</td>
<td>$33.61 - limited to 80 units per member, per calendar month for the first three (3) months; after initial three (3) months limited to forty-eight (48) units per member, per month</td>
</tr>
<tr>
<td>Counseling – Individual</td>
<td>15 minutes</td>
<td>$23.84 - limited to 52 units per member, per month</td>
</tr>
<tr>
<td>Counseling – Group</td>
<td>15 minutes</td>
<td>$5.75 - limited to 48 units per member, per calendar month</td>
</tr>
<tr>
<td>Occupational Therapy</td>
<td>15 minutes</td>
<td>$25.90 - limited to 52 units per member, per calendar month</td>
</tr>
<tr>
<td>Speech Therapy</td>
<td>15 minutes</td>
<td>$28.41 - limited to 52 units per member, per calendar month</td>
</tr>
<tr>
<td>Specialized Medical Equipment and Supplies (see paragraph (b) of this subsection)</td>
<td>Per Item</td>
<td>As negotiated by the department</td>
</tr>
<tr>
<td>Environmental Modification</td>
<td>Per Modification</td>
<td>Actual cost not to exceed $2,000 per member, per calendar year</td>
</tr>
<tr>
<td>Supervised Residential Care Level I</td>
<td>(1) calendar day</td>
<td>$200.00 - Limited to one (1) unit per member, per calendar day</td>
</tr>
<tr>
<td>Supervised Residential Care Level II</td>
<td>(1) calendar day</td>
<td>$150.00 - Limited to one (1) unit per member, per calendar day</td>
</tr>
<tr>
<td>Supervised Residential Care Level III</td>
<td>(1) calendar day</td>
<td>$75.00 - Limited to one (1) unit per member, per calendar day</td>
</tr>
<tr>
<td>Nursing Supports</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 28 units per member, per calendar week</td>
</tr>
<tr>
<td>Family Training</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 8 units per member, per calendar week</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>15 minutes</td>
<td>$25.00 - Limited to 52 units per member, per calendar week</td>
</tr>
<tr>
<td>Assessment or Reassessment</td>
<td>One (1) unit equals entire process</td>
<td>$100.00</td>
</tr>
<tr>
<td>Participant – [Directed Services][Options]:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home and Community Supports</td>
<td></td>
<td>Service limited by dollar amount prior authorized by QIO based on DMS approved participant[consumer] budget</td>
</tr>
<tr>
<td>Community Day Supports</td>
<td></td>
<td>Service limited by dollar amount prior authorized by QIO based on DMS approved participant[consumer] budget</td>
</tr>
<tr>
<td>Goods and Services</td>
<td></td>
<td>Service limited by dollar amount prior authorized by DMS based on DMS approved participant[consumer] budget</td>
</tr>
<tr>
<td>Support Broker</td>
<td>One (1) unit equal to one (1) calendar month</td>
<td>$375.00 - Limited to one (1) unit per member, per calendar month</td>
</tr>
<tr>
<td>Financial Management Services</td>
<td>Fifteen (15) minutes</td>
<td>$12.50 Limited to eight (8) units per member, per calendar month</td>
</tr>
</tbody>
</table>

1028
Section 12.[10] Electronic Signature Usage.[44] 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] An ABI long term care waiver provider which chooses to use electronic signatures shall:
(a) Develop and implement a written security policy which shall:
1. Be adhered to by each of the provider's employees, officers, agents, and contractors;
2. Identify each electronic signature for which an individual has access to; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
(b) Develop a consent form which 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 with:
1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original signed signature immediately upon request.

Section 13.[11] Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.
(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.
(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation:
(a) Regarding a provider's reimbursement shall be in accordance with 907 KAR 1:671, Sections 8 and 9; or
(b) Not regarding a provider's reimbursement shall be in accordance with 907 KAR 1:671.

Section 14.[12] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "MAP 10, Waiver Services Physician's Recommendation", June 2015[July 2008 edition];
(b) "MAP – 115 Application Intake – Participant Authorization", May 2015;
(c) "MAP – 116 Service Plan – Participant Authorization", May 2015;
(d) "MAP – 331 Conflict-Free Case Management Exemption", May 2015;
(a) "MAP 99, Request for Equipment Form", June 2007 edition;(f) "MAP 109 Plan of Care/Prior Authorization for Waiver Services", July 2008 edition;(g) "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015[July 2008 edition];
(f)(b) "MAP 351, Medicaid Waiver Assessment", July 2015[2008 edition];
(g) "MAP 2000, Initiation/Termination of Participant-Consumer Directed Services/Option (CDO)", June 2015[July 2008 edition];
(h) "Mayo-Portland Adaptability Inventory-4", March 2003 edition;
(i) "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006;
(ii) The Revised Levels – Third Edition", 1998; and
(ii) "Kentucky Participant-Consumer Directed Services/Option Employee Provider Contract", June 2015;
(k) "MAP 4100a Acquired Brain Injury Waiver Program Information and Services", September 2009[revised April 19, 2007].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law.
(a)[12] 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

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 5, 2015
FILED WITH LRC: August 7, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2015 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in
writing September 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 September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding acquired brain injury (ABI) long-term waiver services. The ABI long-term program enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for the Medicaid ABI long-term waiver program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid ABI long-term coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid service plan development and entry in the MWMA portal; a MAP-531 Conflict Free Case Management Exemption form used to request an exemption from the conflict-free case management requirement; and updating a couple of other forms. Additionally, the amendment deletes incorporated material that is being obsoleted due to implementation of a new online portal (MWMA).
(b) The necessity of the amendment to this administrative regulation: The primary amendments (revising the case management requirements, establishing person-centered service plan requirements, and requiring a new online portal (MWMA) to be used) are mandated by the Centers for Medicare and Medicaid Services (CMS) via a CMS rule published January 2015. Requiring providers to check the caregiver misconduct registry regarding potential staff and to not hire anyone listed on the registry is a safeguard to enhance participant safety and welfare. Reducing the classes of incidents is an effort to synchronize incident reporting requirements among DMS’s 1915(c) home and community based waiver services programs. Introducing new incorporated material is necessary to allow participants to designate individuals to use the new online portal (MWMA portal) and/or perform related activities.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the ABI waiver program and by enhancing participant safety and welfare.
(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by requiring a new online portal (MWMA) to be used with federal mandates to ensure the receipt of federal funding for the ABI waiver program and by enhancing participant safety and welfare.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects individuals receiving ABI waiver program services (participants) as well as providers of these services. Currently, there are 223 individuals receiving services, 210 on the waiting list to receive services, and thirty-two (32) providers enrolled.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will need to ensure they comply with the conflict free case management 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 imposed.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals receiving services will benefit from greater involvement and direction in the types of services they receive as well as when and where they receive the services which will enhance their independence as well as assimilation in their local community.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral initially.
(b) On a continuing basis: DMS anticipates that the amendments to this administrative regulation will be budget neutral 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 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 the
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.
(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.730(b) and 42 C.F.R. 441.725.
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. Among the mandates in 42 C.F.R. 441.730(b) are that services to waiver participants are free from conflict of interest. In the context of the ABI program that means that the individual who provides case management to a given waiver participant provide actual ABI waiver services or work for an entity that provides actual ABI waiver services or entity that has a business interest in a provider of actual ABI waiver services in order to 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.”
4. Are provider of actual ABI waiver services or work for an entity that provides actual ABI waiver services or entity that has a business interest in a provider of actual ABI waiver services in order to comply with any requirement that may be imposed or opportunity that may be presented by federal law.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services and the Department for Behavioral Health and Intellectual Disabilities.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.730(b), and 42 C.F.R. 441.725.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.
   (c) How much will it cost to administer this program for the first year? DMS anticipates that the amendments will be budget neutral for the first year.
   (d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendments will be budget neutral 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
Division of Community Alternatives
(Amendment)

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5605(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds [KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer directed services program to provide an option for the home and community based services waivers.] This administrative regulation establishes the service and coverage policies for a new version of the Supports for Community Living (SCL) waiver program that applies to all SCL waiver services including a participant directed services option pursuant to KRS 205.5606.

Section 1. Definitions. (1) “1915(c) home and community based waiver program” means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).
(2) “Abuse” is defined by KRS 209.020(8).
(3) “Adult day health care center” means an adult day health care center licensed in accordance with 902 KAR 20:066.
(4) "Adult foster care home" means a home: (a) Not owned or leased by an SCL provider; (b) In which a participant: 1. Is at least eighteen (18) years of age; and 2. Receives SCL services and resides in the family occupied (leased or owned) home; and (c) In which the family: 1. Includes the participant in the family’s household routines; 2. Provides training and supervision; and 3. Ensures that the participant’s needs are met in accordance with the participant’s person centered service plan; or care and support services provided pursuant to KRS 205.620(4).
(5) “Advance directive” is defined by KRS 311.621(2).
(6) “Aversive technique” means:
(a) Withholding: 1. Food or hydration as a means to control or impose calm; 2. Access to a legal advocate or ombudsman; 3. Access to toilet, bath, or shower; 4. Access to personal belongings; or 5. Access to natural supports.
(b) Depriving medical attention or prescribed medication; or
(c) Depriving sleep.
(7) "Behavior intervention committee" or "BIC" means a group of individuals:
(a) Established to evaluate the technical adequacy of a proposed behavioral intervention for a participant; and
(b) Which meets in accordance with the BIC policies established in Section 3 of this administrative regulation[the Supports for Community Living Manual].
(8) [64] "Board" means three (3) meals a day or other full nutritional regimen of a caregiver for the purpose of providing shared living services.
(9) [22] "Case manager" means an individual who:
(a) Works closely with a participant to ensure that the:
1. Participant’s person-centered service plan[ol-CASE] focuses on the participant’s ongoing expectations and satisfaction with the participant’s life; and
2. Participant maintains the freedom of choice of providers in a conflict free climate;
(b)1. Has a bachelor’s or higher degree in a human service field from an accredited college or university; and
2. Has a bachelor’s degree in any other field from an accredited college or university with at least one (1) year of experience in the field of intellectual disability; or
(c) Shall be supervised by a case management supervisor; and
(d) Meets all personnel and training requirements established in Section 3 of this administrative regulation.
(10) [48] "Case manager supervisor" means an individual who:
(a) Provides professional oversight of case managers;
(b)1. Has a bachelor’s or higher degree in a human service field from an accredited college or university; and
2. Has a bachelor’s degree in any other field from an accredited college or university with at least one (1) year of experience in the field of intellectual disability; or
(c) Has at least two (2) years of experience of case management responsibility in an organization which serves individuals with intellectual or developmental disabilities;
(d) Completes a case management supervisory training curriculum approved by DBHDID within six (6) months of beginning supervision responsibilities;
(e) Meets all personnel and training requirements established in Section 3 of this administrative regulation; and
(f) Participates in six (6) hours per year of professional development or continuing education in the areas of person-centered processes, supervision, and mentoring of employees.
(11) [49] "Certified nutritionist" is defined by KRS 310.005(12).
(12) [44] "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.
(13) [40] "Certified psychologist with autonomous functioning" means a person licensed pursuant to KRS 319.056.
(14) [44] "Certified school psychologist" means an individual certified by the Kentucky Education Professional Standards Board under 16 KAR 2:500.
(15) [42] "Chemical restraint" means a drug or the use of over-the-counter or prescription medication;
(a) Used to restrict an individual's:
1. Behavior; or
2. Freedom of movement; and
(b)1. That is not a standard treatment for the individual’s condition; or
2. Dosage that is not an appropriate dosage for the individual's condition to control a participant or participant’s behavior;
(a) For the convenience of staff; or
(b) As a punishment.
(16) [43] "Community access specialist" means an individual who:
(a) Provides support and training that enables[es] a participant to develop a network of natural supports[that empower the participant to]:
1. Participate in meaningful routines or events; and
2. Build a natural support system; and
3. Build a natural support system;
(b) Has:
1. A bachelor’s degree in a human services field from an accredited college or university; or
2. A bachelor's degree in any other field from an accredited college or university plus at least one (1) year of experience in the field of intellectual or developmental disabilities; or
3. Relevant experience or credentialing that will substitute for the educational requirements stated in subparagraph 1, or 2, of this paragraph on a year-for-year basis; and
4. Has:
1. A bachelor’s degree in a human services field from an accredited college or university;
2. A bachelor’s degree in any other field from an accredited college or university plus at least one (1) year of experience in the field of intellectual or developmental disability; or
5. Relevant experience or credentialing that will substitute for the educational requirements stated in subparagraph 1, or 2, of this paragraph on a year-for-year basis; and
(c) Meets the personnel and training requirements established in Section 3 or 10 of this administrative regulation.
(17) [14] "Community guide" means an individual who:
(a) Has been selected by a participant to provide training, technical assistance, and support including individual budget development and implementation in aspects of participant direction; and
(b) Has:
1. A bachelor’s degree in a human services field from an accredited college or university;
2. A bachelor’s degree in any other field from an accredited college or university plus at least one (1) year of experience in the field of intellectual or developmental disability; or
3. Relevant experience of intellectual or developmental disabilities that will substitute for the educational requirements stated in subparagraph 1, or 2, of this paragraph on a year-for-year basis; and
4. Has:
1. A bachelor’s degree in a human services field from an accredited college or university;
2. A bachelor’s degree in any other field from an accredited college or university plus at least one (1) year of experience in the field of intellectual or developmental disability; or
5. Relevant experience or credentialing that will substitute for the educational requirements stated in subparagraph 1, or 2, of this paragraph on a year-for-year basis; and
(e) Provides services to a participant in accordance with Section 4 or 10 of this administrative regulation.
(18) [15] "Conflict free" means a scenario in which an agency, including any subsidiary, partnership, not for profit, or other business entity under control of the agency, providing case management to an individual does not also provide another waiver service to the individual.
16) "Controlled substance" is defined by KRS 218A.010(6).
(19) [47] "Covered services and supports" is defined by KRS 205.5605(3).
(20) [48] "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.
(21) [49] "DCBS" means the Department for Community Based Services.
(22) [48] "Department" means the Department for Medicaid Services or its designee.
23) [21] "Developmental disability" means a disability that:
(a) Is manifested prior to the age of twenty-two (22); and
(b) Constitutes a substantial disability to the affected individual; and
(c) Is attributable either to an intellectual disability or a condition related to an intellectual disability that:
1. Results in an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and
2. Is a direct result of, or is influenced by, the person's cognitive deficits.
(24) [22] "Direct support professional" means an individual who:
(a) Provides services to a participant in accordance with Section 4 of this administrative regulation; and
(b) Has direct contact with a participant when providing
services to the participant; 
(c) Is at least: 
18 years old and has a high school diploma or 
GED; or 
2. Twenty-one (21) years old; 
(d) Meets the personnel and training requirements established in 
Section 3 of this administrative regulation; 
(e) Has the ability to: 
1. Communicate effectively with a participant and the 
participant’s family; 
2. Read, understand, and implement written and oral 
instructions; 
3. Perform required documentation; and 
4. Participate as a member of the participant’s person-centered 
team if requested by the participant; and 
(f) Demonstrates competence and knowledge on topics 
required to safely support the participant as described in the 
participant’s person-centered service plan[of care]. 
(25)(23) “Direct support professional supervisor” means an 
individual who: 
(a) Provides oversight of direct support professionals in the 
provision of services to participants; 
(b) Is at least: 
18 years old and has a high school diploma or 
GED; or 
2. Twenty-one (21) years old; 
(c) Meets the personnel and training requirements established in 
Section 3 of this administrative regulation; 
(d) Has the ability to: 
1. Communicate effectively with a participant and the 
participant’s family; 
2. Read, understand, and implement written and oral 
instructions; 
3. Perform required documentation; and 
4. Participate as a member of the participant’s person-centered 
team if requested by the participant; 
(e) Has at least two (2) years of experience in providing direct 
support to persons with a developmental disability; 
(f) Demonstrates competence and knowledge on topics 
required to safely support the participant as described in the 
participant’s person-centered service plan[of care]; and 
(g) Completes a supervisory training curriculum approved by 
DBHDS within six (6) months of beginning supervisory 
responsibilities. 
(26)(24) “Drug paraphernalia” is defined by KRS 218A.500(1). 
(27) (26) “Early and periodic screening, diagnostic, and 
treatment services” is defined by 42 U.S.C. 1396d(r). 
(26)(26) “Electronic signature” is defined by KRS 369.102(8). 
(29)(27) “Employee” means an individual who is employed by 
an SCL provider. 
(30)(28) “Executive director” means an individual who shall: 
(a) Lead the design, develop, and implement strategic plans for 
an SCL provider; 
(b) Maintain responsibility for the day-to-day operation of the 
SCL provider organization; 
(c)1. Have a bachelor’s or higher degree from an accredited 
institution or 
2. Be a registered nurse; 
(d) Have at least two (2) years of: 
1. Experience in the field of intellectual or developmental 
disabilities; and 
2. Administrative experience[responsibility]: 
(a) [4] In an organization which served individuals with an 
intellectual or developmental disability; and 
(b) [2] That includes experience in the execution of the overall 
administration of an agency including: 
(i) [a] Development, implementation, and 
maintenance[accountability] of the agency’s budget; 
(ii) [b] Development, review[and] implementation, and 
revisions as needed of the organization’s[agency’s] policies and 
procedures; and 
(iii) [c] Supervision of employees including conducting 
performance evaluations;
(k) Occupational therapy;
(l) Physical therapy;
(m) Speech-language pathology;
(n) Therapy, social work;
or
(o) Family studies.

42 KAR (403) “ICF-ID” means an intermediate care facility for individuals with intellectual disabilities.

43 KAR (411) “Illicit substance” means:
(a) A drug, prescription or not prescription, used illegally or in excess of therapeutic levels;
(b) A prohibited drug; or
(c) A prohibited substance.

44 KAR (422) “Immediate family member” is defined by KRS 205.84(5)(3).

45 KAR (434) “Impact service” means a service designed to decrease the amount of paid supports a participant requires as the participant becomes:
(a) More independent; and
(b) Less reliant on an employee.

46 KAR (444) “Individual family service plan” or “IFSP” is defined by KRS 300.655(9).

47 KAR (454) “Integrated employment site” means the location of an activity or job that provides regular interaction with people without disabilities, excluding service providers, to the same extent that a worker without disabilities in a comparable position interacts with others.

48 KAR (466) “Integrated setting” means a setting that:
(a) Enables a participant to interact with nondisabled persons to the fullest extent possible;
(b) Includes access to community activities and opportunities at times, frequencies, and with persons of a participant’s choosing; and
(c) Affords a participant choice in the participant’s daily life activities.

49 KAR (471) “Intercultural disability” or “ID” means:
(a) A demonstration:
1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of [approximately] seventy (70) plus or minus five (5) or below; and
2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
   a. Communication;
   b. Self-care;
   c. Home living;
   d. Social or interpersonal skills;
   e. Use of community resources;
   f. Self-direction;
   g. Functional academic skills;
   h. Work;
   i. Leisure;
or
   j. Health and safety; and
(b) An intellectual disability that had an onset before eighteen (18) years of age.

50 KAR (481) “Legally responsible individual” means an individual who has a duty under state law to care for another person and includes:
(a) A Parent (biological, adoptive, or foster) of a minor child who provides care to the child;
(b) The guardian of a minor child who provides care to the child;
or
(c) A spouse of a participant.

51 KAR (491) “Level of care determination” means a determination by the department that an individual meets patient status criteria for an intermediate care facility for individuals with intellectual disabilities as established in 907 KAR 1:022.

52 KAR (502) “Licensed clinical social worker” means an individual who meets the licensed clinical social worker requirements established in accordance with KRS 335.100.

53 KAR (511) “Licensed dietitian” is defined by KRS 310.005(11).

54 KAR (521) “Licensed marriage and family therapist” or “LMFT” is defined by KRS 335.300(2).

55 KAR (531) “Licensed medical professional” means:
(a) A physician;
(b) An advanced practice registered nurse;
(c) A physician assistant;
(d) A registered nurse;
(e) A licensed practical nurse; or
(f) A pharmacist.

56 KAR (541) “Licensed practical nurse” is defined by KRS 314.011(9).

57 KAR (551) “Licensed professional clinical counselor” or “LPCC” is defined by KRS 335.500(3).

58 KAR (561) “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(319.064).

59 KAR (571) “Licensed psychological practitioner” means an individual who meets the requirements established in accordance with KRS 319.053.

60 KAR (581) “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(319.055).

61 KAR (591) “Life history” means an account of the series of events making up a participant’s life including:
(a) Developmental and historical information regarding family of origin, childhood experiences, and life events to present;
(b) History of supports received across the life span; and
(c) Life style practices which may lead to greater insight regarding a participant’s current preferences, behavioral patterns, wants, and needs.

62 KAR (601) “Medically necessary” or “medical necessity” means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

63 KAR (611) “Medical order for scope of treatment” is defined by KRS 311.621(12).


65 KAR (631) “National Core Indicators” means:
(a) A collaboration between the National Association of State Directors of Developmental Disability Services and the Human Services Research Institute; and
(b) An effort by public developmental disabilities agencies to measure and track their own performance; and
(c) Standard measures:
1. Used across states to assess the outcomes of services provided to individuals and families; and
2. Which address key areas of concern including employment, rights, service planning, community inclusion, choice, and health and safety.

66 KAR (641) “Natural supports” means assistance, relationships, or interactions that:
(a) Allow a participant to be in the community;
(b) Include working in a job of the participant’s choice in ways similar to people without disabilities; and
(c) Are based on ordinary social relationships at work; and in the community.

67 KAR (651) “Neglect” is defined by KRS 209.020(16).

68 KAR (661) “Occupational therapist” is defined by KRS 319A.010(3).

69 KAR (671) “Occupational therapy assistant” is defined by KRS 319A.010(4).

70 KAR (681) “Office of Vocational Rehabilitation” means the agency mandated:
(a) By the Rehabilitation Act of 1973, as amended; and
(b) To provide individualized services to eligible individuals with disabilities with a substantial impediment to employment in order for the individual to gain and maintain employment.

71 KAR (691) “Participant” means a Medicaid recipient who:
(a) Meets patient status criteria for an intermediate care facility for individuals with intellectual disabilities as established in 907 KAR 1:022;
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(b) Is authorized by the department to receive SCL waiver services; and
(c) Utilizes SCL waiver services and supports in accordance with a person-centered service plan[care].

(72)[66] “Participant-directed service” or “PDS” means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs which allows recipients to receive non-medical services in which the individual:
(a) Assists with the design of the program;
(b) Chooses the providers of services; and
(c) Directs the delivery of services to meet his or her needs[an option to receive a service which is based on the principles of self-determination and person centered thinking].

(73)[62] “Person-centered care” means a person who:
(a) Assists a participant and the participant’s person-centered team in implementing and monitoring the effectiveness of the participant’s person-centered service plan[care];
(b) Models person-centered thinking;
(c) Is responsible for training a participant, family, guardian, natural and unpaid supports, and other members of the person-centered team when barriers challenge the success of the participant in achieving his or her goals;
(d) Has:
1. A high school diploma or GED; and
2. a. Two (2) years of experience in the field of intellectual or developmental disabilities; or
   b. Completed twelve (12) hours of college coursework in a human services field;
(e) Meets all personnel and training requirements established in Section 3 of this administrative regulation; and
(f) Performs required documentation.

(74)[68] “Person-Centered Employment Plan” means a document that identifies the unique preferences, strengths, and needs of a participant in relation to the participant’s work.

(75)[69] “Person-centered service plan[care]” or “POC” means a written individualized plan of services for a participant that meets the requirements established in Section 5 of this administrative regulation:
(a) The eight (8) page form incorporated by reference titled “Person Centered Plan of Care”; and
(b) A written individualized plan that is developed:
1. By:
   a. An SCL participant or an SCL participant’s guardian,
   b. The case manager; and
   c. Any other person designated by the SCL participant if the SCL participant designates any other person; and
2. Using a process that:
   a. Allows the participant, or the participant’s guardian, to direct the planning and allocation of resources to meet the participant’s life goals;
   b. Achieves understanding of how the participant:
      (i) Learns;
      (ii) Makes decisions; and
      (iii) Chooses to live and work in the community;
   c. Discovers the participant’s likes and dislikes; and
   d. Empowers the participant or the participant’s guardian to create a life plan and corresponding plan of care for the participant that:
      (i) Is based on the participant’s preferences, ideas, and needs;
      (ii) Encourages and supports the participant’s long term satisfaction;
      (iii) Is supported by a short-term plan that is based on reasonable costs, given the participant’s support needs;
      (iv) Includes participant input;
      (v) Includes a range of supports, including funded, community, and natural supports;
      (vi) Includes information necessary to support a participant during times of crisis, to include crisis prevention strategies, crisis intervention strategies, and positive behavioral supports, if deemed necessary by the participant and the participant’s support team; and
      (vii) Assists the participant in making informed choices by facilitating knowledge of and access to services and supports.

(76)[70] “Person-centered team” means a participant, the participant’s guardian or representative, and other individuals who are natural or paid supports and who:
(a) Recognize that evidenced based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice;
(b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant’s needs; and
(c) Include providers who receive payment for services who shall:
1. Be active contributing members of the person-centered team meetings;
2. Base their input upon evidence-based information; and
3. Not request reimbursement for person-centered team meetings.

(77) “Physical restraint” means any manual method or physical or mechanical device, material, or equipment that:
(a) Immobilizes or reduces the ability of a person to move his or her arms, legs, body, or head freely; and
(b) Does not including orthopedically prescribed devices or other devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a person.

(78)[71] “Physical therapist” is defined by KRS 327.010(2).

(79)[72] “Physical therapist assistant” means a skilled health care worker who:
(a) Is certified by the Kentucky Board of Physical Therapy; and
(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(80) (74) “Positive behavior support specialist” means an individual who:
(a) Provides evidence-based individualized interventions that assist a participant with acquisition or maintenance of skills for community living and behavioral intervention for the reduction of maladaptive behaviors;
(b) Has a master’s degree in a behavioral science and one (1) year of experience in behavioral programming;
(c) Has at least one (1) year of direct service experience with individuals with intellectual or developmental disabilities;
(d) Meets all personnel and training requirements established in Section 3 of this administrative regulation; and
(e) Participates in at least six (6) hours per year of professional development or continuing education in the areas of psychology, behavioral supports, applied behavioral science, or school psychology.

(81)[74] “Prohibited drugs” means a drug or substance that is all drugs and substances which are illegal under KRS Chapter 218A or other statutes or administrative regulations of the Commonwealth of Kentucky.

(82)[75] “Registered agent” means an individual meeting the requirements of KRS 14A.4-010(1)(b).

(83)[76] “Registered nurse” is defined by KRS 314.011(5).

(84)[77] “Registered office” means an office meeting the requirements of KRS 14A.4-010(1)(a).

(85)[78] “Representative” is defined in KRS 205.5605(6).

(86) “Rights restriction” means any intervention that restricts a participant:
(a) Movement;
(b) Access to other individuals, locations, or activities; or
(c) Rights.

(87)[79] “Room” means the aggregate expense of housing costs for the purpose of providing shared living, including:
(a) Rent, lease, or mortgage payments;
(b) Real estate taxes;
(c) Insurance;
(d) Maintenance; and
(e) Utilities.
(89) "SCL intellectual disability professional" or "SCL IDP" means an individual who:
(a) Has at least one (1) year of experience working with persons with an intellectual or developmental disability; or
(b) Meets personnel and training requirements established in Section 3 of this administrative regulation; and
(c)1. Is a doctor of medicine or osteopathy; or
2. Is a registered nurse; or
3. Holds at least a bachelor's degree from an accredited institution in a human services field.
(90) "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.
(91) "Seclusion" means the involuntary confinement of a participant alone in:
(a) A room; or
(b) An area from which the participant is physically prevented from leaving.
(92) "Serious medication error" means a medication error that requires or has the potential to require a medical intervention or treatment.
(93) "Shared living caregiver" means an unrelated individual who:
(a) Resides with a participant in the participant's home;
(b) Provides supervision and necessary personal assistance services as specified in the participant's person-centered service plan; or
(c)1. Is at least eighteen (18) years of age and has a high school diploma or GED; or
2. Is at least twenty-one (21) years old;
(d) Meets all personnel and training requirements established in Section 3 of this administrative regulation;
(e) Has the ability to:
1. Communicate effectively with a participant and the participant's family;
2. Read, understand and implement written and verbal instructions; and
3. Perform required documentation;
(f) Has been determined by the participant's person-centered team, prior to being alone with the participant, to meet the following qualifications:
1. Demonstrate competence and knowledge on topics required to safely support the participant as described in the participant's person-centered service plan; and
2. Have the ability to participate as a member of the participant's person-centered team if requested by the participant; and
(g) Does not have any of the following relationships to the participant:
1. Immediate family member;
2. Extended family member;
3. Guardian; or
4. Legally responsible individual.
(94) "Speech-language pathologist" is defined by KRS 334A.020(3).
(95) "Staffed residence" means a residential setting:
(a) That is owned or leased by a provider who meets the SCL provider requirements established in Section 3 of this administrative regulation; and
(b) In which no more than three (3) participants reside.
(96) "State plan" is defined by 42 C.F.R. 400.203.
(97) "Subcontractor" means an entity or an individual:
(a) Who is a currently credentialed professional or other service provider;
(b) Who has signed an agreement with a certified SCL agency to provide SCL services and supports; and
(c) To whom the employee requirements in this administrative regulation apply.
(98) "Suicidal ideation" means thoughts about suicide which may range from being fleeting in nature to detailed planning.
(99) "Supported Employment" means an individual who:
(a) Provides ongoing support services to eligible participants in supported employment jobs in accordance with Section 4 or 10 of this administrative regulation;
(b) Has at least a bachelor’s degree from an accredited college or university and one (1) year of experience in the field of developmental disabilities;
2. Has previously qualified or been credentialed by the department to provide supported employment services prior to the effective date of this administrative regulation; or
3. a. Has at least one (1) year of experience in the field of intellectual or developmental disabilities; and
b. Has completed a department approved credential within one (1) year of application while providing supported employment services under the direct supervision of a supported employment specialist or credentialing that substitutes for the educational requirement stated in subparagraph 1. of this paragraph on a year-for-year basis.
(c) Meets the personnel and training requirements established in Section 3 of this administrative regulation; and
(d) Sequentially completes the Kentucky Supported Employment Training Project curriculum from the Human Development Institute at the University of Kentucky within eight (8) six (6) months of the date of employment.
(100) "Supports for Community Living" or "SCL" means home and community-based waiver services for an individual with an intellectual or developmental disability.
(101) "Supports Intensity Scale" or "SIS" means an assessment tool developed by the American Association on Intellectual and Developmental Disabilities (AAIDD) that:
(a) Measures practical support requirements of individuals with intellectual or developmental disabilities in daily living, medical, and behavioral areas; and
(b) Is administered by a trained professional in the human services field as approved by the department.

Section 2. SCL Participant Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:
(a) Shall be screened by the department for the purpose of
1. Demonstrate competence and knowledge on topics required to safely support the participant as described in the participant’s person-centered service plan; and
2. Have the ability to participate as a member of the participant’s person-centered team if requested by the participant; and
3. Does not have any of the following relationships to the participant:
   1. Immediate family member;
   2. Extended family member;
   3. Guardian; or
   4. Legally responsible individual.
(b) Shall meet ICF-IID patient status requirements established in 907 KAR 1:022;
(c) Shall have Medicaid eligibility requirements established in 907 KAR 20:010(4.605); and
(d) Upon receiving notification of potential SCL funding, shall upload the following into the MWMA portal:
   1. A completed MAP – 350 Long Term Care Facilities and Home and Community Based Program Certification Form[MAP – 350];
   2. The results of a physical examination that was conducted within the last twelve (12) months;
   3. A life history which has been completed within the past twelve (12) months[less than one (1) year old]; and
   4. Documentation of a MAP-24C documenting a participant’s status change.
(2)(a) To maintain eligibility as a participant:
1. A participant shall be administered a Supports Intensity Scale assessment by the department at least once every twenty-four (24) months;
2. A participant shall maintain Medicaid eligibility requirements established in 907 KAR 20:010(1655); and
3. An ICF-IID level of care determination shall be performed by the department at least once every twelve (12) months.
(b) The department shall:
1. Obtain the rights to use a Supports Intensity Scale; and
2. Use it in accordance with the terms and conditions required by the copyright associated with it.
(3) An SCL waiver service shall not be provided to an individual who is:
(a) Receiving a service in another 1915(c) home and community based waivers program;
(b) Receiving a duplicative service provided through another funding source; or
(c) An inpatient of an ICF-IID or other facility.
(4) Involuntary termination and loss of an SCL waiver program placement shall:
(a) In accordance with 907 KAR 1:563; and
(b) Initiated if:
1. An applicant fails to access an SCL waiver service within sixty (60) days of receiving notice of potential funding without receiving an extension based on demonstration of good cause; or
2. A participant:
   a. Fails to access any services outlined in the participant’s service plan[PQC] for a period greater than sixty (60) consecutive days without receiving an[and] extension based on demonstration of good cause;
   b. Moves to a residence outside of the Commonwealth of Kentucky;
   c. Does not meet ICF-IID patient status criteria in accordance with 907 KAR 1:022.
(5)(a) An involuntary termination of a service to a participant by an SCL provider shall require:
1. The SCL provider to;
   a. Simultaneously notify electronically or in writing the participant or participant’s guardian, the participant’s case manager, the department, and DBHDID at least thirty (30) days prior to the effective date of the termination;
   [b. Submit a MAP-24C to the department and DBHDID at the time of termination; and]
   2. The participant’s case manager, in conjunction with the SCL provider, to:
      a. Provide the participant or participant’s guardian with the name, address, and telephone number of each current SCL provider in Kentucky;
      b. Provide assistance to the participant or participant’s guardian in making contact with another SCL provider;
      c. Arrange and provide transportation for a requested visit to an SCL provider site;
      d. Provide a copy of pertinent information to the participant or participant’s guardian;
      e. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;
      f. Continue to provide supports until alternative services or another placement is secured; and
      g. Provide assistance to ensure a safe and effective service transition.
(b) The notice referenced in paragraph (a)1.a. of this subsection shall include:
1. A statement of the intended action;
2. The basis for the intended action;
3. The authority by which the intended action is taken; and
4. The participant’s right to appeal the intended action through the provider’s appeal or grievance process.
(6)(a) DBHDID shall initiate an intent to discontinue a participant’s participation in the SCL waiver program if the participant or participant’s guardian submits a written notice of intent to discontinue services to:
1. The SCL provider; and
2. DBHDID.
(b) An action to terminate waiver participation shall not be initiated until thirty (30) calendar days from the date of the notice referenced in paragraph (a) of this subsection.
(c) A participant or guardian may reconsider and revoke the notice referenced in paragraph (a) of this subsection in writing during the thirty (30) calendar day period.

Section 3. Non-PDS Provider Participation Requirements. (1) An SCL provider shall comply with:
(a) 907 KAR 1:671;
(b) 907 KAR 1:672;
(c) 907 KAR 1:673;
(d) 902 KAR 20:078;
(e) 907 KAR 7:005[The Supports for Community Living Policy Manual];
(g) 42 U.S.C. 1320d to 1320d-8; and
(h) Local laws and ordinances governing smoke-free environments.
(2) In order to provide an SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:
(a) Be certified by the department prior to the initiation of a service;
(b) Be recertified at least biennially by the department;
(c) In accordance with KRS 273.182, maintain a registered agent and a registered office in Kentucky with the Office of the Secretary of State and file appropriate statement of change documentation with the filing fee with the Office of Secretary of State if the registered office or agent changes;
(d) Be in good standing with the Office of the Secretary of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020;
(e) Abide by the laws which govern the chosen business or tax structure of the SCL provider;
(f) Maintain policy that complies with this administrative regulation concerning the operation of the SCL provider and the health, safety, and welfare of all people supported or served by the SCL provider;
(g) Maintain an executive director who shall have the authority and responsibility for the management of the affairs of the SCL provider in accordance with written policy and procedures that comply with this administrative regulation; and
(h) Participate in the National Core Indicators’ surveys and all department survey initiatives.
(3) An SCL provider[shall]:
(a) Shall ensure that SCL waiver services shall not be provided to a participant by a staff person of the SCL provider who is a guardian, legally responsible individual, or immediate family member of the participant unless allowed for a participant-directed service in accordance with Section 4 of this administrative regulation;
(b) Shall not enroll a participant whose needs the SCL provider is unable to meet;
(c) Shall have and follow written criteria that comply with this administrative regulation for determining the eligibility of a participant for admission to services;
(d) Shall document:
1. A denial for a service; and
2. The reason for the denial;
(e) Shall maintain documentation of its operations including:
1. A written description of available SCL waiver services; 2. A current table of organization; 3. A memorandum of understanding with all providers with whom the SCL provider shares person-centered plans[of care]; 4. Information regarding participants’ satisfaction with services and the utilization of that information;
(f) A quality improvement plan that;
1. Includes updated findings and corrective actions as a result of department and case management quality assurance monitoring; and
b. Addresses how the provider shall accomplish the following goals:
   (i) Ensure that the participant receives person-centered SCL waiver services;
   (ii) Enable the participant to be safe, healthy, and respected in the participant’s community;
   (iii) Enable the participant to live in the community with effective, individualized assistance;
   (iv) Enable the participant to enjoy living and working in the participant’s community; and
   (v) Improve the participant’s competence;

6. Evidence of continuous improvement of utilizing best practice standards toward meeting[SCL program goals and] the critical strategic areas identified in the annual report released by the Kentucky National Core Indicators available at the Kentucky National Core Indicators Web site of http://www.nationalcoreindicators.org/states/KY/; and

7. A written plan of how the SCL provider shall participate in the:
   a. Human Rights Committee in the area in which the SCL provider is located; and
   b. Behavior Intervention Committee in the area in which the SCL provider is located;
   (f) Shall maintain accurate fiscal information including documentation of revenues and expenses;
   (g) Shall maintain a written policy that room and board charges shall be determined as the lesser of:
      1. Seventy (70) percent of the federal benefits rate as determined by the United States Social Security Administration; or
      2. An amortized amount determined by the SCL provider based on the participants being served by the SCL provider sharing the following on an equal basis:
         a. Lease, mortgage payment, or market rent;
         b. Utilities and basic television services;
         c. The costs of food and household goods based upon the number of people, including participants and staff, in the home during waking hours; and
         d. The costs of residential telephone services on the basis of the SCL provider paying fifty (50) percent of the costs (excluding long distance telephone costs) and the participants sharing the burden of the remaining costs;
   (h) Shall meet the following requirements if responsible for the management of a participant’s funds:
      1. Separate accounting shall be maintained for each participant or for the participant’s interest in a common trust or special account;
      2. Account balance and records of transactions shall be provided to the participant or the participant’s guardian on a quarterly basis; and
      3. The participant or the participant’s guardian shall be notified if a balance is accrued that may affect Medicaid eligibility;
         (i) Shall have a written statement of its mission and values, which shall:
            1. Support participant empowerment and informed decision-making;
            2. Support and assist participants to form and remain connected to natural support networks;
            3. Promote participant dignity and self-worth;
            4. Support team meetings which help ensure and promote the participant’s right to choice, inclusion, employment, growth, and privacy;
            5. Foster a restraint-free environment where the use of physical[mechanical] restraints, seclusion[manual restraint] including any manner of prone or supine restraint, or chemical restraints, or aversive techniques shall be prohibited; and
   6. Support the SCL program goal that all participants:
      a. Receive person-centered waiver services;
      b. Are safe, healthy, and respected in the participant’s community;
      c. Live in the community with effective, individualized assistance, and
      d. Enjoy living and working in the participant’s community;
      (j) Shall have written policy and procedures for communication and interaction with a participant, family, or participant’s guardian, which shall include:
         1. A timely response to an inquiry;
         2. The opportunity for interaction by direct support professionals;
         3. Prompt notification of any unusual occurrence;
         4. Visitation with the participant at a reasonable time, without prior notice, and with due regard for the participant’s right of privacy;
         5. Involvement in decision making regarding the selection and direction of the person-centered service provided; and
         6. Consideration of the cultural, educational, language, and socioeconomic characteristics of the participant and family being supported;
   (k) Shall ensure the rights of a participant by:
      1. Providing conflict free services and supports that are person-centered;
      2. Making available a description of the rights and means by which the rights can be exercised and supported including the right to:
         a. Live and work in an integrated setting;
         b. Time, space, and opportunity for personal privacy;
         c. Communicate, associate, and meet privately with the person of choice;
         d. Send and receive unopened mail;
         e. Retain and use personal possessions including clothing and personal articles; and
         f. Private, accessible use of a telephone or cell phone;
         g. Access accurate and easy-to-read information;
         h. Be treated with dignity and respect and to maintain one’s dignity and individually:
            i. Voice grievances and complaints regarding services and supports that are furnished without fear of retaliation, discrimination, coercion, or reprisal;
            j. Choose among service providers;
            k. Accept or refuse services;
            l. Be informed of and participate in preparing the person-centered service plan and any changes in the person-centered service plan;
            m. Be advised in advance of the;
               (i) Provider or providers who will furnish services; and
               (j) Frequency and duration of services;
            n. Confidential treatment of all information, including information in the participant’s records;
               o. Receive services in accordance with the current person-centered service plan;
               p. Be informed of the name, business, telephone number, and business address of the person supervising the services and how to contact the person;
               q. Have the participant’s property and residence treated with respect;
               r. Be fully informed of any cost sharing liability and the consequences if any cost sharing is not paid;
               s. Review the participant’s records upon request;
               t. Receive adequate and appropriate services without discrimination;
               u. Be free from and educated on mental, verbal, sexual, and physical abuse, neglect, exploitation, isolation, corporal or unusual punishment, including interference with daily functions of living; and
            v. Be free from mechanical, chemical, or physical restraints;
      3. Having a grievance and appeals system that includes an external mechanism for review of complaints;
   (l) Human rights committee in accordance with the Human Rights Committee requirements[polices] established in Section 7 of this administrative regulation[the Supports for Community Living Policy Manual]; and

5. Ensuring access to participation in the local Behavior Intervention Committee:
   a. Established as a subset of the local Human Rights Committee; and
   b. In accordance with the Behavior Intervention Committee
The results of an annual dental exam;
- The MAP – 350, Long Term Care Facilities and Home and Community Based Program Certification Form [MAP-350] updated annually in the MWMA portal;
- A psychological evaluation;
- A current level of care certification;
- The prior authorization notifications; and
- Incident reports, if any exist.

6.[1L] Be maintained by the provider in a manner that:
- Ensures the confidentiality of the participant’s record and other personal information; and
- Allows the participant or guardian to determine when to share the information in accordance with law.

7.[1L] Be safe from loss, destruction, or use by an unauthorized person ensured by the provider.

13. Have a corresponding legend which the provider shall make readily accessible.

(p) Shall ensure that an employee or volunteer:
- Behaves in a legal and ethical manner in providing a service;
- Has a valid Social Security number or valid work permit if not a citizen of the United States of America; and
- If responsible for driving a participant during a service delivery, has a valid driver’s license with proof of current mandatory liability insurance for the vehicle used to transport the participant.

Shall ensure that an employee or volunteer:
- Completes a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider within thirty (30) days of the date of hire or date the individual began serving as a volunteer; or
- Who tests positive for TB or has a history of positive TB skin tests:
  - Shall be assessed annually by a licensed medical professional for signs or symptoms of active disease; and
  - If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work or volunteer, he or she shall be administered follow-up testing by his or her physician with the testing indicating the person does not have active TB disease.

Shall maintain documentation:
- Of an annual TB risk assessment or negative TB test for each employee who performs direct support or a supervisory function; or
- Annually for each employee with a positive TB test that ensures no active disease symptoms are present.

(a) Shall provide a written job description for each staff person that describes the required qualifications, duties, and responsibilities for the person’s job;

(i) Shall maintain an employee record for each employee that includes:
- The employee’s experience;
- The employee’s training;
- Documented competency of the employee; and
- Evidence of the employee’s current licensure or registration if required by law; and
- An annual evaluation of the employee’s performance;
- Shall require a background check:
  - And drug testing for each employee who is paid with funds administered by the department and who:
    - Provides support to a participant who utilizes SCL services; or
    - Manages funds or services on behalf of a participant who utilizes SCL services; or
  - For a volunteer recruited and placed by an agency or provider who has the potential to interact with a participant;
- Shall ensure that a volunteer placed by an agency or provider does not have unsupervised interaction with a participant;

(ii) Shall for a potential employee or volunteer obtain:
- The results of a criminal record check from the Kentucky Administrative Office of the Courts and an equivalent out-of-state institutional database;
agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteering.

b.[2] The results of a nurse aide abuse registry check as described in 906 KAR 1:100 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteering.

c. The results of a caregiver misconduct registry check as described in 922 KAR 5:120 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteering.

d.[2] Within thirty (30) days of the date of hire or initial date of volunteering, the results of a central registry check as described in 922 KAR 1:470 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteering.

2. May use Kentucky’s national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph.

(x) Shall for a convicted potential employee obtain negative results of drug testing for illicit or prohibited drugs;

(y) Shall on an annual basis:
1. Randomly select and perform criminal history background checks, nurse aide abuse registry checks, and central registry checks of at least twenty-five (25) percent of employees; and
2. Conduct drug testing of at least five (5) percent of employees;

3. Obtain the results of a caregiver misconduct registry check as described in 922 KAR 5:120 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteering;

2. Shall provide 1915(c) home and community based waiver services if the employee or subcontract with, or place an individual as a volunteer who:
1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);
2. Has a prior felony conviction, plea bargain, amended plea bargain, or diversion program that has not been completed;
3. Has a drug related conviction, felony plea bargain, or amended plea bargain conviction within the past five (5) years;
4. Has a positive drug test for prohibited drugs;
5. Has a conviction for abuse, neglect, or exploitation;
6. Has a Cabinet for Health and Family Services finding of:
   a. Child abuse or neglect pursuant to the central registry; or
   b. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry; or
7. Is listed on the nurse aide abuse registry;
   (aa) Shall not permit an employee to transport a participant if the individual has a driving under the influence conviction, amended plea bargain, or diversion during the past year;
   (bb) Shall maintain adequate staffing and supervision to implement services being billed;
   (cc) Shall establish written guidelines that address and ensure the health, safety, and welfare of a participant, which shall include:
      1. A basic infection control plan that includes:
         a. Universal precautions;
         b. Hand washing;
         c. Proper disposal of biohazards and sharp instruments; and
         d. Management of common illnesses likely to be emergent in the particular service setting;
      2. Effective cleaning and maintenance procedures sufficient to maintain a sanitary and comfortable environment that prevents the development and transmission of infection;
      3. Ensuring that each site operated by the provider is equipped with:
         a. An operational smoke detector placed in all bedrooms and other strategic locations; and
         b. At least two (2) correctly charged fire extinguishers placed in strategic locations, at least one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;
      4. Ensuring the availability of an ample supply of hot and cold running water with the water temperature complying with the safety limits established in the participant’s person-centered service plan [POC];
   5. Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:
      a. Safe storage and use; and
      b. That firearms and ammunition are permitted:
         (i) Only in nonprovider owned or leased residences; and
         (ii) Only if stored separately and under double lock;
   6. Establishing written procedures concerning the safe storage of common household items;
   7. Ensuring that the nutritional needs of a participant are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;
   8. Ensuring that an adequate and nutritious food supply is maintained as needed by the participant;
   9. Ensuring a smoke-free environment for any participant who chooses a smoke-free environment including settings in which the participant is expected to spend any amount of time, including a home, a day training site, a meeting site, or any other location;
10. Ensuring that:
   a. Every case manager and any employee who will be administering medication, unless the employee is a currently licensed or registered nurse, has:
      (i) Specific training provided by a registered nurse per a DBHID medication administration approved curriculum; and
      (ii) Documented competency on medication administration, medication cause and effect, and proper administration and storage of medication; and
   b. An individual administering medication documents all medication administered, including self-administered and over-the-counter drugs, on a medication administration record, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:
      (i) Be kept in a locked container;
      (ii) If a controlled substance, be kept under double lock with a documented medication count performed every shift;
      (iii) Be carried in a proper container labeled with medication and dosage pursuant to KRS 315.010(8) and 217.182(6);
      (iv) Accompany and be administered to a participant at a program site other than the participant’s residence if necessary; and
   (v) Be documented on a medication administration record and properly disposed of, if discontinued; and
   (vi) Adhering to policies and procedures for ongoing monitoring of medication administration; and
   (dd) Shall establish and follow written guidelines for handling an emergency or a disaster which shall:
      1. Be readily accessible on site;
      2. Include instruction for notification procedures and the use of alarm and signal systems to alert a participant according to the participant’s disability;
      3. Include documentation of training and competency of staff and training of participants on emergency disaster drills;
      4. Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and, for a participant who receives residential support services, is scheduled to include a time when the participant is asleep; and
      5. Mandate that the result of an evacuation drill be evaluated and if not successfully completed within three (3) minutes shall modify staffing support as necessary and repeat the evacuation drill within seven (7) days;
   (ee) Shall provide orientation for each new employee which shall include the mission, goals, organization, and practices, policies, and procedures of the agency;
   (ff) Shall annually provide or arrange for the provision of at least six (6) hours of professional development or continuing education units of competency-based training to each employee to teach and enhance skills related to the performance of duties, except for a case management supervisor or positive behavior support specialist;
   2. Annually provide or arrange for the provision of at least six [1040]
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(6) hours of professional development or continuing education units in the area of person-centered processes, supervision, or mentoring to each employee who is a case management supervisor; or

3. Annually provide or arrange for the provision of at least six (6) hours of professional development or continuing education units in the area of psychology, behavioral supports, applied behavioral science, or school psychology to each employee who is a positive behavior support specialist;

   (gg) Shall require documentation of all face-to-face training which shall include:
   1. The type of training provided;
   2. The name and title of the trainer;
   3. The training objectives;
   4. The length of the training;
   5. The date of completion;
   6. The signature of the trainee verifying completion; and
   7. Verification of competency of the trainee as demonstrated by post-training assessments, competency checklists, or post-training observations and evaluations;

   (hh) Shall require documentation of Web-based training which shall include:
   1. Transcripts verifying successful completion of training objectives with scores of eighty-five (85) percent or higher; and
   2. Competency checklist listing date of completion, signature of evaluator, and Signature of trainee for all Phase I or Phase II Kentucky College of Direct Support modules within the timeframe specified;

   (ii) Shall ensure that each case manager or employee prior to independent functioning and no later than six (6) months from the date of employment successfully completes training which shall include:
   1. First aid and cardiopulmonary resuscitation certification by, which shall be provided by a certified trainee with a nationally-accredited entity;
   2. Department of Behavioral Health, Developmental and Intellectual Disabilities' crisis prevention and intervention training;
   3. Successful completion of all Kentucky College of Direct Support Phase I training modules;
   4. Individualized instruction about the person-centered service plan (POC) of the participant to whom the trainee provides supports; and
   5. Verification of trainee competency as demonstrated by pre- and post-training assessments, competency checklists, and post-training observations or evaluations;

   (jj) Shall ensure that all case managers or employees, unless the case manager or employee is a licensed professional providing a service governed by the licensure of the individual's profession, complete the Kentucky College of Direct Support Phase II training modules, no later than six (6) months from the date of employment or when the individual began providing services;

   (kk) Shall ensure that each case manager complete DBHDID approved case management training after three (3) months but within nine (9) months from the date of hire; and

   (ll) Shall ensure that each case manager employed prior to the effective date of this administrative regulation complies the DBHDID case management training within one (1) year of this administrative regulation’s effective date; and

   (mm) Ensure that each adult family member residing in a level II residential adult foster care home or family home provider who may be left alone with the participant will receive training regarding the individualized needs of the participant.

(4) DBHDID shall:

1. The Health Risk Screening Tool required to be used by an SCL waiver provider pursuant to this administrative regulation; or

2. the Kentucky College of Direct Support training modules required to be used by an SCL waiver provider pursuant to this administrative regulation; and

   (b) Facilitate access to [a][b]:

   [Health Risk Screening tool to assess health risk required to be used by an SCL waiver provider of residential services pursuant to this administrative regulation; or

2. Kentucky College of Direct Support training modules required to be used by an SCL waiver provider pursuant to this administrative regulation.

(5) An SCL provider, employee, or volunteer shall:

(a) Not manufacture, distribute, dispense, be under the influence of, purchase, possess, use, or attempt to purchase or obtain, sell, or transfer any of the following in the workplace or while performing work duties:

   1. An alcoholic beverage;
   2. A controlled substance except an SCL provider, employee, or volunteer may use or possess a medically necessary and legally prescribed controlled substance;
   3. An illicit drug;
   4. A prohibited drug or prohibited substance;
   5. Drug paraphernalia; or
   6. A substance that resembles a controlled substance, if there is evidence that the individual intended to pass off the item as a controlled substance; and

(b) Not possess a prescription drug for the purpose of selling or distributing it.

Section 4. Covered Services. (1)(a) An SCL waiver service shall:

1. Be prior authorized by the department; and

2. Be provided to a participant pursuant to the participant’s person-centered service plan (POC) by an individual who meets the requirements established in Section 3 of this administrative regulation.

(b) Any combination of day training, community access, personal assistance, or any hours of paid community employment or on-site supported employment service shall not exceed sixteen (16) hours per day.

(2) SCL covered services shall include:

   (a) Case management;
   (b) Community access services;
   (c) Community guide services;
   (d) Community transition services;
   (e) Consultative clinical and therapeutic services;
   (f) Day training;
   (g) Environmental accessibility adaptation services;
   (h) Goods and services;
   (i) Natural supports training;
   (j) Occupational therapy;
   (k) Person-centered coaching;
   (l) Personal assistance services;
   (m) Physical therapy;
   (n) Positive behavior supports;
   (o) Residential support services;
   (p) Respite;
   (q) Shared living;
   (r) Specialized medical equipment and supplies;
   (s) Speech therapy;
   (t) Supported employment;
   (u) Transportation services; or

(3) Case management requirements shall be as established in Section 8 of this administrative regulation.

(4):

(a) Not include any other SCL waiver service;
(b) Be provided by a case manager who;

1. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. Shall not provide any other SCL waiver service to the participant receiving case management from the case manager;
(c) Be conflict free unless the department grants an exemption to the conflict-free requirement in accordance with subsection (4)(b) of this section;
(d) Include initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;
(e) Include assisting a participant in the identification, coordination, and arrangement of the person-centered team and person-centered team meetings;
(f) Include facilitating person-centered team meetings that assist a participant to develop, update, and monitor the POC which shall:
1. Reflect the principles and tools of self-determination to assist a participant in creating supports and services:
   a. Designed to meet the needs of the participant; and
   b. That promote choice, community experiences, employment, and personal satisfaction;
2. Be developed and prior authorized within thirty (30) days of the initiation of a service;
3. Include the objectives, interventions, goals, and outcomes that meet the participant’s identified needs from all assessments and person-centered team members;
4. Include documented participation in the development of the POC by the participant, participant’s guardian, family members, other providers, or other people the participant has identified as important in the participant’s life and as members of the person centered team; and
5. Include information about:
   a. What is important to the participant;
   b. What the person-centered plan will help the participant accomplish;
   c. What people like and admire about the participant;
   d. The characteristics of people providing support that are important to and for the participant;
   e. What people need to know or do to help the participant stay healthy and safe;
   f. Instructions for those who support the participant;
   g. The barriers that block the participant’s progress towards the participant’s goals;
   h. What action steps are needed to ensure that a participant’s goals are reached:
      i. Who is responsible for each action; and
      j. When the action is anticipated to be completed;
   (g) Include assisting a participant to gain access to and maintain employment, membership in community clubs, groups, activities, and opportunities at the times, frequencies, and with the people the participant chooses;
(h) Include coordination and monitoring of all waiver and non-waiver services which shall include:
   1. Monthly face-to-face contacts with the participant to determine if the participant’s needs are being met which shall include:
      a. Contact at a location where the participant is engaged in services; and
      b. Utilization of a DBHDID approved monitoring tools to:
         (i) Identify that person-centered practices are demonstrated by the service provider;
         (ii) Ensure that the participant’s health, safety, and welfare is not at risk;
         (iii) Gather data regarding the participant’s satisfaction with the services for use in guiding the person-centered planning process; and
      (iv) Generate monthly summary notes;
   2. Responsibility to initiate a person-centered team meeting and receive prior authorization within fourteen (14) days of a contact visit if the results of a monthly contact visit indicate that different or additional services or other changes in the participant’s POC are required to meet the participant’s needs;
3. Assistance with participant directed services which shall include:
   1. Assisting the participant in identifying, if necessary, a community guide and a representative who shall work with the participant on the development of a POC, budget, and emergency back-up plan;
   b. Assisting the participant in recruiting and managing employees;
   c. Assigning modules within the Kentucky College of Direct Supports for training purposes and assisting the participant, the community guide, or the representative in monitoring the completion of training within timeframes specified in Section 6 of this administrative regulation; and
   d. Monitoring the provision of services and submission of required documentation to the financial management agency; and
4. Authority to require immediate remediation of identified deficiencies that impact the health, safety, and welfare of a participant;
   (i) Include assisting a participant in planning resource use and assuring protection of resources to include:
   1. Clearly outlining the participant’s insurance options and availability; and
   2. Exploring the potential availability of other resources and social service programs for which the participant may qualify;
   (j) Include ensuring that notification with the MAP-24C occurs to the local DCBS office, the department, and DBHDID if a participant is:
      1. Terminated from the SCL waiver program;
      2. Admitted to an ICE-ID;
      3. Admitted to a hospital;
      4. Admitted to a skilled nursing facility;
      5. Transferred to another Medicaid 1915(c) home and community-based waiver program; or
      6. Relocated to a different address;
   (k) Include monitoring to ensure that services continue if a participant has been terminated from any service until an alternate provider, if needed, has been chosen by the participant and services have been approved;
   (l) Include providing a participant and the participant’s team members twenty-four (24) hour telephone access to a case management staff person;
   (m) Include documentation of services by:
      1. A monthly DBHDID approved person-centered monitoring tool; and
      2. A detailed monthly summary note which shall include:
         a. The month and year for the time period the note covers;
         b. An analysis of progress toward the participant’s outcome or outcomes;
         c. Identification of barriers to achievement of outcomes;
         d. A projected plan to achieve the next step in achievement of outcomes;
         e. The signature and title of the case manager completing the note; and
         f. The date the note was generated;
   (n) Include person-centered team meetings which shall not constitute the required monthly face-to-face visit with a participant;
   (o) Include the case manager being responsible for providing information about participant directed services:
      1. At the time the initial POC is developed; and
      2. At least annually thereafter and upon inquiry from the participant or participant’s guardian; and
   (p) Include the case manager supervisor performing supervision duties:
      1. As outlined in the Supports for Community Living Policy Manual; and
      2. In accordance with a DBHDID approved case manager supervisor training.
   (4)(a) If a case management service is approved to be provided despite not being conflict free, the case management provider shall document and demonstrate that the participant:
      1. Receives the same level of advocacy; and
      2. Exercises free choice of providers and services;
   (b) An exemption to the conflict-free requirement shall be granted if:
      1. A participant requests the exemption; and
      2. The participant’s case manager provides documentation to DBHDID in accordance with the Supports for Community Living Policy Manual, that;
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

- Provides evidence that there is a lack of a qualified case manager within thirty (30) miles of the participant’s residence; or
- There is a relationship between the participant and the participant’s case manager.
  
(c) A request to receive a case management service that is not conflict free shall accompany each prior authorization request for the case management service.

(d) One (1) unit of a case management service shall equal one (1) month.

(e) A provider shall bill for a case management service in accordance with 907 KAR 12:020.

(5) A community access service:

(a) Shall be provided by a community access specialist;

(b) Shall be designed to support a participant to participate in meaningful routines, events, and activities through various community organizations;

(c) Shall be designed to empower a participant in developing natural supports;

(d) May be participant directed;

(e) If participant directed, may be provided by an immediate familial member, guardian, legally responsible individual of the participant in accordance with Section 5 of this administrative regulation;

(f) Shall stress training that empowers a participant in acquiring, practicing, utilizing, and improving skills related to:

1. Connecting with others;
2. Independent functioning;
3. Self advocacy;
4. Socialization;
5. Community participation;
6. Personal responsibility;
7. Financial responsibility; and
8. Other skills related to optimal well-being as defined in the participant’s person-centered service plan[PCC];

(g) Shall be designed to result in an increased ability to develop natural supports and access community resources including educational, recreational, religious, civic, or volunteer opportunities with an outcome of:

1. Less reliance on formal supports; and
2. Greater reliance on natural or unpaid supports as established in the participant’s person-centered service plan[PCC];

(h) Shall have an emphasis on the development of personal social networks, membership, opportunities, friendships, and relationships for the participant as established in the participant’s person-centered service plan[PCC];

(i) Shall be provided outside the participant’s home or residential setting and occur during the day, in the evening, or on weekends;

(j) Shall not duplicate residential, day training services, or authorized therapies;

(k) Shall be provided to a participant with:

1. One (1) to one (1) staff to participant ratio; or
2. Ratio of one (1) staff to no more than two (2) participants according to the participant’s person-centered service plan[PCC], if the participant invites a friend;

(l) Shall occur in an integrated community setting;

(m) Shall be an impact service and the participant’s person-centered service plan[PCC] shall define steps to decrease the provision of the service as the participant becomes more independent in accessing and becoming part of the community;

(n) Shall be documented in the MWMA portal by:

1. A note documenting each contact which shall include:
   a. A full description of each service rendered;
   b. Evidence of training or service to support outcomes designated in the participant’s person-centered service plan[PCC];
   c. The date of the service;
   d. The location of the service;
   e. The beginning and ending times of the service;
   f. The signature and title of the individual providing the service; and
g. The date the entry was made in the record; and
2. A monthly summary note which shall include:
   a. The month and year for the time period the note covers;
b. An analysis of progress toward the participant’s outcome or outcomes;
c. Identification of barriers to achievement of outcomes;
d. Projected plan to achieve the next step in achievement of outcomes;
e. The signature and title of the community access specialist completing the note; and
f. The date the note was written; and
  (o) Shall not exceed 160 fifteen (15) minute units per week alone or in combination with community access group services.

(6)[(6)](a) A community guide service shall:

1. Be provided by a community guide who meets the personnel and training requirements established in Sections 3 and 10[6] of this administrative regulation;

2. Be designed to empower a participant to define and direct the participant’s services;

3. Only be for a participant who chooses participant-directed supports for some or all of the participant’s support services;

4. Include:

   a. Direct assistance to a participant in meeting his or her participant-directed responsibilities;
   b. Information and assistance that helps the participant in:
      (i) Problem solving;
      (ii) Decision making;
      (iii) Developing supportive community relationships; and
   c. Accessing resources that promote implementation of the participant’s person-centered service plan[PCC];

5. Be documented by:

   a. A note documenting each contact which shall include:
      (i) A full description of each service rendered;
      (ii) The date of the service;
      (iii) The location of the service;
      (iv) The beginning and ending times of the service;
      (v) The signature and title of the community guide[individual] providing the service; and
   (vi) The date the entry was made in the record; and
b. A completed monthly summary note which shall include:

      (i) The month and year for the time period the note covers;
      (ii) An analysis of the efficacy of the service provided including recommendations and identification of additional support needs;
      (iii) The signature and title of the community guide completing the note; and
   (iv) The date the note was written; and
6. Be limited to 576 fifteen (15) minute units per year.

(b) A participant and the participant’s person-centered team shall determine the community guide services to be received.

2. The community guide services to be received by a participant shall be specified in the participant’s person-centered service plan[PCC].

(c) If needed, directed assistance provided by a community guide:

1. Shall be based on the needs of the participant; and
2. May include assistance with:
   a. Recruiting, hiring, training, managing, evaluating, and changing employees;
   b. Scheduling and outlining the duties of employees;
   c. Developing and managing the individual budget;
   d. Understanding provider qualifications; or
   e. Recordkeeping and other program requirements.

(d) A community guide service shall not duplicate a case management service.

(e) A community guide providing community guide services to a participant shall not provide other direct waiver services to any participant.

(f) A community guide shall not be employed by an agency that provides other direct waiver services to the participant receiving community guide services from the community guide.

[6][6] Community transition services:

(a) Shall be nonrecurring set-up expenses for a participant who is transitioning from an institutional or other provider-operated
living arrangement to a living arrangement in a private residence where the participant is directly responsible for his or her own living expenses;

(b) Shall be expenses that are necessary to enable a participant to establish a basic household that do not constitute room and board;

(c) May include:

1. A security deposit that is required to obtain a lease on an apartment or home;

2. Essential household furnishings or moving expense required to occupy and use a community domicile, including furniture, window coverings, food preparation items, or bed or bath linens;

3. A one (1) time set-up fee or deposit for utility or service access, including telephone, electricity, heating, or water;

4. A service necessary for the participant’s health and safety including pest eradication or one (1) time cleaning prior to occupancy;

5. A necessary home accessibility adaptation; or

6. An activity to assess a need and arrange for and procure needed resources;

7. Shall be:

   a. To the extent that the service is reasonable and necessary;

   b. As clearly identified in the participant’s person-centered service plan[POC]; and

   c. If the service cannot be obtained from other sources;

   d. Shall not include:

      1. Monthly rental or mortgage expense;

      2. Food;

      3. Regular utility charges;

      4. Items that are intended for purely diversive or recreational purposes; or

   5. Furnishings for living arrangements that are owned or leased by an SCL provider;

   6. Shall be coordinated and documented in the MHMA portal by the participant’s case manager by:

      1. Description or itemized line item of purchase and cost;

      2. A receipt for a procurement including date of purchase;

      3. The signature and title of the case manager;

      4. The date the entry was made in the record; and

   g. Shall not exceed $2,000 per qualified transition.

2. A necessary home accessibility adaptation shall:

   a. To the extent that the service is reasonable and necessary;

   b. As clearly identified in the participant’s person-centered service plan[POC]; and

   c. If the service cannot be obtained from other sources;

   d. Shall not include:

      1. Monthly rental or mortgage expense;

      2. Food;

      3. Regular utility charges;

5. Providing training and technical assistance to carry out recommendations and plans which shall occur within the settings in which the recommendations, home treatment, or support plans are to be carried out;

6. Monitoring:

   a. Of the fidelity of data reporting and participant’s person-centered service plan[POC] implementation;

   b. Of the effectiveness of the participant’s person-centered service plan[POC];

   c. Of the impact of the participant’s person-centered service plan[POC] on the participant, the participant’s environment and system of supports; and

   d. Which shall be conducted:

      (i) In the settings where the participant’s person-centered service plan[POC] is implemented;

      (ii) Through discussions and observations of people implementing the participant’s person-centered service plan[POC]; and

   (iii) Through reporting data;

7. A functional assessment, which shall:

   a. Be conducted by a person who meets the personnel and training requirements established in Section 3 of this administrative regulation and is:

      (i) Licensed psychologist;

      (ii) Certified psychologist with autonomous functioning; or

      (iii) Positive behavior support specialist[and]

   b. Include;

   (i) A description of the behavior patterns identified through the functional assessment and the goals of intervention; and

   (ii) Modifications to the social or physical environment that may prevent the behavior or increase the likelihood of alternative adaptive behaviors; and

   c. Identify specific skills to be taught or reinforced that shall:

      (i) Achieve the same function as the behavior of concern;

      (ii) Through discussions and observations of people implementing the participant’s person-centered service plan[POC] on the participant, the participant’s environment and system of supports; and

   (iii) Be documented when they occur[all functional assessment components specified in the Supports for Community Living Policy Manual][and]

8. Documentation of[all service by a note documenting] each contact, which shall include:

   a. A full description of each service rendered;

   b. An analysis of the efficacy of the service provided including any recommendation or identification of additional support needs if needed;

   c. The date of the service;

   d. The location of the service;

   e. The beginning and end times of the service;

   f. The signature and title of the professional providing the service;

   g. The date the entry was made in the record[and]

   h. Not exceed 160 fifteen (15) minute units per year; and

   i. For a participant who has a diagnosis of mental illness and a diagnosis of an intellectual disability, incorporate a positive behavior support plan that utilizes evidenced-based best practice in the behavioral health condition.

   j. In this instance, the behavioral health condition shall be considered the primary support service, with behavioral interventions as supplemental services as needed.

2. The positive behavior support plan shall use both behavioral health and positive behavior supports in a collaborative manner.

3. The positive behavior support plan shall be revised whenever necessary by the participant’s person-centered team based on the participant’s needs or recommendations from the local Behavior Intervention Committee or the local Human Rights Committee.

4. Revisions to the positive behavior support plan shall be covered as a consultative clinical and therapeutic service.

6. Day training:

   a. Shall be provided by a direct support professional;

   b. Shall include:

      1. Providing regularly scheduled activities in a non-residential setting that are designed to foster the acquisition of skills, build
positive social behavior and interpersonal competence, foster greater independence and personal choice; and
2. Career planning or pre-vocational activities to develop experiential learning opportunities and career options consistent with the participant’s skills and interests that:
   a. Are person-centered and designed to support employment related goals;
   b. Provide active training designed to prepare a participant to transition from school to adult responsibilities, community integration, and work;
   c. Enable each individual to attain the highest level of work in the most integrated setting with the job matched to the participant’s interests, strengths, priorities, abilities, and capabilities; and
   d. Include:
      (i) Skill development to communicate effectively with supervisors, co-workers, and customers;
      (ii) Generally accepted community workplace conduct and dress;
      (iii) Workplace problem solving skills and strategies;
      (iv) General workplace safety;
      (v) The ability to use proper installation directions;
      (vi) The ability to attend tasks; or
      (vii) Mobility training;
   3. Supported retirement activities including:
      a. Altering schedules to allow for more rest time throughout the day; or
      b. Support to participate in hobbies, clubs, or other senior-related activities in the participant’s community;
   4. Training and supports designed to maintain skills and functioning and to prevent or slow regression, rather than acquiring new skills or improving existing skills;
   (c) Shall include required informational sessions sponsored by the provider at least annually for the participant regarding community involvement or employment services and arrangement of opportunities for the participant to explore community integration, supported employment, and other employment opportunities in the community;
   (d) Shall, if provided in an adult day health care center, only be available for a participant who:
      1. Is at least twenty-one (21) years of age; and
      2. Requires skilled nursing services or nursing supervision in a licensed adult day health care center as outlined in the participant’s person-centered service plan (POC);
   (e) Shall include environments that:
      1. Are not diversional in nature; and
      2. Occur in a variety of settings in the community and shall not be limited to fixed-site facilities; and
      3. Coordinate with any needed therapies in the participant’s POC.
   (f) May be participant directed and if participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 5 of this administrative regulation;
   (g) Shall not be reimbursable if vocational in nature and for the primary purpose of producing goods or performing services;
   (h) Shall include documentation that shall be:
      1. A note for each contact which shall include:
         a. A full description of each service rendered;
         b. The date of the service;
         c. The location of the service;
         d. The beginning and ending times of the service;
         e. The signature and title of the individual providing the service; and
         f. The date the entry was made in the record; and
      2. A completed monthly summary note which shall include:
         a. The month and year for the time period the note covers;
         b. An analysis of the efficacy of the service provided including recommendations and identification of additional support needs;
         c. The signature and title of the individual completing the note; and
         d. The date the note was written; and
      (i) Shall be limited to:
         1. Five (5) days per week excluding weekends; and
         2. 160 fifteen (15) minute units per week for day training alone or in combination with any hours of paid community employment or on-site supported employment services.
   (9)(10)(a) An environmental accessibility adaptation service:
      1. Shall be:
         a. Designed to enable participants to interact more independently with their environment thereby enhancing their quality of life and reducing their dependence on physical support from others; and
         b. A physical adaptation to a participant’s or family’s home which shall be necessary to:
            (i) Ensure the health, welfare, and safety of the participant; or
            (ii) Enable the participant to function with greater independence in the home and without which the participant would require institutionalization;
      2. May include the following if necessary for the welfare of a participant:
         a. Installation of a ramp or grab-bar;
         b. Widening of a doorway;
         c. Modification of a bathroom facility; or
         d. Installation of a specialized electric and plumbing system which shall be necessary to accommodate the medical equipment or supplies necessary for the welfare of the participant;
      3. Shall not include:
         a. An adaptation or improvement to a home which is not of direct medical or remedial benefit to a participant;
         b. An adaptation that adds to the total square footage of a home except if necessary to complete an adaptation; and
         c. An adaptation to a provider-owned residence;
      4. Shall be provided:
         a. In accordance with applicable state and local building codes; and
         b. By a vendor who shall be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020;
      5. Shall be coordinated and documented in the MWMA portal by a case manager by:
         a. A description of each adaptation purchased;
         b. A receipts for every adaptation made which shall include the:
            (i) Date of purchase;
            (ii) Description of the item;
            (iii) Quantity and per unit price; and
            (iv) Total amount of the purchase;
            c. The signature and title of the case manager; and
            d. The date the entry was made in the record; and
      6. Shall be limited to $8,000 per lifetime.
   (b) An immediate family member, guardian, or legally responsible individual of a participant shall not be eligible to be a vendor or provider of an environmental accessibility service for the participant.
   (c) A home accessibility modification shall not be furnished to a participant who receives residential habilitation services except if the services are furnished in the participant’s own home.
   (d) A request shall be documented in a participant’s person-centered service plan (POC) and include cost of adaptations.
   [10](11)(a) Goods and services shall:
      1. Be services, equipment, or supplies that are individualized to a participant who chooses to use participant-directed services;
      2. Be utilized to reduce the need for personal care or to enhance independence within a participant’s home or community;
      3. Not be a good or service available to a recipient outside of the department’s SCL waiver program;
      4. Meet the following requirements:
         a. The good or service shall decrease the need for other Medicaid services;
         b. The good or service shall promote participant inclusion in the community;
         c. The good or service shall increase a participant’s safety in the home environment; and
         d. The participant shall not have the funds to purchase the good or service;
5. If participant directed and purchased from a participant-directed budget, be prior authorized;
6. Not include experimental or prohibited treatments;
7. Be clearly linked to a participant need that has been documented in the participant’s person-centered service plan (POC);
8. Be coordinated and documented in the MWMA portal by a case manager by:
   a. Description or itemized line item of purchase and cost;
   b. Receipts for procurements which include the date of purchase;
   c. The signature and title of the case manager; and
   d. The date the entry was made in the record; and
9. Not exceed $1,800 per one (1) year authorized person-centered service plan (POC) period.

(b) A purchase of a good or service shall not circumvent other restrictions on SCL waiver services:
1. Established in this administrative regulation; and
2. Including the prohibition against claiming for the costs of room and board.

(c) An immediate family member, guardian, or legally responsible individual of a participant shall not be a provider of participant-directed goods and services to the participant.

(d) A case manager shall submit reimbursement documentation to the financial management agency.

(e) Equipment purchased as a good shall become the property of the participant.

11[(12)][(13)] Occupational therapy shall:
(a) Be provided by:
   1. A person who:
      a. Meets the personnel and training requirements established in Section 3 of the administrative regulation; and
      b. Is either an:
         i. Occupational therapist; or
         ii. Occupational therapy assistant; and
      2. Order of a physician;
(b) Be evaluation and therapeutic services that are not available to a participant outside of a 1915(c) home and community based waiver program;
(c) Include:
   1. Evaluation of a participant and the participant’s environment;
   2. Therapeutic activities to improve functional performance;
   3. Sensory integrative techniques to enhance sensory processing and promote adaptive responses to environmental demands; and
   4. Participant and family education;
(d) Facilitate maximum independence by establishing life skills with an emphasis on safety and environmental adaptation to improve quality of life and increase meaning and purpose in daily living and community integration;
(e) Promote fine motor skills, coordination, sensory integration, and facilitate the use of adaptive equipment or other assistive technology;
(f) Include, as needed, coordination of program wide support addressing assessed needs, conditions, or symptoms affecting a participant’s ability to fully participate in the participant’s community;
(g) Include the development of a home treatment or support plan with training and technical assistance provided on-site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;
(h) Be delivered in a participant’s home or in the community as described in the participant’s POC;
(i) Include monitoring;
   1. Of the fidelity of data reporting and participant’s POC implementation;
   2. Of the effectiveness of the participant’s POC;
   3. Of the impact of the participant’s POC on the participant, the participant’s environment, and system of supports; and
   4. Which shall be conducted:
      a. In the settings where the participant’s POC is implemented;
      b. Through discussions and observations of people implementing the participant’s POC; and
      c. Through reporting data;
(j) Be documented by a note documenting each contact which shall include:
   1. A full description of each service rendered;
   2. Evidence of progress toward the participant’s outcome or
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

outcomes:
3. Identification of barriers to achievement of outcomes;
4. The projected plan to achieve the next step in achievement of outcomes;
5. The date of the service;
6. The location of the service;
7. The beginning and ending time of the service;
8. The signature and title of the person providing the service;
9. The date the entry was made in the record; and
10. The signature and title of the occupational therapist supervising the occupational therapy assistant and date of the documentation review, if applicable;

(a) Not be available to a participant under the age of twenty-one (21);
(b) Not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 101 et seq.); and
(c) Be limited to fifty (50) fifteen (15) minute units per month.

(14)(a) Person-centered coaching shall:
1. Be provided by a person-centered coach who shall:
   a. Operate independently of a residential or day training provider;
   b. Work under the direction of a positive behavior support specialist or other licensed professional in the settings where the person-centered service plan[POC] is implemented; and
   c. Meet the personnel and training requirements specified in Section 3 of this administrative regulation;
2. Be an individualized service to be utilized when a barrier challenges the success of a participant in achieving the participant's goals;
3. Include:
   a. The provision of training developed in conjunction with certified or licensed professionals from the participant's person-centered team, to the participant, family, guardian, natural and paid supports on implementation of all or designated components of the participant's person-centered service plan[POC];
   b. Monitoring the effectiveness of person-centered planning as demonstrated by the support system's implementation of the person-centered service plan[POC] or designated components across the array of service settings and reporting of required and pertinent data; and
   c. Data collection which shall be utilized by the participant's person-centered team to modify the environment or person-centered service plan[POC] as needed;
4. Not duplicate case management or any other service;
5. Not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 101 et seq.); and
6. Be limited to 1,320 fifteen (15) minute units per year.

(b) [An individualized service shall be outcome-based with a plan for the gradual withdrawal of the services.

(c) A person-centered coach shall not be considered as part of a staffing ratio, plan, or pattern.

(d) Documentation of a person-centered coaching service shall include:
1. A note documenting each contact which shall include:
   a. A full description of each service rendered;
   b. The date of the service;
   c. The location of the service;
   d. The beginning and ending time of the service;
   e. The signature and title of the person-centered coach(individual) providing the service;
2. A completed monthly summary note which shall include:
   a. The month and year for the time period the note covers;
   b. A summary of the service provided including recommendations and identification of additional support needs if any exist;
   c. The signature and title of the individual completing the note;
   d. The date the note was written; and
   e. The signature, title, and date of review of documentation by the positive behavior specialist or other licensed professional directing the work of the person-centered coach.

(13)(15) Personal assistance services:
(a) Shall be provided by a direct support professional;
(b) Shall enable a participant to accomplish tasks that the participant normally would do for himself or herself if the participant did not have a disability;
(c) Shall be available only to a participant who lives in the participant's own residence or in the participant’s family residence;
(d) May be participant directed and if participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 10(5) of this administrative regulation;
(e) Shall include:
1. Hands-on assistance (performing a task for a participant);
2. Reminding, observing, guiding, or training a participant in activities of daily living;
3. Reminding, observing, guiding, or training a participant in instrumental[independent] activities of daily living;
4. Assisting a participant in managing the participant's medical care including making medical appointments and accompanying the participant to medical appointments; or
5. Transportation, which is not otherwise available under the Medicaid Program, to access community services, activities, and appointments;

(f) Shall take place in a participant's home or in the community as appropriate to the participant's need;
(g) Shall not be available to a participant:
1. Receiving paid residential supports; or
2. Under the age of twenty-one (21) if medically necessary personal assistance is available as an early and periodic screening, diagnostic, and treatment service;
(h) Shall not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); and

(i) Shall be documented by:
1. A note for each contact which shall include:
   a. A full description of each service rendered;
   b. Evidence of training or service to support outcomes designated in the participant's person-centered service plan[POC] as appropriate;
   c. The date of the service;
   d. The location of the service;
   e. The beginning and ending time of the service;
   f. The signature and title of the direct support professional providing the service; and
   g. The date the entry was made in the record; and
2. A detailed monthly summary note which shall include:
   a. The month and year for the time period the note covers;
   b. Evidence of progress toward the participant's outcome or outcomes;
   c. Identification of barriers to achievement of outcome or outcomes;
   d. Projected plan to achieve the next step in achievement of outcome or outcomes;
   e. The signature and title of the direct support professional completing the note;
   f. The date the note was written; and
   g. The signature, title, and date the documentation was reviewed by the direct support professional supervisor supervising the direct support professional.

(14)(16) Physical therapy shall:
(a) Include evaluation or therapeutic services that are not available to a participant outside of a 1915(c) home and community-based waiver program;
(b) Address physical therapy needs that result from a participant's developmental disability;
(c) Facilitate a participant's independent functioning or prevent progressive disabilities;
(d) Include:
1. Evaluation;
2. Therapeutic procedures;
3. Therapeutic exercises to increase range of motion and flexibility;
4. Participant or family education;
5. Assessment of a participant’s environment;
6. If needed, development of a home treatment or support plan with training and technical assistance provided on-site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;
7. An needed coordination of program wide support addressing assessed needs, conditions, or symptoms affecting a participant’s ability to fully participate in the community;
8. Monitoring:
   a. Of the fidelity of data reporting and participant’s POC implementation;
   b. Of the effectiveness of the participant’s POC;
   c. Of the impact of the participant’s POC on the participant, the participant’s environment, and system of supports; and
   d. Which shall be conducted:
      (i) In the settings where the participant’s POC is implemented;
      (ii) Through discussions and observations of people implementing the participant’s POC; and
      (iii) Through reporting data;
   (e) Be provided by:
      1. A person who:
         a. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and
         b. Is either:
            (i) A physical therapist; or
            (ii) A physical therapist assistant; and
         2. An order of a physician;
   (f) Be delivered in a participant’s home or in the participant’s community as described in the participant’s POC;
   (g) Not be available to a participant under the age of twenty-one (21) years;
   (h) Not supplant educational services available under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.);
   (i) Be documented by a note documenting each contact which shall include:
      1. A full description of each service rendered;
      2. Evidence of progress toward the participant’s outcome or outcomes;
      3. Identification of barriers to achievement of outcomes;
      4. The projected plan to achieve the next step in achievement of outcomes;
      5. The date of the service;
      6. The location of the service;
      7. The beginning and ending time of the service;
      8. The signature and title of the person providing the service;
      9. The date the entry was made in the record; and
      10. The signature and title of the physical therapist supervising the physical therapist assistant and date of the documentation review if applicable and
   (j) Be limited to fifty-two (52) fifteen (15) minute units per month;

47(1)(a) Positive behavior supports shall include:
   1. The utilization of evidenced based and best practices in behavioral techniques, interventions, and methods to assist a participant with significant, intensive challenges which interfere with activities of daily living, social interaction, or work;
   2. Evidenced based or best practices regarding treatment of a behavioral health condition which shall be the primary support services if supplemental behavioral interventions are needed; and
   3. A positive behavior support plan, which shall:
      a. Be clearly based upon the information, data collected, and recommendations from the functional assessment;
      b. Meet the primary purpose of having the participant acquire or maintain skills for community living while behavioral interventions are delivered for the reduction of significant challenges which interfere with activities of daily living, social interaction, or work;
      c. Be developed with the participant and participant’s person-centered team;
      d. Be related to goals of interventions, such as greater participation in activities, enhanced coping or social skills;
      e. Identify strategies for managing consequences to maximize reinforcement of adaptive or positive behavior and minimize that for target behavior;
      f. Delineate goals of intervention and specific replacement behavior or skills that are incorporated into the participant’s total service plan;
   g. If necessary to ensure safety and rapid de-escalation of a targeted behavior, outline the de-escalation techniques and scaled response with criteria for use and documentation requirements;
   h. Include specific criteria for how data including rate, frequency, duration, and intensity shall be recorded;
   i. Include specific criteria for re-evaluation when the data does not demonstrate progress;
   j. Include specific criteria for fading or discontinuing the service as the participant’s adaptive, positive behavior improves;
   k. Include all the positive behavior support components specified in the Supports for Community Living Policy Manual;
   l. Be revised whenever necessary, and submitted for review to the local Behavior Intervention Committee along with:
      (i) The participant’s person-centered service plan;
      (ii) The participant’s functional assessment;
      (iii) The participant’s medical assessment; and
      (iv) The participant’s life history;
   m. Be submitted to the local Human Rights Committee if rights restrictions are recommended; and
   (n) Be implemented across service settings by the various paid and natural supports, assisting a participant to reach the participant’s goals and dreams.
   (b) Positive behavior supports shall be provided by a positive behavior support specialist.
   (c) Behavioral health treatment and positive behavioral supports shall be utilized in a collaborative manner.
   (d) One (1) unit of positive behavior supports shall equal one (1) hour;
   (e) Positive behavior supports shall be billed in accordance with 907 KAR 12:020.
   (f) Be authorized for a participant based upon information from the participant’s Supports Intensity Scale assessment, an [Health Risk] screening tool that assesses health risk[assessment], and a person-centered service plan[POC];

2. Ensure that the participant has:
   a. Privacy in the sleeping or living unit in a residential setting;
   b. An option for a private unit in a residential setting;
   c. A unit with lockable entrance doors and with only the individual and appropriate staff having keys to those doors;
   d. A choice of roommates or housemates;
   e. The freedom to furnish or decorate the participant’s sleeping or living units within the lease or other agreement;
   f. Visitors of the participant’s choosing at any time and access to a private area for visitors; and
   g. Physical accessibility defined as being easy to approach, enter, operate, or participate in a safe manner and with dignity by a person with or without a disability;
   (b) To be considered physically accessible, a setting shall meet the American Disability Act standards of accessibility for all participants served in the setting;
   (c) All communal areas shall be accessible to all participants as well as having a means to enter the building (i.e., keys, security codes, etc.);
   (d) Bedrooms shall be accessible to the appropriate persons;
   (e) Any modification of the additional residential conditions except for the setting being physically accessible requirement shall be supported by a specific assessed need and justified in the person-centered service plan.
   (f) The following shall be documented in the participant’s person-centered service plan:
      1. Identification of a specific and individualized assessed need;
      2. Documentation of any positive intervention or support used prior to any modifications to the person-centered service plan;
      3. Documentation of any less intrusive method of meeting the
participant’s needs that has been tried but did not work:

4. A clear description of the condition that is directly proportionate to the specific assessed need;

5. Regular collection and review of data to measure the ongoing effectiveness of the modification;

6. Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

7. The informed consent of the participant; and

8. An assurance that interventions and supports will cause no harm to the participant.

(g) Residential support services shall:

1. (b) Include:
   a. (1) Level I residential supports;
   b. (2) Technology assisted residential supports; or
   c. (2) Level II residential supports; and

2. (c) Be documented by a:
   a. Daily note, which shall include:
      i. Information about how a participant spent the day including any effort toward meeting any outcome identified in the participant’s person-centered service plan
         • (POC)
      ii. The location of the service;
      iii. The signature and title of the individual providing the service; and
      iv. The date the entry was made in the record; and
   b. (2) Detailed monthly summary note, which shall include:
      i. The month and year for the time period covered by the note;
      ii. An analysis of progress toward a participant’s outcome or outcomes;
      iii. A projected plan to achieve the next step in achievement of an outcome or outcomes;
      iv. Information regarding events that occurred that had an impact on the participant’s life;
      v. The signature and title of the direct support professional writing the note;
      vi. The date the note was written; and
      vii. The signature, title, and date of documentation review by the direct support professional supervisor providing supervision to the direct support professional.

16. [(14)](b)1. Level I residential supports shall:

   1. Be furnished in a provider-owned or leased residence which complies with the Americans with Disabilities Act based upon the needs of each participant receiving a support in the residence;
   2. Be for a participant who requires a twenty-four (24) hour a day, intense level of support;
   3. Include no more than five (5) unsupervised hours per day per participant:
      a. To promote increased independence; and
      b. Which shall be based on:
         i. Needs of the participant as determined by the participant’s person-centered team; and
         ii. The participant’s person-centered service plan (POC);
   4. Include:
      a. Adaptive skill development;
      b. Assistance with activities of daily living including bathing, dressing, toileting, transferring, or maintaining continence;
      c. Community inclusion;
      d. Adult education supports;
      e. Social and leisure development;
      f. Protective oversight or supervision;
      g. Transportation;
      h. Personal assistance; and
      i. The provision of medical or health care services that are integral to meeting the participant’s daily needs; and
   5. Be outlined in a participant’s person-centered service plan with an accurate reflection of the responsibilities of the residential provider (POC).

(b) Level I residential supports shall be provided by a:

1. Staffed residence which:
   a. Has been certified;
      i. By the department to be an SCL waiver provider; and
      ii. By DBHDID to provide level I residential supports; and
   b. Shall have no more than three (3) participants receiving publicly-funded supports in a home leased or owned by the provider; or
   2. Group home which:
      a. Has been certified;
         i. By the department to be an SCL waiver provider; and
         ii. By DBHDID to provide level I residential supports; and
      b. Shall have no more than eight (8) participants in the group home.

(c1. For a participant approved for unsupervised time, a safety plan shall be included in the participant’s person-centered service plan (POC) based upon the participant’s assessed needs.

2. A participant’s case manager and other person-centered team members shall ensure that a participant is able to implement a safety plan.

3. A participant’s case manager shall provide ongoing monitoring of the safety plan, procedures, or assistive devices required by a participant to ensure relevance, the participant’s ability to implement the safety plan, and the functionality of the devices if required.

(d) If a participant experiences a change in support needs or status, the participant’s person-centered team shall meet to make the necessary adjustments in the:

1. Participant’s person-centered service plan (POC); and

2. Residential services to meet the participant’s needs.

(e) A level I residential support provider shall employ staff who shall be:

1. Direct support professional; or

2. Direct support professional supervisor if providing supervision.

17. [(20)](a) Technology assisted residential services shall:

1. Be furnished in a participant’s residence:

   a. Which complies with the Americans with Disabilities Act based upon the needs of each participant receiving a support in the residence; and
   b. To three (3) or fewer participants who reside in the residence with twenty-four (24) hour staff support;

2. Be for a participant who:

   a. Requires up to twenty-four (24) hours a day of support; and
   b. Is able to increase his or her level of independence with a reduced need for onsite staff;

3. Include, to the extent required for a participant:

   a. Protective oversight or supervision;
   b. Transportation;
   c. Personal assistance; or
   d. The provision of medical or health care services that are integral to meeting the participant’s daily needs;

4. Increase a participant’s independence without undue risk to the participant’s health or safety;

5. Be a real-time monitoring system with a two (2) way method of communication linking a participant to a centralized monitoring station; and

6. Be allowed to include:

   a. An electronic sensor;
   b. A speaker or microphone;
   c. A video camera which shall not be located in a bedroom or a bathroom;
   d. A smoke detector; or
   e. A personal emergency response system.

(b1. A device listed in paragraph (a)6. of this subsection shall link a participant’s residence to remote staff employed to provide electronic support.

2. A technology assisted residential service provider shall have a plan established to ensure that staff is available twenty-four (24) hours a day, seven (7) days a week for a participant or participants receiving services from the provider.

(c) Technology shall be used by the technology assisted residential service provider to assist a participant in residing in the most integrated setting appropriate to the participant’s needs.

(d) The level and types of technology assisted residential services provided to a participant shall be:

1. Determined by a participant’s person-centered team; and

2. Outlined in a participant’s person-centered service plan.
plan[POC].

(e) A participant’s person-centered team shall give careful consideration to the participant’s medical, behavioral, and psychiatric condition in determining the level and types of technology assisted residential services needed for a participant.

(f) The use of technology to reduce a participant’s need for residential staff support in a residence may be utilized if there is an individualized person-centered service plan[POC] which has been developed to promote a participant’s increased independence:

1. Based on the participant’s needs as indicated in the scores and results of the Supports Intensity Scale assessment and the Health Risk screening tool that assesses health risk[assessment]; and

2. As recommended by the participant’s person-centered team.

(g)1. If a participant experiences a change in support need or status, the technology assisted residential service provider shall:
   a. Immediately adjust the participant’s supervision to meet any acute need of the participant; and
   b. Reassess the appropriateness of technology assisted residential services and make any adjustment, if needed, to meet any acute need of the participant.

2. Any adjustment shall be made in collaboration with the participant’s case manager and person-centered team if the adjustment is to be implemented for a period longer than what was determined by the participant’s person-centered team when developing the participant’s person-centered service plan[POC].

(h) A technology assisted residential service provider shall:

1. Be responsible for arranging or providing a participant’s transportation between the participant’s residence and any other service site or community location;
2. Employ staff who:
   a. Shall be a:
      (i) Direct support professional; or
      (ii) Direct support professional supervisor if providing supervision; and
   b. Demonstrate:
      (i) Proficiency in the individual’s ability to operate all monitoring devices utilized in technology assisted residential services; and
      (ii) The ability to respond appropriately to the needs of participants in a timely manner; and
3. Have daily contact with the participant.

19[(21)](a) Level II residential supports shall:
1. Be for a participant who requires up to a twenty-four (24)-hour level of support;
2. Be a support tailored to a participant to:
   a. Assist the participant with acquiring, retaining, or improving skills related to living in a community; and
   b. Promote increased independence;
3. Be designed and implemented to assist a participant to reside in the most integrated setting appropriate to the participant’s needs; and
4. Provide support for a participant up to twenty-four (24) hours a day;
   [and]
5. Be furnished in:
   a. An adult foster care home;
   b. A family home provider; or
   c. A participant’s own home;
6. Be based on:
   a. Needs of the participant as determined by the participant’s person-centered team; and
   b. Participant’s person-centered service plan; and
7. Include:
   a. Adaptive skill development;
   b. Assistance with activities of daily living including bathing, dressing, toileting, transferring, and maintaining continence;
   c. Community inclusion;
   d. Adult education supports;
   e. Social and leisure development;
   f. Protective oversight or supervision;
   g. Transportation;
   h. Personal assistance; and
   i. The provision of medical or health care services that are integral to meeting the participant’s daily needs.

(b) Level II residential supports shall be provided by:
1. An adult foster care provider which:
   a. Has been certified:
      (i) By the department to be an SCL waiver provider; and
      (ii) By DBHDID to provide Level II residential supports; and
   b. Shall have no more than three (3) participants who are:
      (i) Aged eighteen (18) years or older; and
      (ii) Receiving publicly-funded supports and living in the home;
   or
2. A family home provider which:
   a. Has been certified:
      (i) By the department to be an SCL waiver provider; and
      (ii) By DBHDID to provide Level II residential supports; and
   b. Shall have no more than three (3) participants receiving publicly-funded supports living in the home.

(c) A level II residential support provider shall employ staff who shall be a:
1. Direct support professional; or
2. Direct support professional supervisor if providing supervision.

(d) If a participant experiences a change in support need or status, the level II residential services provider shall adjust services provided to the participant to meet the participant’s altered need or status.

(e) For a participant approved for unsupervised time, a safety plan shall:
1. Be included in the participant’s person-centered service plan based upon the participant’s assessed needs; and
2. Ensure that:
   a. The participant’s case manager and other person centered service plan team members ensure that the participant is able to implement the safety plan; and
   b. The participant’s case manager provides ongoing monitoring of the safety plan, procedures, or assistive devices required by the participant to ensure:
      (i) Relevance; and
      (ii) The participant’s ability to implement the safety plan; and
      (iii) The functionality of the devices if required.

(f) If a participant experiences a change in support needs or status, the participant’s person-centered team shall meet to make the necessary adjustments in the:
1. Participant’s person-centered service plan; and
2. Residential services to meet the participant’s needs.

19[(22)] Respite:
(a) Shall:
1. Be provided to a participant who:
   a. Does not receive residential services;
   b. Resides in the participant’s own home or family’s home; and
   c. Is unable to independently administer self-care;
2. Be provided:
   a. In a variety of settings;
   b. By a direct support professional; and
   c. On a short-term basis due to the absence or need for relief of a non-paid primary caregiver/individual providing care to a participant;
3. Be documented by a contact note which shall include:
   a. The date of the service;
   b. The beginning and ending time of the service;
   c. A full description of each service rendered; and
   d. The signature and title of the individual providing the service; and
4. Not exceed 830 hours per each one (1) calendar year authorized person-centered service plan period; and
(b) May be participant directed and if participant directed, may be provided by an immediate family member or guardian of the participant in accordance with Section 10(5) of this administrative regulation.
of room and board expenses.

(b) A payment for the portion of the costs of rent or food attributable to an unrelated personal caregiver shall be routed through the financial management agency specifically for reimbursing the participant.

(c) If two (2) participants choose to live together in a home, the two (2) may share a caregiver.

(d) Depending upon the need of a participant, a caregiver may provide:

1. Assistance with the acquisition, retention, or improvement in skills related to activities of daily living; or
2. Supervision required for safety or the social and adaptive skills necessary to enable the participant to reside safely and comfortably in the participant's own home.

(e) Shared living services shall:

1. Address a participant's needs identified in the participant's person-centered planning process;
2. Be outlined in the participant's person-centered service plan [POC];
3. Be specified in a contractual agreement between the participant and the caregiver; and
4. Complement other services the participant receives and enhance increased independence for the participant.

(f) A participant's person-centered team shall decide and ensure that the individual who will serve as the participant's caregiver has the experience, skills, training, and knowledge appropriate to the participant and the type of support needed.

(g) A participant's caregiver shall meet direct support professional qualifications in accordance with Section 1(23)(24) of this administrative regulation.

(h) Room and board expenses for an unrelated caregiver living with a participant shall be:

1. Reflected in the participant's person-centered service plan [POC]; and
2. Specified in the contractual agreement between the participant and the caregiver.

(i) A payment shall not be made if a participant lives in the caregiver's home or in a residence that is owned or leased by an SCL provider.

(j) Documentation shall:

1. Be maintained by a participant's case manager in the MWMA portal; and
2. Include:
   a. A dated monthly summary note that is written by the case manager and details how services were provided according to the contractual agreement and the participant's person-centered service plan [POC];
   b. A monthly receipt for the caregiver's room and board expenses that were reimbursed to the participant;
   c. The signature and title of the case manager writing the note;
   d. The date the note was written;
   e. A signed and dated statement from the participant or the participant's guardian indicating that the participant is satisfied with the services provided by the caregiver; and
   f. The signature, title and date of documentation review by the case manager supervisor who is supervising the case manager.

(k) Shared living shall not exceed $600 per month.

(l)(i) Specialized medical equipment and supplies shall:

1. Include a device, control, or appliance specified in a participant's person-centered service plan [POC] which shall:
   a. Be necessary to ensure the health, welfare, and safety of the participant; or
   b. Enable the participant to function with greater independence in the home;
2. Include assessment or training needed to assist a participant with mobility, seating, bathing, transferring, security, or other skills including operating a wheelchair, a lock, a door opener, or a side lyre;
3. Include a computer necessary for operating communication devices, a scanning communicator, a speech amplifier, a control switch, an electronic control unit, a wheelchair, a lock, a door opener, or a side lyre;
4. Include customizing a device to meet a participant's needs;
5. Include partial nutrition supplements, special clothing, an enuresis protective chuck, or another authorized supply that is specified in the participant's person-centered service plan [POC];
6. Include an ancillary supply necessary for the proper functioning of an approved device;
7. Be identified in a participant's person-centered service plan [POC];
8. Be recommended by a person whose signature shall verify the type of specialized equipment or supply that is necessary to meet the participant's need; and who
   a. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and is a:
      (i) An occupational therapist;
      (ii) A physical therapist;
      (iii) A speech-language pathologist[therapist]; or
   b. Is a certified or licensed practitioner whose scope of practice includes the evaluation and recommendation of specialized equipment or supplies;
9. Not include equipment, a supply, an orthotic, prosthetic, service, or item covered under the department's:
   a. Durable medical equipment program pursuant to 907 KAR 1:479;
   b. Hearing services program pursuant to 907 KAR 1:038 or 907 KAR 1:039; or
   c. EPSDT program pursuant to 907 KAR 11:034 or 907 KAR 11:035; and
10. Be coordinated and documented in the MWMA portal by a case manager by:
   a. A description or itemized line item of purchase and cost;
   b. Receipts for procurements which include the date of purchase;
   c. The signature and title of the case manager;
   d. The date the entry was made in the record; and
   e. The signature, title, and date of the documentation review by the case manager supervisor providing supervision to the case manager.

(b) Equipment purchased pursuant to this subsection for a participant shall become the property of the participant.
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

(i) In the settings where the participant’s POC is implemented;
(ii) Through discussions and observations of people implementing the participant’s POC; and
(iii) Through reporting data;
(c) Preserve abilities for independent function in communication, motor and swallowing functions, facilitate use of assistive technology, and prevent regression;
(d) Be delivered in a participant’s home or in the participant’s community as described in the participant’s POC;
(e) Not be available to a participant under the age of twenty-one (21) years;
(f) Not supplant educational services available under the IDEA (20 U.S.C. 1401 et seq.) and
(g) Be documented by a note documenting each contact which shall include:
   1. A full description of each service rendered;
   2. Evidence of progress toward the participant’s outcome or outcome;
   3. Identification of barriers to achievement of outcomes;
   4. The projected plan to achieve the next step in achievement of outcomes;
   5. The date of the service;
   6. The location of the service;
   7. The beginning and ending time of the service;
   8. The signature and title of the speech-language pathologist providing the service; and
   9. The date the entry was made in the record; and
   (26)(a) Supported employment shall be funded by the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401 et seq.) for a participant if funding is available under either act for the participant.
   (b) If the funding referenced in paragraph (a) of this subsection is not available for a participant, SCL waiver funding may be accessed for the participant for all defined supported employment services if there has been no change in the impact of the participant’s disability on the participant’s employment.
   (c) Supported employment shall:
      1. Be services that enable a participant to engage in paid work which occurs in an integrated community setting with competitive wages and benefits commensurate to the job responsibilities;
      2. Be covered for a participant if no change in the impact of a participant’s disability on the participant’s employment has occurred and:
         a. A Supported Employment Long-Term Support Plan has been completed and incorporated into the participant’s person-centered service plan, and uploaded into the MWMA portal.[POC]; or
         b. There is documentation of the payment of the supported employment individual outcome placement fee indicating closure of the case by the Office of Vocational Rehabilitation;
   3.[2] Be participant directed, if a participant chooses this option;
   4.[4] Be provided:
      a. In a variety of settings; and
      b. By a supported employment specialist who:
         (i) Meets the personnel and training requirements established in Section 3 of this administrative regulation; and
         (ii) Works for an SCL certified provider that is a vendor of supported employment services for the Office of Vocational Rehabilitation; and
         (iii) Is documented in the current Supported Employment Policies stated in the current Supports for Community Living Policy Manual;
   5.[4] Be delivered on a one (1) to one (1) basis with a participant or indirectly on behalf of a participant;
   6.[5] Exclude work performed directly for the supported employment provider or other service provider; and
   7.[6] Be coordinated with other applicable 1915(c) home and community based waiver services, if applicable, in support of the participant’s employment outcome.
   (d) Supported employment services delivered on a one-to-one basis and the hours spent by a participant performing paid employment and adult[adult] day training shall not exceed:
      1. Forty (40) hours per week; or
      2. 160 units per week.
   (e) A supported employment service shall;
      1. Be provided and documented as required by this subsection; and
      2. Include the components established in this subsection[paragraph].
   (f) [1] Supported employment shall include person-centered job selection discovery that shall:
      a. Be a respectful way to get to know a participant who is seeking a job and break past concealed notions about what a participant can or cannot do;
      b. Include developing a Person-Centered Employment Plan based upon the participant’s:
         (i) Life experiences;
         (ii) Interests;
         (iii) Talents;
         (iv) Contributions;
         (v) Impact of disability;
         (vi) Vulnerabilities; and
         (vii) Support needs.
   2. The Person-Centered Employment Plan shall be completed by the employment specialist, entered into the MWMA portal, and updated as needed.
   3. A participant may access up to 120 units of person-centered job selection funding.
   4. Prior to receiving employment services and job development, a participant and the participant’s person-centered team shall review the content of the Person-Centered Employment Plan and ensure that the plan:
      a. Represents an accurate description of the participant’s interests, goals, and objectives;
      b. Is based upon the development of a career rather than short-term employment; and
      c. Is incorporated into the participant’s person-centered service plan.
   5.a. Person-centered job selection shall conclude with a meeting at which parties supporting the participant provide:
      (i) Suggestions of places in the participant’s area where the participant might be able to perform the job tasks identified in the Person-Centered Employment Plan in return for at least minimum wage; and
      (ii) Contacts, if available, for the places referenced in subsection (i) of this clause.
   6.a. Job development and analysis shall:
      (i) Be conducted to determine the skills that the participant will need to successfully contribute in a specific workplace;
      (ii) Include deciding how to talk about the impact of the participant’s disability in relation to the contributions that the participant can offer the employer;
      (iii) Include facilitating the development of natural supports based on ordinary social relationships at work; and
      (iv) Include matching job tasks that need to be completed for potential employers with the interests, skills, and abilities established in the participant’s Person-Centered Employment Plan beginning with the leads provided during the job planning meeting;
   7.a. Job development services may access up to ninety (90) units of job development services.
   8.a. A participant who successfully completes a supported employment service shall be the actual acceptance of a position by the participant.
   b. Stabilization services shall include becoming as independent as is possible in the workplace through assistance from natural supports and other means;
   c.(i) Ongoing support shall include services needed to maintain the supported employee in an integrated, competitive employment setting with primary assistance being provided by natural supports.
   (ii) The expectation shall be for systemic fading of the supported employment specialist to begin as soon as possible.
without jeopardizing the job and continuing until the participant receives only monitoring, career planning, and crisis assistance.

d. A participant and the participant’s supported employment specialist may access up to 800 units of job acquisition and stabilization services.

8. Prior to initiating long-term support and follow-up services, the participant and the participant’s person-centered team shall review the supported employment long-term support plan and ensure that the:

   a. Participant is functioning well in the job in terms of general satisfaction, number of hours worked, and performance of job duties;
   b. Participant is comfortable in interacting with coworkers and supervisors and performs job duties through the use of natural supports; and
   c. Long-term support plan has been completed and integrated into the participant’s person-centered service plan.

9.a. Long-term support and follow-up shall be provided to help a participant maintain the job and experience continued success after the:

   (i) Participant is fully integrated into the workplace; and
   (ii) Supported employment specialist is no longer needed on a regular basis.

b. The supported employment specialist shall continue to be available for the participant if and when needed for support or assistance with any job change or job advancement.

c.(i) The participant and the participant’s supported employment specialist may access twenty-four (24) units of supported employment each month.

(ii) Any increase in supported employment units shall be justified in the long-term employment support plan and approved by the participant and the participant’s person-centered team.

10.[6]: A Person Centered Employment Plan shall be completed by a participant’s supported employment specialist and updated as needed, as required in the Supports for Community Living Policy Manual.

2. A Supported Employment Long-Term Support Plan shall be completed by a participant’s supported employment specialist and updated as needed as required in the Supports for Community Living Policy Manual.

3. A Person-centered employment plan activity note, notes regarding a participant’s job development activity, notes regarding a participant’s job acquisition or stabilization activity, and notes regarding a participant’s long-term support activity shall:

   a. Be completed, and uploaded into the MWMA portal, by a participant’s supported employment specialist to document each contact with the participant or action provided on behalf of the participant; and
   b. Contain:

      (i) The date of the service;
      (ii) The beginning time of the service;
      (iii) The ending time of the service;
      (iv) A description of the activity that was conducted;
      (v) The justification of the activity;
      (vi) The results of the activity;
      (vii) The anticipated content of the next activity; and
      (viii) The signature of the supported employment specialist who provided the service.

23.[24](a) A vehicle adaptation shall:

   1. Be a device, control, or service that enables a participant to:
      a. Increase the participant’s independence and physical safety; and
      b. Interact more independently with the participant’s environment and reduce the participant’s dependence on physical support from others;

   2. Be made to a participant’s or a participant’s family’s privately owned vehicle;

   3. Include:
      a. A hydraulic lift;
      b. A ramp;
      c. A special seat; or

   d. An interior modification to allow for access into and out of the vehicle as well as safety while the vehicle is moving;

   4. Be limited to $6,000 per five (5) years per participant;

   5. Be prior authorized by the department in order to be reimbursable by the department; and

   6. Be coordinated and documented in the MWMA portal by a case manager by:

      a. Documenting an estimate from a vendor determined to be qualified to complete vehicle modifications by the Office of Vocational Rehabilitation;
      b. Documentation from the Office of Vocational Rehabilitation that the participant is not qualified to receive a vehicle modification from the Office of Vocational Rehabilitation;
      c. A description or itemized line item of purchase and cost;
Section 5. Person-centered Service Plan Requirements. (1) A person-centered service plan shall:
   (a) Be established for each participant;
   (b) Be developed by:
      1. The participant, the participant’s guardian, or the participant’s representative;
      2. The participant’s case manager;
      3. The participant’s person-centered team; and
      4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;
   (c) Use a process that:
      1. Provides the necessary information and support to empower the participant, the participant’s guardian, or participant’s representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant’s schedules and activities without coercion or restraint;
      2. Is timely and occurs at times and locations convenient for the participant;
      3. Reflects cultural considerations of the participant;
      4. Provides information:
         a. Using plain language in accordance with 42 C.F.R. 435.905(b); and
         b. In a way that is accessible to an individual with a disability or who has limited English proficiency;
      5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;
      6. Includes a method for the participant to request updates to the person-centered service plan as needed;
      7. Enables all parties to understand how the participant:
         a. Learns;
         b. Makes decisions; and
         c. Chooses to live and work in the participant’s community;
      8. Discovers the participant’s needs, likes, and dislikes;
      9. Empowers the participant’s person-centered team to create a person-centered service plan that:
         a. Is based on the participant’s:
            i. Assessed clinical and support needs;
            ii. Strengths;
            iii. Preferences; and
            iv. Ideas;
         b. Encourages and supports the participant’s:
            i. Rehabilitative needs;
            ii. Habilitative needs; and
            iii. Long term satisfaction;
         c. Is based on reasonable costs given the participant’s support needs;
   d. Includes:
      i. The participant’s goals;
      ii. The participant’s desired outcomes; and
      iii. Matters important to the participant;
      e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;
      f. Information necessary to support the participant during times of crisis; and
      g. Risk factors and measures in place to prevent crises from occurring;
   g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;
   h. Records the alternative home and community-based settings that were considered by the participant;
      i. Reflects that the setting in which the participant resides was chosen by the participant;
      j. Is understandable to the participant and to the individuals who are important in supporting the participant;
      k. Identifies the individual or entity responsible for monitoring the person-centered service plan;
      l. Is finalized and agreed to with the informed consent of the participant or participant’s representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;
      m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;
      n. Includes those services which the individual elects to self direct; and
      o. Prevents the provision of unnecessary or inappropriate services and supports; and
   d) Include in all settings the ability for the participant to:
      1. Have access to make private phone calls, texts, or emails at the participant’s preference or convenience; and
      2. a. Choose when and what to eat;
         b. Have access to food at any time;
         c. Choose with whom to eat or whether to eat alone; and
         d. Choose appropriating clothing according to the;
      (i) Participant’s preference;
      (ii) Weather; and
      (iii) Activities to be performed.
   (2) If a participant’s person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.
   (3)(a) A participant’s person-centered service plan shall be:
      1. Entered into the MWMA portal by the participant’s case manager; and
      2. Updated in the MWMA portal by the participant’s case manager.
   (b) A participant or participant’s authorized representative shall complete and upload into the MWMA portal a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA portal.

Section 6. Case Management Requirements. (1) A case manager shall:
   (a) Have a bachelor’s degree from an accredited institution in a human services field and be supervised by:
      1. An SCL intellectual disability professional;
      2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a development disability;
      3. An individual with a bachelor’s degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
      4. A licensed clinical social worker who has at least two (2)
years of experience working with individuals with an intellectual or a developmental disability;
5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
7. A certified psychologist or licensed psychological associate who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability; or
8. A licensed psychological practitioner or certified psychologist with autonomous functioning who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability.
(b) Be a registered nurse;
(c) Be a licensed clinical social worker;
(d) Be a licensed marriage and family therapist;
(e) Be a licensed professional clinical counselor;
(f) Be a licensed psychologist, or
(g) Be a licensed psychological practitioner.
(2) A case manager shall:
(a) Communicate in a way that ensures the best interest of the participant;
(b) Be able to identify and meet the needs of the participant;
(c1) Be competent in the participant’s language either through personal knowledge of the language or through interpretation; and
(c2) Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;
(d) Ensure that:
1. The participant is educated in a way that addresses the participant’s:
   a. Need for knowledge of the case management process;
b. Personal rights; and
c. Risks and responsibilities as well as awareness of available services; and
2. All individuals involved in implementing the participant’s person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;
(e) Have a code of ethics to guide the case manager in providing case management, which shall address:
1. Advocating for standards that promote outcomes of quality;
2. Ensuring that no harm is done;
3. Respecting the rights of others to make their own decisions;
4. Treating others fairly; and
5. Being faithful and following through on promises and commitments;
(f1) Lead the person-centered service planning team; and
2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant’s person-centered service plan;
(g1) Include the participant’s participation or representative’s participation in the case management process; and
2. Make the participant’s preferences and participation in decision making a priority; and
(h) Document:
1. A participant’s interactions and communications with other agencies involved in implementing the participant’s person-centered service plan; and
2. Personal observations;
(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant’s person-centered service plan;
(ii) Be accountable to:
1. A participant to whom the case manager provides case management in ensuring that the participant’s needs are met;
2. A participant’s person-centered team and provide leadership to the team and follow through on commitments made; and
3. The case manager’s employer by following the employer’s policies and procedures;
(k) Stay current regarding the practice of case management and case management research;
(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant’s person-centered service plan is successful and done so in a way that is efficient regarding the participant’s financial assets and benefits;
(m) Document services provided to a participant by entering the following into the MWMA portal:
1. A monthly DHID approved person-centered monitoring tool; and
2. A monthly entry, which shall include:
a. The month and year for the time period the note covers;
b. An analysis of progress toward the participant’s outcome or outcomes;
c. Identification of barriers to achievement of outcomes;
d. A projected plan to achieve the next step in achievement of outcomes;
e. The signature and title of the case manager completing the note; and
1. The date the note was generated;
(n) Accurately reflect in the MWMA portal if a participant is:
1. Terminated from the SCL waiver program;
2. Admitted to an intermediate care facility for individuals with intellectual disabilities;
3. Admitted to a hospital;
4. Admitted to a skilled nursing facility;
5. Transferred to another Medicaid 1915(c) home and community based waiver service program; or
6. Relocated to a different address;
(o) Provide information about participant-directed services to the participant or the participant’s guardian:
1. At the time the initial person-centered service plan is developed;
2. At least annually thereafter; and
3. Upon inquiry from the participant or participant’s guardian.
3(a) Case management for any individual who begins receiving SCL services after the effective date of this administrative regulation shall be conflict free except as allowed in paragraph (b) of this subsection;
3(b) Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified SCL provider within thirty (30) miles of the participant’s residence.
3. An exemption to the conflict free case management requirement shall be granted if:
(a) A participant requests the exemption;
(b) The participant’s case manager provides documentation of evidence to DHID, that there is a lack of a qualified case manager within thirty (30) miles of the participant’s residence;
3. The participant or participant’s representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and
4. The participant’s representative or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA portal.
3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall document conflict of interest protections, separate case management and service provision functions within the provider entity, and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.
4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.
(c) A participant who receives SCL services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant’s next level of case determination occurs;
(d) During the transition to conflict free case management, any case manager providing case management to a participant shall
educate the participant and members of the participant’s person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant’s:

1. Case manager; or
2. Provider of non-case management SCL services.

(4) Case management shall include:
(a) Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;
(b) Assisting a participant in the identification, coordination, and arrangement of the person centered team and person centered team meetings;
(c) Facilitating person-centered team meetings that assist a participant to develop, update, and monitor the person-centered service plan which shall be distributed or made available to all members of the person-centered team within five (5) business days of development;
(d) Assisting a participant to gain access to and maintain employment, membership in community clubs and groups, activities, and opportunities at the times, frequencies, and with the people the participant chooses;
(e) Coordinating and monitoring all 1915(c) home and community based waiver services and non-waiver services including having monthly face-to-face contacts with the participant to determine if the participant’s needs are being met;
1. Contact shall be at a location where the participant is engaged in services.
2. A case manager shall utilize a DBHDID-approved monitoring tool to:
   a. Identify that person-centered practices are demonstrated by the service provider;
   b. Ensure that the participant’s health, safety, and welfare are not at risk;
   c. Gather data regarding the participant’s satisfaction with the services for use in guiding the person centered planning process; and
   d. Address how the person-centered team will address the following:
      (i) Expanding and deepening the participant’s relationships;
      (ii) Increasing the participant’s presence in local community life;
      (iii) Helping the participant have more choice and control;
      (iv) Enhancing the participant’s reputation and increasing the number of valued ways the participant contributes to community life; and
   (v) Improving the person’s competency; and
   e. Generate monthly summary notes.
3. Coordinating and monitoring shall include:
   a. Initiating person-centered team meetings and receiving prior authorization within fourteen (14) days of a contact visit if the results of a monthly contact visit indicate that different or additional services or other changes in the participant’s person-centered service plan are required to meet the participant’s needs;
   b. Assisting with participant-directed services including;
      (i) Assisting the participant in identifying, if necessary, a community guide and a representative who shall work with the participant on the development of a person-centered service plan, budget, and emergency back-up plan;
      (ii) Assisting the participant in recruiting and managing employees; and
   (iii) Assigning modules within the Kentucky College of Direct Supports for training purposes and assisting the participant, the community guide, or the representative in monitoring the completion of training within timeframes specified in Section 5 of this administrative regulation;
   c. Monitoring the provision of services and submission of required documentation to the financial management agency; and
   d. Authority to require immediate remediation of identified deficiencies that impact the health, safety, and welfare of a participant;
   (f) Assisting a participant in planning resource use and assuring protection of resources to include:

1. Clearly outlining the participant’s insurance options and availability; and
2. Exploring the potential availability of other resources and social service programs for which the participant may qualify;
(a) Monitoring to ensure that services continue if a participant has been terminated from any service until an alternate provider, if needed, has been chosen by the participant and services have been approved;
(b) Providing a participant and the participant’s team members twenty-four (24) hour telephone access to a case management staff person;
   i. Documentation, uploaded into the MWMA portal, of services by:
      1. A monthly DBHDID approved person centered monitoring tool; and
      2. A detailed monthly summary note, which shall include:
         a. The month and year for the time period the note covers;
         b. An analysis of progress toward the participant’s outcome or outcomes;
         c. Identification of barriers to achievement of outcomes;
         d. A projected plan to achieve the next step in achievement of outcomes;
         e. The signature and title of the case manager completing the note;
         f. The date the note was generated; and
         g. The signature and title of the case manager supervisor reviewing and approving the monthly person-centered monitoring tool;
   (m) Person-centered team meetings, which shall not constitute the required monthly face-to-face visit with a participant; and
   (n) Supervision duties performed by the case manager supervisor who provides supervision in accordance with a DBHDID approved case manager supervisor training.
   (a) One (1) unit of case management shall equal one (1) method.
   (b) A provider shall bill for a case management service in accordance with 907 KAR 12:020.
   (7) Case management shall involve:
      a. A constant recognition of what is and is not working regarding a participant; and
      b. Changing what is not working.

Section 7. Human Rights Committee. (1) A Human Rights Committee shall meet on a routine, scheduled basis, no less than quarterly to ensure that the rights of participants utilizing SCL services are respected and protected through due process.
(2) A Human Rights Committee shall include at least:
(a) Two (2) self-advocates;
(b) Three (3) members from the community at large with experience in human rights issues or in the field of intellectual or developmental disabilities;
(c) Two (2) appointed guardians or family members of a waiver participant;
(d) One (1) professional in the medical field; and
(e) Two (2) professionals with:
   1. A bachelor’s degree from an accredited college or university; and
   2. Three (3) years of experience in the field of intellectual or developmental disabilities;
(3) Each SCL provider shall:
(a) Actively participate in the Human Rights Committee process of the local Human Rights Committee; and
(b) Provide the necessary documentation to the local Human Rights Committee for review and approval prior to implementation of any rights restrictions or positive behavior support plans involving rights restrictions.
(4) A Human Rights Committee meeting shall have a quorum of eight (8) members at least one (1) of which shall be a self-advocate and one (1) of which shall be a community at large member.
(5) A Human Rights Committee shall:
(a) Maintain a record of each meeting; and
(b) Send a summary of each person-centered service plan
reviewed to the:
1. Relevant participant; or
2. Participant’s guardian and case manager.

(6) Each member of a Human Rights Committee shall:
(a) Complete an orientation approved by DBHDID;
(b) Sign a confidentiality agreement; and
(c) Function in accordance with the Health Insurance Portability and Accountability Act codified as 45 C.F.R. Parts 160, 162, and 164.

(7)(a) A Human Rights Committee shall ensure that any restriction imposed on a participant is:
1. Temporary in nature;
2. Defined with specific criteria outlining how the restriction is to be imposed;
3. Paired with learning or training components to assist the participant in eventual reduction or elimination of the restriction;
4. Removed upon reaching clearly-defined objectives; and
5. Reviewed by the Human Rights Committee at least once annually if the restriction remains in place for at least twelve (12) months.

(b) In an emergency where there is imminent danger or potential harm to a participant or other individuals, the participant’s SCL service provider in consultation with the case manager and participant’s guardian, as appropriate, may limit or restrict the participant’s rights for a maximum of one (1) week.

(c) If a participant is under the care of a psychologist, counselor, psychiatrist, or behavior support specialist, a restriction plan:
1. Shall be developed with the input of the psychologist, counselor, psychiatrist, or behavior support specialist; and
2. May be implemented for up to two (2) weeks.

(d) A proposed continuation of a restriction shall be immediately reviewed and approved by three (3) members of the local Human Rights Committee while alternative strategies are being developed.

(e) If it is decided that a rights restriction needs to be continued and addressed in the participant’s person-centered service plan, the restriction shall be submitted to the local:
1. Behavior Intervention Committee; and
2. Human Rights Committee at the next regularly scheduled meeting.

Section 8. Behavior Intervention Committee. (1) A Behavior Intervention Committee shall include at least:
(a) One (1) self-advocate, representative, or family member;
(b) Two (2) members from the community at large with experience in human rights issues or in the field of intellectual or developmental disabilities;
(c) One (1) professional in the medical field; and
(d) Three (3) professionals comprised of any combination of:
   1. A positive behavior support specialist;
   2. A licensed psychologist;
   3. A certified psychologist; or
   4. A licensed clinical social worker.

(2) A Behavior Intervention Committee shall meet at least quarterly to review, approve, and as necessary, make written technical recommendations for each new or revised positive behavior support plan as submitted.

(3) A Behavior Intervention Committee shall ensure that:
(a) Positive behavior supports are clinically sound and based on person-centered values considering what is important for the participant in the context of what is important to the participant;
(b) Assessments and interventions utilize evidenced based and best practices for treatment of a behavioral health condition as the primary support services when supplemental behavioral interventions are needed;
(c) The use of both behavioral health treatment and positive behavioral supports shall be utilized in a collaborative manner; and
(d) A new or revised positive behavior support plan is not implemented until it is approved by:
   1. The Behavior Intervention Committee; and
   2. If rights restrictions are recommended, the Human Rights Committee.

(4) A Behavior Intervention Committee shall:
(a) Maintain a record of each meeting; and
(b) Send a summary of each person-centered service plan reviewed to the:
1. Relevant participant; or
2. Participant’s guardian and case manager.

(5) Each Behavior Intervention Committee member shall:
(a) Complete an orientation approved by DBHDID;
(b) Sign a confidentiality agreement; and
(c) Function in accordance with the Health Insurance Portability and Accountability Act codified as 45 C.F.R. Parts 160, 162, and 164.

Section 9. Other Assurances. (1) For each participant to whom it provides services, an SCL provider shall ensure:
(a) The participant’s:
   1. Right to privacy, dignity, and respect; and
   2. Freedom from coercion or restraint;
(b) The participant’s freedom of choice as defined by the experience of independence, individual initiative, or autonomy in making life choices in all matters (small as well as large);
(c) That the participant or participant’s representative chooses services, providers, and service settings including non-disability specific settings if so desired;
(d) That the participant is provided with a choice of where to live with as much independence as possible and in the most community-integrated environment; and
(e) That the service setting options are:
   a. Identified and documented in the participant’s person-centered service plan; and
   b. Based on the participant’s needs and preferences.

(2) An SCL provider shall not use an aversive technique with a participant.

(3) Any right restriction imposed by an SCL provider shall:
(a) Be annually reviewed by a Human Rights Committee;
(b) Be subject to approval by a Human Rights Committee; and
(c) Include a plan to restore the participant’s rights.

Section 10. Participant-Directed Services (PDS). (1)(a) The following services may be participant directed and shall be provided in accordance with the specifications and requirements established in Section 4 of this administrative regulation[—the Supports for Community Living Policy Manual] and the training requirements specified in paragraph (b) of this subsection:
1. Community access services;
2. Community guide services;
3. Day training;
4. Personal assistance services;
5. Respite;
6. Shared living; or
7. Supported employment.
(b) An individual who provides a participant-directed service shall complete the following training requirements in the timeframe established by paragraph (c) of this subsection:
1. First aid and cardiopulmonary resuscitation certification by a nationally accredited entity[—the American Red Cross or the American Heart Association];
2. If providing supported employment services, the Kentucky Supported Employment Training Project curriculum from the Human Development Institute at the University of Kentucky within eight (8) months of the date of employment as an employment specialist[—administering or monitoring the administration of a medication, an approved DBHDID medication administration curriculum];
3. Individualized instruction regarding the participant receiving a support;
4. The following areas of the Kentucky College of Direct Support modules:
   a. Maltreatment of vulnerable adults and children;
   b. Individual rights and choices;
   c. Safety at home and in the community;
   d. Supporting healthy lives; and
   e. Person-centered planning;
5. Other training if required by the participant.
   (c) The training required by paragraph (b) of this subsection shall be completed;
   [1] within six (6) months of the date of hire for a new provider of a participant-directed service; or
   [2] within one (1) year of the effective date of this administrative regulation for an employee-providing a participant-directed service on the effective date of this administrative regulation.

(2) An individual providing a participant-directed service to more than three (3) participants in the same household or different households shall complete all provider training requirements as specified in Section 3 of this administrative regulation.

(3)(a) The following services may be participant directed and shall be provided in accordance with the specifications and requirements established in [the Supports for Community Living Manual and in] Section 4 of this administrative regulation and this section:
1. Environmental accessibility adaptation services;
2. Goods and services;
3. Natural supports training;
4. Transportation services; or
5. Vehicle adaptation services.

(b) A participant-directed service shall not be available to a participant who resides in a living arrangement, regardless of funding source, that is furnished to four (4) or more individuals who are unrelated to the proprietor.

(4) An immediate family member or guardian of a participant may provide a support to a participant-directed service if:
(a) Allowed to do so pursuant to Section 4 of this administrative regulation;
(b) The family member or guardian has the unique abilities necessary to meet the needs of the participant;
(c) The service is not something normally provided by the family member or guardian to the participant;
(d) Delivery of the service by the family member or guardian is cost effective;
(e) The use of the family member or guardian is age and developmentally appropriate;
(f) The use of the family member or guardian enables the participant to:
1. Learn and adapt to different people; and
2. Form new relationships;
(g) The participant learns skills to increase independence;
(h) Having the family member or guardian provide the service:
1. Truly reflects the participant’s wishes and desires;
2. Increases the participant’s quality of life in measurable ways;
3. Increases the participant’s level of independence;
4. Increases the participant’s choices; and
5. Increases the participant’s access to the amount of service hours for needed support.
(ii)(1) There is no qualified provider;
1. Within thirty (30) miles from the participant’s residence; or
2. [There is no qualified provider] Who can furnish the service at the necessary times and places; and
(i) The participant, participant’s immediate family member, or guardian of the participant:
1. Completes a MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider; and
2. Uploads the completed MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider into the MWMA portal.
(5) A legally responsible individual may provide a service to a participant if:
(a) Allowed to do so pursuant to Section 4 of this administrative regulation;
(b) The legally responsible individual meets the requirements established for a family member or guardian in subsection (4) of this section;
(c) The service exceeds the range of activities that a legally responsible individual would ordinarily provide in a household on behalf of a person:
1. Without a disability; and
2. Of the same age; and
(d) The service is necessary to:
1. Assure the health and welfare of the participant; and
2. Avoid institutionalization; and
(e) The participant or legally responsible individual:
1. Completes a MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider; and
2. Uploads the completed MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider into the MWMA portal.
(6) An individual serving as a representative for a participant shall not be eligible to provide a 1915(c) home and community based waiver service to the participant.

(7) A participant-directed reimbursement service shall be provided by a financial management agency with whom the department contracts that shall:
(a) Only pay for service identified and prior authorized in a participant’s person-centered service plan[POC];
(b) Ensure compliance with all Internal Revenue Service regulations, United States Department of Treasury regulations, and Kentucky Department of Workers’ Claims administrative regulations regarding workers’ compensation;
(c) Process employer-related payroll and deposit and withhold necessary mandatory employer withholdings;
(d) Receive, disburse, and track public funds based on a participant’s approved person-centered service plan[POC];
(e) Provide:
1. A participant and the participant’s case manager with payroll reports semi-monthly;
2. Additional payroll information to a participant’s case manager on a per request basis; and
3. Reports to DBHDID.
(8)(a) A participant may voluntarily disenroll from a participant-directed service at any time.
(b) If a participant elects to disenroll from a participant-directed service, the participant’s case manager shall assist the participant and the participant’s guardian to locate a traditional 1915(c) home and community based waiver service provider of the participant’s choice to provide the service.
(c) 1. Except as provided in subparagraph 2 of this paragraph, a participant-directed service shall not be terminated until a traditional service provider is ready to provide the service.
2. If a participant does not wish to continue receiving the service, the service shall be terminated.
(9)(a) If case management monitoring reveals that a participant’s health, safety, or welfare is being jeopardized, the participant’s case manager shall:
1. Develop a corrective action plan in conjunction with the participant, the participant’s guardian, and any other person-centered team member; and
2. Monitor the progress of the corrective action plan and resulting outcomes to resolve the health, safety, or welfare issue.
(b) If the health, safety, or welfare issue referenced in paragraph (a) of this subsection is not resolved, the participant’s case manager, in conjunction with the participant’s person-centered team members, shall assist the participant to locate a traditional 1915(c) home and community based waiver service provider of the participant’s choice to provide the service.
(c) A participant-directed service shall not be terminated until a traditional service provider is ready to provide the service.
10. Documentation of a participant-directed service shall include:
(a) A timesheet; and
(b) A note documenting each contact which shall include:
1. A full description of each service provided to support an participant to:
2. Of the same age; and
3. The location of the service;
4. The beginning and ending time of the service;
5. The signature and title of the person providing the service; and
6. [There is no qualified provider] Who can furnish the service at the necessary times and places; and
7. The location of the service; and
8. The participant, participant’s immediate family member, or guardian of the participant:
1. Completes a MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider; and
2. Uploads the completed MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider into the MWMA portal.
6. The date the entry was made in the record; and
(c) Any applicable form for each service in accordance with Section 4 of this administrative regulation.

Section 11.16 Incident Reporting Process. (1) The following shall be the two (2) classes of incidents:
(a) An incident; or
(b) A critical incident.
(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
(a) A minor injury;
(b) A medication error without a serious outcome; or
(c) A behavior or situation which is not a critical incident.
(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
(a) Can reasonably be expected to result in harm to a participant; and
(b) Shall include:
1. Abuse, neglect, or exploitation;
2. A serious medication error;
3. Death;
4. A homicidal or suicidal ideation;
5. A missing person; or
6. Other action or event that the provider determines may result in harm to the participant.
(4)(a) If an incident occurs, the individual who discovered or witnessed the incident shall:
1. Report the incident by making an entry into the MMWA portal that includes details regarding the incident; and
2. Be immediately assessed for potential abuse, neglect, or exploitation.
(b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:
1. The individual who discovered or witnessed the incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant;
2. The incident shall immediately be considered a critical incident;
3. The critical incident procedures established in subsection (5) of this section shall be followed; and
4. The SCL provider shall report the incident to the participant’s case manager and participant’s guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident;
5. The witness of the incident or the discovering agency’s employee or volunteer shall record details of the incident on an Incident Report form;
6. A completed Incident Report form shall be retained on file by the SCL provider; and
7. A copy of the completed Incident Report form shall be provided to the case management agency providing case management to the participant.
(5)(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall:
1. Immediately act to ensure the health, safety, and welfare of the at-risk participant;
(b) If the critical incident:
1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MMWA portal by the individual who witnessed or discovered the critical incident; or
2. Does not require immediate reporting of the critical incident:
   a. The Department for Community-Based Services, Adult Protective Services Branch or Child Protective Services Branch, as applicable;
   b. The participant’s case manager;
   c. The participant’s guardian; and
   d. DBHDID, via fax, if abuse, neglect, or exploitation is suspected; and
(6) If the critical incident is not one which requires reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MMWA portal by the individual who witnessed or discovered the critical incident within eight (8) hours of discovery:
1. The participant’s case manager;
2. The participant’s guardian; and
3. To DBHDID by fax, unless it occurs after 4:30 p.m. Eastern Standard Time or on a weekend, in which case notification shall be sent to DBHDID on the following business day.
(7) The witness of the critical incident or the discovering agency’s employee or volunteer shall record details of the critical incident on a Critical Incident Report form.
(8) The SCL provider shall:
1. Conduct an immediate investigation and involve the participant’s case manager in the investigation; and
2. Prepare a report of the investigation, which shall be recorded in the MMWA portal and shall include:
   a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
   b. Details of the critical incident; and
   c. Relevant participant information including:
      (i) Diagnostic impressions and medical diagnoses based on the current version of American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders®[Disp. Axis I diagnosis or diagnoses];
      (ii) [Disp. Axis II diagnosis or diagnoses; (iii) Axis III diagnosis or diagnoses; (iv)] A listing of recent medical concerns;
      (v) An analysis of causal factors; and
      (vi) Recommendations for preventing future occurrences.
(9) The SCL provider shall:
1. Maintain the documentation of the critical incident required in this subsection at the SCL provider’s site; and
2. Provide a copy of the documentation to the case management agency of the participant’s case manager.
(10) Following a death of a participant receiving services from an SCL provider, the SCL provider shall enter submit, by fax, mortality data documentation into the MMWA portal following a death of a participant receiving services from the SCL provider to DBHDID within fourteen (14) days of the death.
(b) Mortality data documentation shall include:
1. (a) The participant’s person-centered service plan; and
2. The participant’s medication administration records from all service sites for the past three (3) months along with a copy of each prescription;
3. The participant’s medication administration records from all service sites for the past thirty (30) days;
4. The results of the participant’s most recent physical examination;
5. All incident reports, if any exist, regarding the participant for the past six (6) months;
6. The participant’s life; and
7. The participant’s living will, or health care directive if applicable;
8. The Department for Community-Based Services, Adult Protective Services Branch or Child Protective Services Branch, as applicable;
9. The participants’ advance directive, medical order for scope of treatment, living will, or health care directive if applicable;
10. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and
11. The participant’s advance directive, medical order for scope of treatment, living will, or health care directive if applicable;
12. The police report if available;
13. A copy of:
14. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months;
Section 12 [2] SCL Waiting List. (1)(a) In order to be placed on the SCL waiting list, an individual or individual’s representative shall:

1. Apply for 1915(c) home and community based waiver services via the MWMA portal; and

2. Complete a MAP - 115 Application Intake - Participant Authorization and upload it into the MWMA portal.

(b) If no SCL funding is available at the time that the individual applies, the department shall:

1. Place the individual on the SCL waiting list; and
2. Document and date stamp the individual’s place on the SCL waiting list.

(c) The following information shall be included in the information entered by the individual into the MWMA portal[shall submit to DBHID a completed MAP-620, Application for I/DD Services, which shall include]:

1. A signature from a physician or an SCL developmental disability professional verifying diagnostic impressions and medical diagnoses[indicating medical necessity];
2. A current and valid intellectual or developmental disability diagnosis, including supporting documentation to validate the diagnosis and age of onset; and
3. List of [Completion of the Axis I, II, and III diagnoses list].

(d) Supporting documentation to validate a diagnosis and age of onset shall include:

1. A psychological or psycho-educational report of the assessment results of at least an individual test of intelligence resulting in an intelligence quotient (IQ) score; and
2. The results of an assessment of adaptive behavior abilities which has been signed by the licensed psychologist, licensed psychological associate, certified psychologist with autonomous functioning, or certified school psychologist who prepared the report.

(e) The IQ test referenced in paragraph (d) shall 1. of this subsection shall:

1. Have been conducted before the age of eighteen (18) years for a diagnosis of intellectual disability or before the age of twenty-two (22) years for a diagnosis of a developmental disability; or
2. If a record of an IQ score prior to the age of eighteen (18) years for an applicant with an intellectual disability or prior to the age of twenty-two (22) years for an applicant with a developmental disability cannot be obtained, the following shall qualify as supporting documentation to validate a diagnosis and age of onset:
   a. Individual education program documentation which contains an IQ score and a report or description of adaptive behavior skills;
   b. The results of a psychological assessment submitted during the course of guardianship proceedings; or
   c. The results of a current psychological assessment which shall:
      (i) Include evidence of onset prior to the age of eighteen (18) years for an intellectual disability or the age of twenty-two (22) years for a developmental disability obtained through a comprehensive developmental history; and
      (ii) Provide documentation ruling out factors or conditions which may contribute to diminished cognitive and adaptive functioning, including severe mental illness, chronic substance abuse, or medical conditions.

2. DBHID shall review an individual’s [validate a MAP-620] application information to determine if the information is complete and valid.

(3)(a) An individual’s order of placement on the SCL waiting list shall be determined by:

1. The chronological date of receipt of complete application information regarding the individual being entered into the MWMA portal[a completed MAP-620] and
2. Category of need of the individual as established in paragraphs (b) through (d) of this subsection.

An individual’s category of need shall be the urgent category if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:

1. Abuse, neglect, or exploitation of the individual as substantiated by DCBS;
2. The death of the individual’s primary caregiver and lack of an alternative primary caregiver;
3. The lack of appropriate placement for the individual due to:
   a. Loss of housing;
   b. Loss of funding; or
   c. Imminent discharge from a temporary placement;
4. Jeopardy to the health and safety of the individual due to the primary caregiver’s physical or mental health status or
5. Imminent or current institutionalization.

An individual’s category of need shall be classified as future planning if an SCL service is needed within one (1) year; and:

1. There is a threatened loss of the individual's existing funding source for supports within the year due to the individual’s age or eligibility;
2. The individual is residing in a temporary or inappropriate placement but the individual’s health and safety is assured;
3. The individual’s primary caregiver has a diminished capacity due to physical or mental status and no alternative primary caregiver exists; or
4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention.

(b) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

5. In determining chronological status, the original date of an individual’s complete application information being entered into the MWMA portal[receipt of a MAP-620] shall:

(a) Be maintained; and
(b) Not change if an individual is moved from one (1) category of need to another.

6. If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

(2) Maintenance of the SCL waiting list shall occur as established in this subsection.

(a) The department shall, at a minimum, annually update the waiting list information about an individual during the birth month of that individual.

(b) The department shall, if identified, be contacted in writing to verify the accuracy of the information on the SCL waiting list and the individual’s guardianship status is maintained.

(c) If a discrepancy in diagnostic information is noted at the time of the annual update, the department may request a current diagnosis of intellectual or developmental disability signed by a physician or SCL IDP, including documentation supporting the diagnosis.

(d) The information referenced in paragraph (c) of this subsection shall be received by the department within thirty (30) days from the date of the written request in order to be considered timely.
(7)[(b)] A reassignment of an individual’s category of need shall be completed based on updated information and the validation process.

(8)[(b)] An individual or individual’s guardian may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.

(9)[(h)] (a) The criteria for removal from the SCL waiting list shall be:

1. After a documented attempt, the department is unable to locate the individual or the individual’s guardian;
2. The individual is deceased;
3. A review of documentation reveals the individual does not have an intellectual or a developmental disability diagnosis;
4. A notification of potential SCL funding is made and the individual or the individual’s guardian:
   a. Declines the potential funding; and
   b. Does not request to be maintained on the SCL waiting list; or
5. Notification of potential SCL funding is made and the individual or the individual’s guardian does not complete the enrollment process with DBHDID nor notify DBHDID of the need for an extension within sixty (60) days of the potential funding notice date.

(b)1. A notification of need for an extension for good cause shall consist of a statement signed by the individual or the individual’s guardian explaining the reason for the delay in accessing services, steps being taken to access services, and expected date to begin utilizing services.
2. Upon receipt of documentation, the department shall grant, in writing, one (1) sixty (60) day extension.

(10)[(c)] If a notification of potential SCL funding is made and an individual or the individual’s guardian declines the potential funding but requests to be maintained on the SCL waiting list, the:

(a) Individual shall be placed in the appropriate category on the SCL waiting list; and
(b) Chronological date shall remain the same.

(11)[(d)] If an individual is removed from the SCL waiting list, DBHDID shall mail written notification to the:

(a) Individual or the individual’s guardian; and
(b) Individual’s case management provider.

(12)[(e)] The removal of an individual from the SCL waiting list shall not prevent the submission of a new application at a later date.

(13)[(f)] An individual shall be allocated potential funding based upon:

(a) Category of need;
(b) Chronological date of placement on the SCL waiting list; and
(c) Region of origin in accordance with KRS 205.6317(3) and (4).

(14)[(g)] To be allocated potential funding, an individual residing in an institution shall meet the following criteria in addition to the criteria established in this section.

(a) The individual’s treatment professionals shall determine that an SCL placement is appropriate for the individual; and
(b) The SCL placement is not opposed by the individual or the individual’s guardian.

Section 13.[(b)] Use of Electronic Signatures.[(i)] The creation, transmission, storage, or other use of electronic signatures and documents shall comply with:

(a) The requirements established in KRS 369.101 to 369.120; and
(b) All applicable state and federal statutes and regulations.

(2) An SCL service provider choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy which shall:
   1. Be adhered to by all of the provider’s employees, officers, agents, or contractors;
   2. Stipulate which individuals have access to each electronic signature and password authorization; and
   3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;
   (b) Develop a consent form which shall:
      1. Be completed and executed by each individual utilizing an electronic signature;
      2. Attest to the signature’s authenticity; and
      3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
   (c) Produce to the department a copy of the agency’s electronic signature policy, the signed consent form, and the original filed signature immediately upon request.

(3) A participant or participant’s guardian may choose to use an electronic signature; and, if choosing to use an electronic signature, shall execute a consent form which shall:

(a) Be completed and executed by each individual utilizing an electronic signature;
(b) Attest to the signature’s authenticity; and
(c) Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature.

Section 14.[(b)] Employee Policies and Requirements Apply to Subcontractors. Any policy or requirement established in this administrative regulation regarding an employee shall apply to a subcontractor.

Section 15.[(b)] Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) The department shall not grant an appeal regarding a category of need determination made pursuant to Section 12[2] of this administrative regulation.

Section 16. Participant Rather Than Provider Driven.[(l)] Transition from 907 KAR 1:145. (1) There shall be a one (1) year transition period, based on each recipient’s birth month, to enable an individual who is receiving SCL services in accordance with 907 KAR 1:145 an effective date of this administrative regulation to transition to receiving services in accordance with this administrative regulation.

(2) During the one (1) year transition period, in the month of an SCL waiver recipient’s birthday, an SCL waiver recipient who remains approved to receive SCL waiver services shall transition to receiving services in accordance with this administrative regulation rather than in accordance with 907 KAR 1:145.

(3) Funding for the SCL waiver program shall be associated with and generated through SCL waiver program participants rather than SCL waiver service providers.

Section 17.[(b)] Incorporation by Reference. (1) The following material is incorporated by reference:

VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

2012 [edition]:
(f) "MAP – 531 Conflict-Free Case Management Exemption", May 2015; and
(g) "MAP – 532 PDS Request for Immediate Family Member, Guardian or Legally Responsible Individual as Paid Service Provider", December 2015.
The "Person-Centered Employment Plan Activity Note", July 2012 [edition], and

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

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: August 5, 2015
FILLED WITH LRC: August 13, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2015, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing September 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 September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Tricia Orme, tricia.orne@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Stuart Owen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage, provisions and requirements for a program that enables individuals with an intellectual or developmental disability to live, and receive services, in a community setting rather than in an institution.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for the Medicaid SCL waiver program to provide a program that enables individuals with an intellectual or developmental disability to live, and receive services, in a community setting rather than in an institution.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals with an intellectual or developmental disability to live, and receive services, in a community setting rather than in an institution.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals with an intellectual or developmental disability to live, and receive services, in a community setting rather than in an institution.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation. The amendments include establishing new federally-mandated case management requirements (that case management be free from conflict of interest); establishing federally-mandated requirements regarding the plan - the new term is person-centered service plan and the prior term was plan of care - that is used to identify the amount, duration, and types of services that a participant in the program receives (the plan is now called a person-centered service plan); requiring, as federally mandated, that an online portal (Medicaid Waiver Management Application or MWMA) be used to apply for admission to the program and to complete forms and documents associated with the program; banning the use of aversive techniques and defines the term; elaborating on the requirements for a quality improvement plan; adding new rights that must be guaranteed for individuals receiving services; requiring providers to check the caregiver misconduct registry before hiring an individual and prohibits the hiring of anyone listed on the registry; requiring providers to ensure smoke-free environments for participants who request a smoke-free environment; deleting the Supports for Community Living Manual from the incorporated materials to check the caregiver misconduct registry; and removing occupational therapy, physical therapy, and speech therapy from the services covered via the SCL program.
(b) The necessity of the amendment to this administrative regulation: The primary amendments (revising the case management requirements, establishing person-centered service plan requirements, and requiring a new online portal (MWMA) to be used) are mandated by federal requirements for Medicaid Services (CMS) via a CMS rule published January 2015. Unincorporating the Supports for Community Living Manual and inserting provisions from it into the administrative regulation is being done to establish one source of provisions and requirements for all stakeholders (providers, participants, DMS, and the Department for Behavioral Health, Intellectual and Developmental Disabilities). Requiring providers to check the caregiver misconduct registry regarding potential staff and to not hire anyone listed on the registry is a safeguard to enhance participant safety and welfare. Removing occupational therapy, physical therapy, and speech therapy from the services covered via the SCL program is necessary to comply with a federal mandate issued by the Centers for Medicare and Medicaid Services (CMS) to DMS. As 1915(c) home and community based services available to Medicaid recipients via the "state plan", CMS explicitly instructed DMS to remove the services from waiver.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the SCL waiver program and by enhancing participant safety and welfare.
(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by complying with federal mandates to ensure the receipt of federal funding for the SCL waiver program and by enhancing participant safety and welfare.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects individuals receiving SCL waiver program services (participants) as well as providers of these services. Currently, there are over 4,400 individuals receiving services, over 1,900 on the waiting list to receive services, and over 251 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: Providers will need to ensure they comply with the conflict free case management 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 imposed.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals receiving services will benefit from greater involvement and direction in the types of services they receive as well as when and where they receive the services which will enhance their independence as well as assimilation in their local community.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral initially.
(b) On a continuing basis: DMS anticipates that the amendments to this administrative regulation will be budget neutral on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.730(b) and 42 C.F.R. 441.725.

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. Among the mandates in 42 C.F.R. 441.730(b) are that services to waiver participants are free from conflict of interest. In the context of the SCL program that means that the individual who provides case management to a given waiver participant provides actual SCL waiver services or work for an entity that provides actual SCL waiver services or entity that has a business interest in a provider of actual SCL waiver services. 42 C.F.R. 447.425 establishes the person-centered service plan requirements which are many but the underlying requirement is that the plan be customized to the individual’s needs (based on input from the individual or representatives of the individual among other parties) and promote/enhance the individual’s independence and choice in their services and activities as well as integration their community.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services and the Department for Behavioral Health, Intellectual and Developmental Disabilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.730(b), and 42 C.F.R. 441.725.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will not increase costs in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendments to this administrative regulation will not increase costs in subsequent years.

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

Revenues (+/–):
Expenditures (+/–):

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(AMENDMENT)


RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n
STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010 (rather than the program established pursuant to 907 KAR 1:145).

Section 1. Definitions. (1) “Allocation” means the dollar amount designated to meet a participant’s identified needs.

(2) “DBHID” means the Department for Behavioral Health, Intellectual and Developmental Disabilities.

(3) “Department” means the Department for Medicaid Services or its designee.
“Developmental disability” means a disability that:
(a) Is manifested prior to the age of twenty-two (22); and
(b) Constitutes a substantial disability to the affected individual; and
(c) Is attributable either to an intellectual disability or a condition related to an intellectual disability that:
1. Results in impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and
2. Is a direct result of, or is influenced by, the person’s cognitive deficits.

“Exceptional support” means a service:
(a) Requested by a participant and the participant’s team; and
(b) That due to an extraordinary circumstance related to a participant’s physical health, psychiatric issue, or behavioral health issue is necessary to:
1. Be provided in excess of the upper payment limit for the service for a specified amount of time; and
2. Meet the assessed needs of the participant.

“Immediate family member” is defined by KRS 205.8451(3).

“Intellectual disability” or “ID” means:
(a) A demonstration:
1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) plus or minus five (5) or below; and
2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
   a. Communication;
   b. Self-care;
   c. Home living;
   d. Social or interpersonal skills;
   e. Use of community resources;
   f. Self-direction;
   g. Functional academic skills;
   h. Work;
   i. Leisure; or
   j. Health and safety; and
(b) An intellectual disability that had an onset before eighteen (18) years of age.

“Legally responsible individual” means an individual who has a duty under state law to care for another person and includes:
(a) A parent (biological, adoptive, or foster) of a minor child who provides care to the child;
(b) The guardian of a minor child who provides care to the child; or
(c) A spouse of a participant.

“Participant” means a Medicaid recipient who:
(a) Meets patient status criteria for an intermediate care facility for a person with an intellectual disability as established in 907 KAR 1:022;
(b) Is authorized by the department to receive SCL waiver services; and
(c) Utilizes SCL waiver services and supports in accordance with a person-centered service plan.

“Participant-directed service” means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs that allows recipients to receive non-medical services in a service which the individual:
(a) Assists with the design of the program;
(b) Chooses the providers of services; and
(c) Directs the delivery of services to meet his or her needs.

“POC” means Plan of Care.

“State plan” is defined by 42 C.F.R. 430.10.

“Supports for community living services” or “SCL services” means community-based waiver services for a participant who has an intellectual or developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service provided to a participant.
(2) In order to be reimbursable by the department, a service shall be:
(a) Provided in accordance with the terms and conditions specified in 907 KAR 12:010; and
(b) Prior authorized by the department.

The reimbursement program established in this administrative regulation shall apply after a recipient transitions to the new SCL waiver program established in 907 KAR 12:010.

Prior to that transition, the services provided pursuant to 907 KAR 1:14S shall be reimbursed pursuant to 907 KAR 1:15S.

Funding for the SCL waiver program shall be associated with and generated through SCL waiver program participants rather than SCL waiver service providers.

Section 3. SCL Reimbursement and Limits. (1) Except as established in Section 4 of this administrative regulation, the department shall reimburse for an SCL service provided in accordance with 907 KAR 12:010 to a participant:
(a) The amount of the charge billed by the provider; and
(b) Not to exceed the fixed upper payment limit for the service.
(2) The unit amounts and fixed upper payment limits listed in the following table shall apply:

<table>
<thead>
<tr>
<th>Service</th>
<th>Unit of Service</th>
<th>Upper Payment Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Management</td>
<td>1 month</td>
<td>$320.00</td>
</tr>
<tr>
<td>Community Access-Individual</td>
<td>15 minutes</td>
<td>$8.00</td>
</tr>
<tr>
<td>Community Access-Group</td>
<td>15 minutes</td>
<td>$4.00</td>
</tr>
<tr>
<td>Community Guide</td>
<td>15 minutes</td>
<td>$8.00</td>
</tr>
<tr>
<td>Consultative, Clinical and Therapeutic</td>
<td>15 minutes</td>
<td>$22.50</td>
</tr>
<tr>
<td>Day Training through December 31, 2013</td>
<td>15 minutes</td>
<td>$2.50</td>
</tr>
<tr>
<td>Day Training</td>
<td>15 minutes</td>
<td>$2.20</td>
</tr>
<tr>
<td>Day Training (Licensed Adult Day Health Center)</td>
<td>15 minutes</td>
<td>$3.00</td>
</tr>
<tr>
<td>Occupational therapy by certified occupational therapist</td>
<td>15 minutes</td>
<td>$16.63</td>
</tr>
<tr>
<td>Physical therapy by physical therapist</td>
<td>15 minutes</td>
<td>$22.17</td>
</tr>
<tr>
<td>Physical therapy by physical therapist assistant</td>
<td>15 minutes</td>
<td>$16.63</td>
</tr>
<tr>
<td>Person Centered Coach</td>
<td>15 minutes</td>
<td>$5.75</td>
</tr>
<tr>
<td>Personal Assistance</td>
<td>15 minutes</td>
<td>$5.54</td>
</tr>
<tr>
<td>Positive Behavior Support</td>
<td>1 positive behavior support plan</td>
<td>$665.00</td>
</tr>
<tr>
<td>Residential Level I (4 to 8 residents)</td>
<td>24 hours</td>
<td>$130.35</td>
</tr>
<tr>
<td>Residential Level I (3 or less residents)</td>
<td>24 hours</td>
<td>$172.46</td>
</tr>
<tr>
<td>Residential -Technology Assisted</td>
<td>24 hours</td>
<td>$79.00</td>
</tr>
<tr>
<td>Residential Level II -12 or more hours of supervision</td>
<td>24 hours</td>
<td>$141.69</td>
</tr>
<tr>
<td>Residential Level II -fewer than 12 hours of supervision</td>
<td>24 hours</td>
<td>$79.00</td>
</tr>
<tr>
<td>Respite</td>
<td>15 minutes</td>
<td>$2.77</td>
</tr>
<tr>
<td>Speech therapy</td>
<td>15 minutes</td>
<td>$22.17</td>
</tr>
</tbody>
</table>
(3) Any combination of [a] day training service, [a] community access service, personal assistance, or any hours of paid community employment or on-site supported employment (and a participant’s hours of employment) shall not exceed sixteen (16) hours per day.

(4) Community access services shall not exceed 160 units per week.

(5) Community guide services shall not exceed 576 units per one (1) year authorized person-centered service plan [POC] period.

(6) Community transition shall be based on prior authorized cost not to exceed $2,000 per approved transition.

(7) Consultative clinical and therapeutic services shall not exceed 160 units per one (1) yearauthorized person-centered service plan [POC] period.

(8) Day training and supported employment alone or in combination shall not exceed 160 units per week.

(9) Environmental accessibility shall be:

(a) Based on a prior authorized, estimated cost; and

(b) Limited to an $8,000 lifetime maximum.

(10) Goods and services shall not exceed $1,800 per one (1) year authorized person-centered service plan [POC] period.

(11) Natural support training shall be based on a prior authorized, estimated cost not to exceed $1,000 per one (1) year authorized person-centered service plan [POC] period.

(12) Person centered coaching shall not exceed 1,320 units per year.

(13) Physical therapy and physical therapy by a physical therapy assistant shall in combination not exceed fifty-two (52) units per month.

(14) Occupational therapy and occupational therapy by an occupational therapy assistant shall in combination not exceed fifty-two (52) units per month.

(15) Respite shall be limited to 3,320 units (830 hours) per one (1) year authorized person-centered service plan [POC] period.

(16) Shared living shall be based on a prior authorized amount not to exceed $600 per month.

(17) Speech therapy shall not exceed fifty-two (52) units per month.

(18) A vehicle adaptation shall be limited to $6,000 per five (5) years per participant.

(19) Transportation shall be reimbursed:

(a)1. If provided as a participant directed service; a. Based on the mileage; and

b. At two thirds of the rate established in 200 KAR 2:006, Section 8(2)(d), if provided by an individual. The rate shall be adjusted quarterly in accordance with 200 KAR 2:006, Section 8(2)(d); or

2. If provided by a public transportation service provider, at the cost per trip as documented by the receipt for the specific trip; and

(b) A maximum of $265 per calendar month.

(20) An estimate for a supply item requested under specialized medical equipment or goods and services shall be based on the actual price to be charged to the provider, participant, or individual by a retailer or manufacturer.

(21) Specialized medical equipment or goods and services shall not include equipment and supplies covered under the Kentucky Medicaid program’s state plan including:

(a) Durable medical equipment;

(b) Early and Periodic Screening, Diagnosis, and Treatment Services;

(c) Orthotics and prosthetics; or

(d) Hearing services.

(22) A participant shall not receive multiple SCL services during the same segment of time except in the case of the following collateral services that shall be allowed to overlap other SCL services:

(a) Community guide services;

(b) Consultative clinical and therapeutic services; or

(c) Person centered coaching.

Section 4. Exceptional Supports. (1) A service listed in subsection (2) or (3) of this section, regardless of delivery method, shall qualify as an exceptional support:

(a) Based on the needs of the participant for whom the exceptional support is requested;

(b) For a limited period of time not to exceed a full person-centered service plan [POC] year;

(c) If the service meets the requirements for an exceptional support in accordance with the Kentucky Exceptional Supports Protocol; and

(d) If approved by DBHDID to be an exceptional support.

(2)(a) The following shall qualify as an exceptional support and be reimbursed at a rate higher than the upper payment limit established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Community access services;

2. Day training that is not provided in an adult day health care center;

3. Personal assistance;

4. Respite;

5. Residential Level I – three (3) or fewer residents;

6. Residential Level I – four (4) to eight (8) residents; or

7. Residential Level II – twelve (12) or more hours.

(b) A rate increase for a service authorized as an exceptional support shall:

1. Be based on the actual cost of providing the service; and

2. Not exceed twice the upper payment limit established for the service in Section 3 of this administrative regulation.

(c) The following shall qualify as an exceptional support and be provided in excess of the unit limits established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Consultative clinical and therapeutic services;

2. Person centered coaching;

3. Personal assistance; or

4. Respite.

(d) A service that qualifies as an exceptional support shall:

1. Be authorized to be reimbursed at a rate higher than the upper payment limit established for the service in Section 3 of this administrative regulation;

2. Be authorized to be provided in excess of the unit limit established for the service in Section 3 of this administrative regulation; and

3. Be not authorized to be reimbursed at a higher rate than the upper payment limit and in excess of the service limit established for the service in Section 3 of this administrative regulation.

Section 5. Allocation. A participant shall be designated an allocated amount of funding to cover SCL waiver expenses for the participant’s POC period based on assessment of the participant’s needs performed by DBHDID.

Section 6.1) Participant Directed Services. (1) A reimbursement rate for a participant directed service shall:

(a) Not exceed the upper payment limit established for the service in Section 3 of this administrative regulation unless the service qualifies as an exceptional support in accordance with Section 4(2)(a) of this administrative regulation; and

(b) Include:

1. All applicable local, state, and federal withholdings; and

2. Any applicable employment related administrative costs which shall be the responsibility of the participant who is directing the service.

(2) An employee who provides a participant directed service shall not be approved to provide more than forty (40) hours of service per week unless authorized to do so by the department.

(3) A legally responsible individual or immediate family member shall not be authorized to be reimbursed for more than forty (40) hours of participant directed services per week.

Section 6.Z] Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 12:010.
Section 7[b] Appeal Rights. A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.


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

LISA LEE, Commissioner
Audrey Tayse Haynes, Secretary
APPROVED BY AGENCY: August 5, 2015

FILED WITH LRC: August 13, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2015, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing September 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 September 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orne@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) reimbursement provisions and requirements regarding SCL waiver program services.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish DMS’s reimbursement provisions and requirements regarding SCL waiver program services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS’s reimbursement provisions and requirements regarding SCL waiver program services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the statutes by establishing DMS’s reimbursement provisions and requirements regarding SCL waiver program 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 eliminates references to funding allocations associated with SCL participants; replaces the term “plan of care” with “person-centered service plan”; eliminates references to a transition from a prior version of the SCL program; clarifies the sixteen (16) hour per day limit on certain services; updates the incorporated material by removing references to “credentialed employees” as employees aren’t credentialed; and removes occupational therapy, physical therapy, and speech therapy from the services covered via the SCL program.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to correct, update, or clarify provisions and to comply with a federal mandate. Removing occupational therapy, physical therapy, and speech therapy from the services covered via the SCL program is necessary to comply with a federal mandate issued by the Centers for Medicare and Medicaid Services (CMS) to DMS. As 1915(c) home and community based waiver services cannot duplicate services available to Medicaid recipients via the “state plan”, CMS explicitly instructed DMS to remove the services from the waiver.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will conform to the content of the authorizing statutes by ensuring the safe and effective transition of enhanced services to enable updating, correcting, and clarifying provisions.

(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 ensuring the safe and effective transition of enhanced services to enable updating, correcting, and clarifying provisions. The amendment provides the department decision regarding the application of this administrative regulation: The amendment conforms to the content of the authorizing statutes by ensuring the safe and effective transition of enhanced services to enable updating, correcting, and clarifying provisions. The amendment provides the department with authority to authorize the transition of enhanced services to enable updating, correcting, and clarifying provisions.

(3) As a result of compliance, what benefits will accrue to the individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects individuals receiving SCL waiver program services (participants) as well as providers of these services. Currently, there are over 4,400 individuals receiving services, over 1,900 on the waiting list to receive services, and over 251 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. No action is mandated.

(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). Entities or individuals will benefit from provisions being updated or clarified.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral initially.

(b) On a continuing basis: DMS anticipates that the amendments to this administrative regulation will be budget neutral on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

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

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

(9) Tiering: Is tiering applied. Tiering is not applied as the amendment applies equally to all regulated entities/individuals.
FEDERAL MANDATE ANALYSIS COMPARISON


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

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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?

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

   (c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the amendments to this administrative regulation will be budget neutral for the first year.

   (d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendments to this administrative regulation will be budget neutral for subsequent years.

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

   Revenues (+/-): 
   Expenditures (+/-): 
   Other Explanation:
NEW ADMINISTRATIVE REGULATIONS

GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(Repealer)

201 KAR 1:071. Repeal of 201 KAR 1:064.

RELATES TO: KRS 325.261(6)
STATUTORY AUTHORITY: KRS 325.240(2)
NECESSITY, FUNCTION AND CONFORMITY: KRS 325.261(6) requiring a candidate to satisfy one (1) experience requirement for the issuance of a CPA license through teaching accounting courses was amended by HB 363 during the 2015 GA. This administrative regulation repeals 201 KAR 1:064 since it is no longer authorized by statute.

Section 1. 201 KAR 1:064, Verification of experience for teaching accounting courses, is hereby repealed.

TONI CARVER SMITH, CPA, President
APPROVED BY AGENCY: July 24, 2015
FILED WITH LRC: July 29, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2015, at 10 a.m., EST at the administrative offices of the board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by, five work days prior to the meeting, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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 September 30, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director,
Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:
(a) What this administrative regulation does: It repeals 201 KAR 1:064.
(b) The necessity of this administrative regulation: To repeal a regulation that is no longer authorized by law.
(c) How this administrative regulation conforms with the content of the authorizing statutes: Since KRS 325.261 no longer allows for a candidate to satisfy the experience requirement by teaching accounting courses this regulation is no longer valid.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will repeal a regulation that is no longer valid.

(2) If 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 not an amendment.
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms with 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: Individuals will not be allowed to satisfy the experience requirement through teaching accounting courses. There will be no effect on local or state governments. Since the board has issued only one (1) license through this process over a six (6) year period it is doubtful this change will affect any candidates.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List 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): Nothing.
(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: Nothing
(b) On a continuing basis: Nothing

(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: None at this time.

(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 since all candidates seeking to meet the experience requirement through this process 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?
Board of Accountancy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 363, Kentucky Acts Chapter 107.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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.

4. How much 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.

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

6. How 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.

7. How much will it cost to administer this program for the first year? None.

8. 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:

1068
VOLUME 42, NUMBER 3 – SEPTEMBER 1, 2015

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

702 KAR 1:170. School district data security and breach procedures.

RELATES TO: KRS 61.931, 61.932, 61.933

STATUTORY AUTHORITY: KRS 61.932(1)(b), 156.070

NECESSITY, FUNCTION AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education (KBE) to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 61.932(1)(b) specifically authorizes the KBE to promulgate administrative regulations with requirements and standards for the reasonable security and breach investigation procedures and practices established and implemented by public school districts. This administrative regulation establishes the requirements and standards for school district reasonable security and breach investigation procedures and practices.

Section 1. Definitions. (1) "Personal information" is defined in KRS 61.931(6).

(2) "Reasonable security and breach investigation procedures and practices" is defined in KRS 61.931(8).

Section 2. Best Practice Guide for School District Personal Information Reasonable Security. The department shall at least annually provide school districts best practice guidance for personal information reasonable security. The current department guidance is provided in the Data Security and Breach Notification Best Practice Guide, which is incorporated by reference into this administrative regulation. School districts are not required to adopt the security practices included in this guidance.

Section 3. Annual Public School District Acknowledgement of Best Practices. Each public school district shall review and consider, in light of the needs of reasonable security, the most recent best practice guidance, including the Data Security and Breach Notification Best Practice Guide, for personal information reasonable security. Each public school district shall acknowledge to its own local board during a public board meeting prior to August 31 of each year, that the district has reviewed this guidance and implemented the best practices that meet the needs of personal information reasonable security in that district.

Section 4. Annual Department Acknowledgement of Best Practices. The department shall review and consider, in light of the needs of reasonable security, the most recent best practice guidance for personal information reasonable security. The department shall acknowledge to the KBE, by August 31 of each year, that the department has reviewed this guidance and implemented the best practices that meet the needs of personal information reasonable security for the department.

Section 5. Data Breach Notification to the Department. Any public school district that determines or is notified of a security breach relating to personal information collected, maintained, or stored by the school district or by a nonaffiliated third party on behalf of the school district shall provide the notification of the security breach to the department required by KRS 61.933 pursuant to the procedure included in the Data Security and Breach Notification Best Practice Guide.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(a) List 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 school district shall have to comply with the requirements in this administrative regulation for establishing the reasonable security and breach investigation procedures and practices.

(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 mandated costs with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More consistency in the reasonable security and breach investigation procedures and practices utilized by school districts.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
   (a) Initially: Minimal
   (b) On a continuing basis: Minimal

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All Kentucky public school districts and the agency.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.932(1)(b), 156.070.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
   (c) How much will it cost to administer this program for the first year? No cost
   (d) How much will it cost to administer this program for subsequent years? No 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:
Call to Order and Roll Call
The August 2015 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 11, 2015, at 1 p.m. in Room 149 of the Capitol Annex. Senator Ernie Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the July 2015 meeting were approved.

Present were:
Members: Senators Ernie Harris, Perry Clark, Julie Raque Adams and Representatives Denver Butler, Mary Lou Marzian and Tommy Turner.

LRC Staff: Donna Little, Sarah Amburgey, Carrie Klaber, Karen Howard, Emily Harkendenker, Emily Caudill, Ange Bertholf, and Betsy Cupp.

Guests: Jimmy Adams, Education Professional Standards Board; Dinah Bevington, Personnel Cabinet; Nicole Biddle, Larry Disney, Tom Veit, Real Estate Appraisers Board; Ron Brooks, Karen Waldrop, David Wicker, Department of Fish and Wildlife; Tim Arnold, John Cummings, Department on Public Advocacy; Amy Barker, Cindy Huddleston, Department of Corrections; Chase Bannister, Kevin Brown, Department of Education; Chad Collins, Julian Tackett, KY High School Athletic Association; Todd Allen, Amanda Ellis, Leslie Slaughter, Dale Winkler, Department of Education; Mike Pettit, Kristi Redmon, Chip Smith, Chuck Stribling, Labor Cabinet; Frederick Higdon, Steve Humphress, Melissa McQueen, Alcohol Beverage Control; John Allender, Tammy Scruggs, Jessica Sharpe, Charles Vice, Department Financial Institutions; William Farmer, Marc Guilfoil, Richard Sams, Susan Speckert, John Ward, Horse Racing Commission; Stephanie Bramer-Barnes, Maryellen Mynear, Office of Inspector General; Laura Begin, Julie McKee, Department for Public Health; Leslie Hoffman, Stuart Owen, Department for Medicaid Services; David Allgood, Jennifer Dudinskie, Victoria Elridge, Department for Aging and Independent Living; Ben Bevington, Karen Veit, Real Estate Appraisers Board; Ron Brooks, Karen Waldrop, deputy commissioner; and Cindy Huddleston, probation and parole officer, represented the department.

The Administrative Regulation Review Subcommittee met on Tuesday, August 11, 2015, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Board
In response to a question by Senator Clark, Mr. Adams stated that the character and fitness form was required each five (5) years to maintain licensure. The form disclosed violations or criminal behavior and would be used by the board if necessary to determine the appropriateness of continued licensure.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Sections 2 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

In response to a question by Co-Chair Harris, Mr. Adams stated that this administrative regulation synchronized out-of-state educator preparation programs to the equivalent in-state programs. A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to: (1) clarify requirements; and (2) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Personnel Cabinet, Classified
101 KAR 2:046. Applications, qualifications, and examinations. A motion was made and seconded to approve the following amendments: to amend Sections 1, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:056. Registers.
101 KAR 2:066. Certification and selection of eligible applicants for appointment.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:120. Incentive programs.
101 KAR 3:045. Compensation plan and pay incentives. A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 2 through 5, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend the STATUTORY AUTHORITY paragraph to add a citation. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Real Estate Appraisers Board: Board
201 KAR 30:070. Grievances. Nicole Biddle, staff attorney; Larry Disney, executive director, and Tom Veit, executive assistant, represented the board.
In response to a question by Co-Chair Harris, Mr. Disney stated that the board historically investigated all grievances, including those submitted anonymously. The board had previously agreed to cease investigating anonymous grievances, but the federal Frank – Dodd Act required the board to continue investigating all grievances, including those submitted anonymously. This administrative regulation addressed anonymous grievances.
A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to clarify that a grievance that is filed anonymously shall still be investigated; and (2) to amend Sections 3 and 5 to make technical corrections. 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 1:146. Commercial fishing gear. Ron Brooks, fisheries director; Dr. Karen Waldrop, deputy commissioner; and David Wicker, general counsel, represented the department.
In response to a question by Co-Chair Harris, Mr. Brooks stated that a rough fish was any fish not already classified as a sport fish.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary
501 KAR 6:270. Probation and parole policies and procedures. Amy Barker, assistant general counsel, and Cindy Huddleston, probation and parole officer, represented the department.
In response to a question by Co-Chair Harris, Ms. Barker stated that this administrative regulation realigned requirements with recent technological advances.
A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to update policy title and
editions; and (2) to amend material incorporated by reference to update citations and make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

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. Kevin Brown, associate commissioner and department general counsel, represented the board. Chad Collins, general counsel, and Julian Tackett, commissioner, represented the Kentucky High School Athletic Association.

In response to a question by Senator Raque Adams, Mr. Tackett stated that drones were being marketed for use at high school athletic events; however, the Federal Aviation Administration did not yet allow that. Kentucky had several incidents and accidents regarding drones at high school athletic events. Individual schools determined if drones were used during practice, and the Kentucky High School Athletic Association recommended that drones not be used during practice.

In response to a question by Co-Chair Marzian, Mr. Tackett stated that drones were being marketed for coaching purposes in order to capture activity from different angles.

A motion was made and seconded to approve the following amendments: to amend Sections 3 through 5 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Instruction
704 KAR 3:303. Required academic standards. Todd Allen, assistant general counsel; Kevin Brown, associate commissioner and department general counsel; and Amanda Ellis, associate commissioner, represented the department.

In response to a question by Senator Clark, Ms. Ellis stated that the department was replacing the Kentucky Core Academic Standards for Arts and Humanities to broaden the program, create a more age-appropriate curriculum, and establish a more performance-based program. Senator Clark stated that he supported the arts.

Instructional Programs
705 KAR 4:041. Work-based learning program standards. Chase Bannister, staff attorney; Kevin Brown, associate commissioner and department general counsel; and Leslie Slaughter, policy advisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Mike Pettit, standards specialist; Kristi Redmon, standards specialist; and Chip Smith, general counsel, represented the division.

In response to questions by Co-Chair Harris, Ms. Redmon stated that the federal Occupational Health and Safety Administration initiated these changes, and the division was required to update these administrative regulations accordingly. Mr. Smith stated that the most substantive changes were to the discrimination provisions, which protect an employee from retaliation related to a complaint pertaining to occupational safety or health. A recent Court of Appeals decision determined that Kentucky's standards were not protective enough; therefore, 803 KAR 2:250 was amended to address those concerns and ensure protection from retaliation.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to make punctuation corrections; (2) to amend the RELATES TO paragraph to add citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Sections 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.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; 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.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 5, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 1 to add a definition for “employer” for consistency with the other administrative regulations in this package. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:317. Special industries.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 1 to add a definition for “employer” for consistency with the other administrative regulations in this package. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 1 to add a definition for “employer” for consistency with the other administrative regulations in this package. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:505. Cranes and derricks in construction.
A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:370. Entertainment destination center license. Frederick Higdon, commissioner; Steve Humphress, general counsel; and Melissa McQueen, staff attorney, represented the department.

In response to questions by Co-Chair Harris, Mr. Humphress stated that this administrative regulation was first initiated in anticipation of Fourth Street Live! This administrative regulation allowed allowing the deployment of alcoholic beverages during events within certain parameters. The department was relaxing the parameter requirements so that other venues, such as the Newport Levee, could participate. This administrative regulation could apply to craft breweries, but those breweries were also subject to other requirements established in other administrative regulations.

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 Section 1 to correct a citation. Without objection, and with agreement of the agency, the amendments were approved.

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. John Allender, staff attorney, and Charles Vice, commissioner, represented the division.

In response to a question by Co-Chair Harris, Mr. Vice stated that this administrative regulation clarified requirements regarding when transactions for payday loans were considered closed.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Section 1; the material incorporated by reference; and the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT 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 Section 1 to add the requirement that the applications for a non-profit exemption and for a HUD exemption be notarized; (4) to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Mortgage Loan Companies and Mortgage Loan Brokers


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a citation and to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to correct a citation and add the requirement that the applications for a Non-Profit exemption and for a HUD exemption be notarized; (4) to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A; and (5) to amend the REGULATORY IMPACT ANALYSIS and the application for a Non-Profit exemption to correct a citation. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 12:021. Licensing and registration.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 5 and Section 9 to correct the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 3 to add the statutory citation that covers the commissioner’s authority to require a background check; and (3) to amend Section 5 to: (a) clarify that the credit report score demonstrates the requirement of “financial responsibility” by the applicant; and (b) add what factors are used in the board’s determination of “character” and “general fitness.” Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:160. Chemical dependency treatment services and facility specifications. Stephanie Brammer-Barnes, regulation coordinator, and Maryellen Mynear, inspector general, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; and (2) to amend Sections 1 through 4, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services.

In response to a question by Senator Clark, Ms. Brammer-Barnes stated that House Bill 92 of the 2015 Regular Session of the General Assembly authorized licensed clinical alcohol and drug counselors and licensed clinical alcohol and drug counselor associates to offer alcohol and drug counseling services.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 7(7)(h) to clarify requirements; and (3) to amend Sections 1 and 14 to add “licensed clinical alcohol and drug counselor” and “licensed clinical alcohol and drug counselor associate”. Without objection, and with agreement of the agency, these amendments were approved.

Division of Maternal and Child Health: Water Fluoridation

902 KAR 115:010. Water fluoridation for the protection of dental health. Laura Begin, regulation coordinator, and Dr. Julie McKee, state dental director, represented the division.

In response to a question by Senator Clark, Dr. McKee stated that this administrative regulation was commensurate with federal recommendations regarding fluoridation of public water supplies.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph; 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 Section 2 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Community Alternatives: 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. Leslie Hoffman, policy advisor, and Stuart Owen, regulation coordinator, represented the department.

In response to a question by Senator Clark, Mr. Owen stated that an emergency administrative regulation regarding licensure of licensed clinical alcohol and drug counselors and associates had been promulgated to the office by the licensure board and it was expected to be filed soon. The licensure of those individuals would impact these Medicaid administrative regulations and 902
A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to revise the definition of: (a) “behavioral health professional” to add a certified alcohol and drug counselor; and (b) “interdisciplinary team” to include a parent, legal guardian, or caregiver of a recipient if requested by the recipient over age eighteen (18); and (2) to amend Sections 1, 2, 4, 6, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 5, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 6, 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 6, 7, 8, 9, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 5, 7, and 9 to update citations; (2) to amend Sections 1 and 3 to reference defined terms; (3) to amend Section 1 to: (a) add definitions for “federal poverty guidelines” and “operating agency”; and (b) clarify that personal care services shall be limited to recipients who are at least twelve (12) years old; (4) to amend Sections 3 and 15 and the renewal application form to clarify application procedures; and (5) to amend Sections 1, 4, 5, 7, 8, 9, 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to revise the definition of: (a) “behavioral health professional” to add a certified alcohol and drug counselor; and (b) “interdisciplinary team” to include a parent, legal guardian, or caregiver of a recipient if requested by the recipient over age eighteen (18); and (2) to amend Sections 2 through 5 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 5, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 6, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 5, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 6, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
In response to a question by Co-Chair Marzian, Mr. Hiles stated that most horses were medicated with furosemide on race days, either for actual bleeding or as a bleeding preventative.

In response to a question by Senator Raque Adams, Mr. Hiles stated that the Equine Drug Research Council failed to approve the concept of nonfurosemide races; therefore, the commission decided to pursue the concept on its own. There were potential penalties related to racing a horse that has experienced multiple bleeding episodes. Currently, only the commission was authorized to establish a nonfurosemide race. These administrative regulations would delegate that authority to the tracks themselves. Mr. Maline stated that there were also disadvantages to the betting public because a given horse may run differently if not using furosemide than it would in other races in which it is administered furosemide. Mr. Ecabert stated that Keeneland supported these administrative regulations because these administrative regulations offered opportunity for the equine industry. The history of Kentucky horse racing was a history of increased opportunity. These administrative regulations would allow for nonfurosemide races for those owners who wanted to participate.

In response to a question by Senator Clark, Mr. Hiles stated that, if a horse bleeds, there is often downtime from racing and veterinarian bills for the owner. There were potential penalties related to racing a horse that has experienced multiple bleeding episodes. Currently, only the commission was authorized to establish a nonfurosemide race. These administrative regulations would delegate that authority to the tracks themselves. Mr. Maline stated that there were also disadvantages to the betting public because a given horse may run differently if not using furosemide than it would in other races in which it is administered furosemide. Mr. Ecabert stated that Keeneland supported these administrative regulations because these administrative regulations offered opportunity for the equine industry. The history of Kentucky horse racing was a history of increased opportunity. These administrative regulations would allow for nonfurosemide races for those owners who wanted to participate.

In response to a question by Senator Raque Adams, Mr. Beasley stated that early on it was determined that a track would be able to determine whether to establish nonfurosemide races. These administrative regulations, as it pertains to nonfurosemide races, were permissive, not mandatory.

Co-Chair Marzian stated that she would like for the Subcommittee to hear from some of the other track representatives when these administrative regulations came back before the Subcommittee for consideration.

Co-Chair Harris stated that he would like the commission to consult with the Attorney General regarding the delegation of authority to establish nonfurosemide races to the tracks.

A motion was made and seconded to defer consideration of these administrative regulations to the September 8 meeting of the Subcommittee. Without objection, and with agreement of the agency, the deferrals were approved.

Harness Racing
811 KAR 1:300. International medication protocol as a condition of a race.

Quarter Horse, Appaloosa and Arabian Racing
811 KAR 2:300. International medication protocol as a condition of a race.

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.

902 KAR 20:180. Psychiatric hospitals; 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 Community Alternatives: Hospital Service Coverage and Reimbursement
907 KAR 10:020. Coverage provisions and requirement regarding outpatient psychiatric hospital services.

907 KAR 10:025. Reimbursement provisions and requirements regarding outpatient psychiatric hospital services.

The Subcommittee adjourned at 2:25 p.m. until September 8, 2015, at 1 p.m.
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 August 10, 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 August 10, 2015, having been referred to the Committee on August 5, 2015, pursuant to KRS 13A.290(6):

704 KAR 3:370
704 KAR 5:070

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:

704 KAR 3:370

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 August 10, 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

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

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

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

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.
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.

SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Emergency expired after 180 days
‡ Withdrawn deferred more than twelve months
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Nota: 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.)

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>Effective Date</th>
<th>Page No.</th>
<th>Regulation Number</th>
<th>Effective Date</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 KAR 2:045E</td>
<td>3-2-15</td>
<td>2062</td>
<td>103 KAR 3:030E</td>
<td>1-16-15</td>
<td>1958</td>
</tr>
<tr>
<td>31 KAR 4:180E</td>
<td>5-5-15</td>
<td>2527</td>
<td>103 KAR 3:040E</td>
<td>12-16-14</td>
<td>1742</td>
</tr>
<tr>
<td>903 KAR 3:060E</td>
<td>4-30-15</td>
<td>2530</td>
<td>902 KAR 3:070E</td>
<td>12-30-14</td>
<td>2533</td>
</tr>
</tbody>
</table>

ORDINARY ADMINISTRATIVE REGULATIONS:

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>Effective Date</th>
<th>Page No.</th>
<th>Regulation Number</th>
<th>Effective Date</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 KAR 4:080</td>
<td>7-6-15</td>
<td>2099</td>
<td>11 KAR 4:145</td>
<td>7-6-15</td>
<td>2100</td>
</tr>
<tr>
<td>11 KAR 15:010</td>
<td>7-6-15</td>
<td>2102</td>
<td>11 KAR 15:090</td>
<td>7-6-15</td>
<td>2538</td>
</tr>
<tr>
<td>13 KAR 2:045</td>
<td>7-6-15</td>
<td>2104</td>
<td>13 KAR 2:045</td>
<td>7-6-15</td>
<td>2108</td>
</tr>
<tr>
<td>31 KAR 3:040</td>
<td>7-6-15</td>
<td>2447</td>
<td>31 KAR 4:120</td>
<td>7-6-15</td>
<td>2285</td>
</tr>
<tr>
<td>31 KAR 4:180</td>
<td>7-6-15</td>
<td>2689</td>
<td>101 KAR 2:102</td>
<td>7-6-15</td>
<td>2113</td>
</tr>
<tr>
<td>101 KAR 2:105</td>
<td>7-6-15</td>
<td>2538</td>
<td>101 KAR 2:105</td>
<td>7-6-15</td>
<td>2118</td>
</tr>
<tr>
<td>101 KAR 2:106</td>
<td>7-6-15</td>
<td>2543</td>
<td>101 KAR 2:106</td>
<td>7-6-15</td>
<td>2120</td>
</tr>
<tr>
<td>101 KAR 2:160</td>
<td>7-6-15</td>
<td>2121</td>
<td>101 KAR 2:160</td>
<td>7-6-15</td>
<td>2121</td>
</tr>
<tr>
<td>101 KAR 2:180</td>
<td>7-6-15</td>
<td>2121</td>
<td>101 KAR 2:180</td>
<td>7-6-15</td>
<td>2121</td>
</tr>
<tr>
<td>Regulation Number</td>
<td>41 Ky.R. Page No.</td>
<td>Effective Date</td>
<td>Regulation Number</td>
<td>41 Ky.R. Page No.</td>
<td>Effective Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------</td>
<td>---------------</td>
<td>-------------------</td>
<td>------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>301 KAR 2:172</td>
<td>Amended 1873</td>
<td></td>
<td>Am comments 1672</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended 2092</td>
<td>725 KAR 1:061</td>
<td></td>
<td>As Amended 2223</td>
<td></td>
<td></td>
</tr>
<tr>
<td>301 KAR 2:178</td>
<td>Amended 1878</td>
<td></td>
<td>301 KAR 1:035</td>
<td>Amended 2045</td>
<td>7-13-15</td>
</tr>
<tr>
<td>Amended 2318</td>
<td>803 KAR 1:061</td>
<td></td>
<td>As Amended 2550</td>
<td>7-6-15</td>
<td></td>
</tr>
<tr>
<td>301 KAR 3:132</td>
<td>As Amended 2208</td>
<td>804 KAR 1:061</td>
<td>804 KAR 4:370</td>
<td></td>
<td></td>
</tr>
<tr>
<td>301 KAR 2:300</td>
<td>Amended 2212</td>
<td>804 KAR 7:010</td>
<td>Amended 2180</td>
<td>7-6-15</td>
<td></td>
</tr>
<tr>
<td>302 KAR 20:110</td>
<td>Amended 2208</td>
<td>804 KAR 7:011</td>
<td>Repealed 2180</td>
<td>7-6-15</td>
<td></td>
</tr>
<tr>
<td>As Amended 2217</td>
<td>804 KAR 10:010</td>
<td></td>
<td>Amended 2630</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>302 KAR 20:120</td>
<td>Amended 804 KAR 10:020</td>
<td>2632</td>
<td>See 42 Ky.R.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As Amended 2219</td>
<td>804 KAR 10:025</td>
<td></td>
<td>See 42 Ky.R.</td>
<td>2633</td>
<td></td>
</tr>
<tr>
<td>402 KAR 3:010</td>
<td>Amended 2619</td>
<td>See 42 Ky.R.</td>
<td>Amended 805 KAR 1:100</td>
<td>2355</td>
<td></td>
</tr>
<tr>
<td>Amended 2621</td>
<td>805 KAR 1:130</td>
<td></td>
<td>Amended 805 KAR 1:140</td>
<td>2361</td>
<td></td>
</tr>
<tr>
<td>402 KAR 3:030</td>
<td>Amended 2623</td>
<td>See 42 Ky.R.</td>
<td>Amended 805 KAR 12:020</td>
<td>2636</td>
<td>See 42 Ky.R.</td>
</tr>
<tr>
<td>500 KAR 13:020</td>
<td>Amended 2632</td>
<td>See 42 Ky.R.</td>
<td>Amended 805 KAR 12:021</td>
<td>2638</td>
<td>See 42 Ky.R.</td>
</tr>
<tr>
<td>501 KAR 1:080</td>
<td>Amended 595</td>
<td>808 KAR 12:110</td>
<td>2698</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>Amended 1057</td>
<td>810 KAR 1:027</td>
<td></td>
<td>As Amended 1066</td>
<td></td>
<td></td>
</tr>
<tr>
<td>503 KAR 1:110</td>
<td>Amended 2626</td>
<td>See 42 Ky.R.</td>
<td>Amended 810 KAR 1:090</td>
<td>2369</td>
<td>See 42 Ky.R.</td>
</tr>
<tr>
<td>Amended 747</td>
<td>810 KAR 1:300</td>
<td></td>
<td>As Amended 810 KAR 1:300</td>
<td>2699</td>
<td>See 42 Ky.R.</td>
</tr>
<tr>
<td>601 KAR 1:112</td>
<td>Amended 1725</td>
<td>811 KAR 2:300</td>
<td>2701</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AmComments 2095</td>
<td>811 KAR 2:300</td>
<td></td>
<td>As Amended 2702</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Withdrawn 7-8-2015</td>
<td>815 KAR 6:010</td>
<td></td>
<td>Amended 2641</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>601 KAR 9:135</td>
<td>Amended 2321</td>
<td>See 42 Ky.R.</td>
<td>815 KAR 35:015</td>
<td>815 KAR 6:010</td>
<td></td>
</tr>
<tr>
<td>Amended 591</td>
<td>815 KAR 35:015</td>
<td></td>
<td>Amended 815 KAR 35:015</td>
<td>2645</td>
<td>See 42 Ky.R.</td>
</tr>
<tr>
<td>603 KAR 5:155</td>
<td>Amended 1056</td>
<td>900 KAR 2:050</td>
<td>900 KAR 2:050</td>
<td>2133</td>
<td></td>
</tr>
<tr>
<td>Amended 591</td>
<td>900 KAR 2:050</td>
<td></td>
<td>As Amended 2551</td>
<td>6-17-15</td>
<td></td>
</tr>
<tr>
<td>603 KAR 10:002</td>
<td>Amended 2453</td>
<td>900 KAR 7:300</td>
<td>900 KAR 7:300</td>
<td>1891</td>
<td></td>
</tr>
<tr>
<td>Amended 2456</td>
<td>900 KAR 7:300</td>
<td></td>
<td>Amended 1891</td>
<td></td>
<td></td>
</tr>
<tr>
<td>603 KAR 10:010</td>
<td>Amended 1728</td>
<td>900 KAR 10:010</td>
<td></td>
<td>900 KAR 10:100</td>
<td>2667</td>
</tr>
<tr>
<td>Amended 2325</td>
<td>900 KAR 10:100</td>
<td></td>
<td>Amended 2667</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>603 KAR 10:021</td>
<td>Amended 2458</td>
<td>900 KAR 10:040</td>
<td>2464</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>702 KAR 3:320</td>
<td>Amended 1728</td>
<td>900 KAR 10:050</td>
<td>2464</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>AmComments 2012</td>
<td>900 KAR 10:100</td>
<td></td>
<td>Amended 2664</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>As Amended 2220</td>
<td>900 KAR 10:100</td>
<td></td>
<td>Amended 2664</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>703 KAR 5:200</td>
<td>Amended 2034</td>
<td>900 KAR 10:020</td>
<td>2651</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended 2236</td>
<td>900 KAR 10:020</td>
<td></td>
<td>Amended 2658</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>703 KAR 5:225</td>
<td>Amended 2037</td>
<td>900 KAR 10:040</td>
<td>2464</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>Amended 2240</td>
<td>900 KAR 10:050</td>
<td></td>
<td>Amended 2464</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>703 KAR 5:240</td>
<td>Amended 2042</td>
<td>900 KAR 10:100</td>
<td>2664</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>Amended 2342</td>
<td>902 KAR 10:100</td>
<td></td>
<td>Amended 2667</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>704 KAR 3:370</td>
<td>Amended 2342</td>
<td>902 KAR 10:022</td>
<td>2468</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>Amended 2351</td>
<td>902 KAR 10:022</td>
<td></td>
<td>Amended 2468</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>705 KAR 4:250</td>
<td>Amended 1144</td>
<td>902 KAR 20:091</td>
<td>1896</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended</td>
<td>902 KAR 20:091</td>
<td></td>
<td>Amended 1896</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulation Number</td>
<td>41 Ky.R. Page No.</td>
<td>Effective Date</td>
<td>Regulation Number</td>
<td>41 Ky.R. Page No.</td>
<td>Effective Date</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------</td>
<td>----------------</td>
<td>-------------------</td>
<td>------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>902 KAR 20:180</td>
<td>Amended 2383</td>
<td>907 KAR 10:020</td>
<td>2491</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>902 KAR 20:320</td>
<td>Amended 2393</td>
<td>See 42 Ky.R.</td>
<td>907 KAR 10:826(r)</td>
<td>2181</td>
<td></td>
</tr>
<tr>
<td>902 KAR 20:400</td>
<td>Amended 1905</td>
<td>907 KAR 10:830</td>
<td>2182</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AmComments 2256</td>
<td>See 42 Ky.R.</td>
<td>907 KAR 15:080</td>
<td>2507</td>
<td>See 42 Ky.R.</td>
<td></td>
</tr>
<tr>
<td>902 KAR 45:110</td>
<td>Amended 2469</td>
<td>907 KAR 15:085</td>
<td>2515</td>
<td></td>
<td></td>
</tr>
<tr>
<td>902 KAR 45:120</td>
<td>Amended 2672</td>
<td>908 KAR 2:230</td>
<td>Amended 1929</td>
<td></td>
<td></td>
</tr>
<tr>
<td>902 KAR 45:160</td>
<td>Amended 2470</td>
<td>See 42 Ky.R.</td>
<td>908 KAR 2:230</td>
<td>Amended 2277</td>
<td></td>
</tr>
<tr>
<td>907 KAR 1:044</td>
<td>Amended 1910</td>
<td>908 KAR 2:260</td>
<td>1945</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AmComments 2261</td>
<td>As Amended 2553</td>
<td>7-6-15</td>
<td>As Amended 2565</td>
<td>6-7-15</td>
<td></td>
</tr>
<tr>
<td>907 KAR 1:045</td>
<td>Amended 1915</td>
<td>910 KAR 1:140</td>
<td>Amended 2138</td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 1:046</td>
<td>Amended 1940</td>
<td>910 KAR 1:170</td>
<td>As Amended 2568</td>
<td>6-7-15</td>
<td></td>
</tr>
<tr>
<td>AmComments 2266</td>
<td>910 KAR 1:170</td>
<td>Amended 2138</td>
<td>6-7-15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 1:055</td>
<td>Amended 2674</td>
<td>910 KAR 1:210</td>
<td>Amended 2150</td>
<td>6-7-15</td>
<td></td>
</tr>
<tr>
<td>AmComments 2268</td>
<td>910 KAR 1:210</td>
<td>Amended 2578</td>
<td>6-7-15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 1:002</td>
<td>As Amended 2556</td>
<td>7-6-15</td>
<td>910 KAR 1:220</td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 1:350</td>
<td>Amended 2136</td>
<td>2157</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amended 2559</td>
<td>As Amended 2583</td>
<td>6-7-15</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 3:017</td>
<td>As Amended 1932</td>
<td>921 KAR 3:045</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 9:005</td>
<td>Amended 2224</td>
<td>921 KAR 3:060</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 9:010</td>
<td>Amended 2417</td>
<td>921 KAR 3:070</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 9:015</td>
<td>Amended 2425</td>
<td>921 KAR 3:070</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 9:020</td>
<td>Amended 2475</td>
<td>921 KAR 3:070</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 10:014</td>
<td>Amended 2487</td>
<td>921 KAR 3:070</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>907 KAR 10:016</td>
<td>Amended 2428</td>
<td>See 42 Ky.R.</td>
<td>2685</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### SYMBOL KEY:

- Statement of Consideration not filed by deadline
- Withdrawn before being printed in Register
- Emergency expired after 180 days
- Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>200 KAR 5:365E</td>
<td>6-16-15</td>
<td>101 KAR 2:046</td>
<td>76</td>
</tr>
<tr>
<td>201 KAR 11:170E</td>
<td>6-29-15</td>
<td>101 KAR 2:066</td>
<td>86</td>
</tr>
<tr>
<td>201 KAR 11:175E</td>
<td>6-29-15</td>
<td>101 KAR 2:056</td>
<td>85</td>
</tr>
<tr>
<td>201 KAR 11:235E</td>
<td>6-29-15</td>
<td>101 KAR 2:120</td>
<td>88</td>
</tr>
<tr>
<td>201 KAR 11:240E</td>
<td>6-29-15</td>
<td>101 KAR 2:113E</td>
<td>88</td>
</tr>
<tr>
<td>201 KAR 12:110E</td>
<td>6-17-15</td>
<td>101 KAR 2:034</td>
<td>88</td>
</tr>
<tr>
<td>505 KAR 1:100E</td>
<td>7-1-15</td>
<td>101 KAR 3:045</td>
<td>91</td>
</tr>
<tr>
<td>505 KAR 1:110E</td>
<td>7-1-15</td>
<td>103 KAR 3:010</td>
<td>664</td>
</tr>
<tr>
<td>505 KAR 1:130E</td>
<td>7-1-15</td>
<td>303 KAR 3:010</td>
<td>12</td>
</tr>
<tr>
<td>601 KAR 1:113E</td>
<td>7-8-15</td>
<td>106 KAR 3:010</td>
<td>452</td>
</tr>
<tr>
<td>787 KAR 2:040E</td>
<td>5-21-15</td>
<td>200 KAR 5:365</td>
<td>456</td>
</tr>
<tr>
<td>804 KAR 4:015E</td>
<td>6-23-15</td>
<td>201 KAR 1:050</td>
<td>817</td>
</tr>
<tr>
<td>804 KAR 4:400E</td>
<td>6-23-15</td>
<td>601 KAR 1:071E</td>
<td>1068</td>
</tr>
<tr>
<td>804 KAR 4:410E</td>
<td>7-10-15</td>
<td>201 KAR 1:071E</td>
<td>1068</td>
</tr>
<tr>
<td>902 KAR 20:420E</td>
<td>6-25-15</td>
<td>201 KAR 1:081</td>
<td>819</td>
</tr>
<tr>
<td>921 KAR 3:090E</td>
<td>7-2-15</td>
<td>201 KAR 1:081</td>
<td>819</td>
</tr>
</tbody>
</table>

### ORDINARY ADMINISTRATIVE REGULATIONS:

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 KAR 15:090</td>
<td>445</td>
<td>201 KAR 1:050</td>
<td>456</td>
</tr>
<tr>
<td>11 KAR 15:100</td>
<td>627</td>
<td>201 KAR 1:053</td>
<td>817</td>
</tr>
<tr>
<td>11 KAR 16:060</td>
<td>449</td>
<td>201 KAR 1:105</td>
<td>820</td>
</tr>
<tr>
<td>13 KAR 2:045</td>
<td>9</td>
<td>201 KAR 1:071E</td>
<td>660</td>
</tr>
<tr>
<td>16 KAR 2:020</td>
<td>72</td>
<td>201 KAR 1:081</td>
<td>822</td>
</tr>
<tr>
<td>16 KAR 2:020</td>
<td>823</td>
<td>201 KAR 1:150</td>
<td>823</td>
</tr>
<tr>
<td>16 KAR 2:110</td>
<td>796</td>
<td>201 KAR 2:015</td>
<td>458</td>
</tr>
<tr>
<td>16 KAR 2:110</td>
<td>796</td>
<td>201 KAR 2:220</td>
<td>823</td>
</tr>
<tr>
<td>16 KAR 2:140</td>
<td>797</td>
<td>201 KAR 2:150</td>
<td>458</td>
</tr>
<tr>
<td>16 KAR 2:150</td>
<td>799</td>
<td>201 KAR 2:205</td>
<td>272</td>
</tr>
<tr>
<td>16 KAR 2:160</td>
<td>801</td>
<td>201 KAR 2:360</td>
<td>273</td>
</tr>
<tr>
<td>16 KAR 2:170</td>
<td>803</td>
<td>201 KAR 2:370</td>
<td>273</td>
</tr>
<tr>
<td>16 KAR 2:200</td>
<td>805</td>
<td>201 KAR 5:030</td>
<td>630</td>
</tr>
<tr>
<td>16 KAR 3:030</td>
<td>807</td>
<td>201 KAR 5:10</td>
<td>824</td>
</tr>
<tr>
<td>16 KAR 3:040</td>
<td>809</td>
<td>201 KAR 6:070</td>
<td>826</td>
</tr>
<tr>
<td>16 KAR 4:030</td>
<td>74</td>
<td>201 KAR 9:305</td>
<td>828</td>
</tr>
<tr>
<td>16 KAR 5:030</td>
<td>661</td>
<td>201 KAR 9:310</td>
<td>460</td>
</tr>
<tr>
<td>16 KAR 5:030</td>
<td>811</td>
<td>201 KAR 11:170</td>
<td>463</td>
</tr>
<tr>
<td>Regulation Number</td>
<td>42 Ky.R. Page No.</td>
<td>Effective Date</td>
<td>Regulation Number</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------</td>
<td>---------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>201 KAR 11:175</td>
<td>Amended</td>
<td>466</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 11:195</td>
<td>Amended</td>
<td>631</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 11:210</td>
<td>Amended</td>
<td>468</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 11:230</td>
<td>Amended</td>
<td>469</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 11:240</td>
<td>Amended</td>
<td>473</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 11:460</td>
<td>Amended</td>
<td>476</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 12:083</td>
<td>Amended</td>
<td>275</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 12:110</td>
<td>Amended</td>
<td>274</td>
<td>AmComments</td>
</tr>
<tr>
<td>201 KAR 18:104</td>
<td>Amended</td>
<td>478</td>
<td>AmComments</td>
</tr>
<tr>
<td>201 KAR 18:142</td>
<td>Amended</td>
<td>831</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 20:056</td>
<td>Amended</td>
<td>833</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 20:062</td>
<td>Amended</td>
<td>480</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 20:063</td>
<td>As Amended</td>
<td>483</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 20:064</td>
<td>Amended</td>
<td>275</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 20:070</td>
<td>Amended</td>
<td>637</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 20:110</td>
<td>Amended</td>
<td>490</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 20:215</td>
<td>Amended</td>
<td>492</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 20:225</td>
<td>Amended</td>
<td>494</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 20:230</td>
<td>Amended</td>
<td>496</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 20:370</td>
<td>Amended</td>
<td>497</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 20:390</td>
<td>Amended</td>
<td>499</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 26:115</td>
<td>Amended</td>
<td>501</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 26:121</td>
<td>Amended</td>
<td>503</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 26:175</td>
<td>Amended</td>
<td>505</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 26:200</td>
<td>Amended</td>
<td>507</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 30:070</td>
<td>Amended</td>
<td>95</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 32:025</td>
<td>Amended</td>
<td>668</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 32:035</td>
<td>Amended</td>
<td>835</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 32:045</td>
<td>Amended</td>
<td>837</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 32:060</td>
<td>Amended</td>
<td>840</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 36:030</td>
<td>Amended</td>
<td>509</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 39:030</td>
<td>Amended</td>
<td>841</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 39:070</td>
<td>Amended</td>
<td>844</td>
<td>Amended</td>
</tr>
<tr>
<td>201 KAR 43:010</td>
<td>Amended</td>
<td>845</td>
<td>As Amended</td>
</tr>
<tr>
<td>201 KAR 43:020</td>
<td>Amended</td>
<td>847</td>
<td>As Amended</td>
</tr>
<tr>
<td>Regulation Number</td>
<td>42 Ky.R. Page No.</td>
<td>Effective Date</td>
<td>Regulation Number</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------</td>
<td>---------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>603 KAR 5:155</td>
<td>348</td>
<td>See 41 Ky.R.</td>
<td>804 KAR 9:050</td>
</tr>
<tr>
<td>603 KAR 10:002</td>
<td>351</td>
<td>As Amended</td>
<td>804 KAR 10:010</td>
</tr>
<tr>
<td>603 KAR 10:010</td>
<td>353</td>
<td>As Amended</td>
<td>804 KAR 10:020</td>
</tr>
<tr>
<td>603 KAR 10:021</td>
<td>371</td>
<td>As Amended</td>
<td>804 KAR 10:025</td>
</tr>
<tr>
<td>702 KAR 1:170</td>
<td>1069</td>
<td></td>
<td>805 KAR 1:100</td>
</tr>
<tr>
<td>702 KAR 7:065</td>
<td>101</td>
<td>AmComments</td>
<td>805 KAR 1:130</td>
</tr>
<tr>
<td>Amended</td>
<td>669</td>
<td></td>
<td>805 KAR 1:170</td>
</tr>
<tr>
<td>703 KAR 5:200</td>
<td>26</td>
<td>See 41 Ky.R.</td>
<td>805 KAR 1:140</td>
</tr>
<tr>
<td>As Amended</td>
<td>29</td>
<td></td>
<td>805 KAR 1:170</td>
</tr>
<tr>
<td>703 KAR 5:225</td>
<td>33</td>
<td>See 41 Ky.R.</td>
<td>808 KAR 6:015</td>
</tr>
<tr>
<td>As Amended</td>
<td>104</td>
<td>AmComments</td>
<td>808 KAR 6:105</td>
</tr>
<tr>
<td>704 KAR 3:303</td>
<td>See 41 Ky.R.</td>
<td>808 KAR 9:010</td>
<td></td>
</tr>
<tr>
<td>AmComments</td>
<td>38</td>
<td></td>
<td>808 KAR 9:010</td>
</tr>
<tr>
<td>As Amended</td>
<td>287</td>
<td></td>
<td>808 KAR 10:050</td>
</tr>
<tr>
<td>705 KAR 4:041</td>
<td>106</td>
<td>As Amended</td>
<td>808 KAR 12:021</td>
</tr>
<tr>
<td>Amended</td>
<td>679</td>
<td></td>
<td>808 KAR 12:021</td>
</tr>
<tr>
<td>787 KAR 2:040</td>
<td>196</td>
<td></td>
<td>808 KAR 12:110</td>
</tr>
<tr>
<td>803 KAR 2:180</td>
<td>108</td>
<td>As Amended</td>
<td>810 KAR 1:070</td>
</tr>
<tr>
<td>Amended</td>
<td>680</td>
<td></td>
<td>810 KAR 1:070</td>
</tr>
<tr>
<td>803 KAR 2:200</td>
<td>110</td>
<td>As Amended</td>
<td>810 KAR 1:090</td>
</tr>
<tr>
<td>Amended</td>
<td>680</td>
<td></td>
<td>815 KAR 6:010</td>
</tr>
<tr>
<td>803 KAR 2:250</td>
<td>113</td>
<td>As Amended</td>
<td>815 KAR 20:060</td>
</tr>
<tr>
<td>Amended</td>
<td>682</td>
<td></td>
<td>815 KAR 20:060</td>
</tr>
<tr>
<td>803 KAR 2:305</td>
<td>116</td>
<td>As Amended</td>
<td>815 KAR 20:100</td>
</tr>
<tr>
<td>Amended</td>
<td>683</td>
<td></td>
<td>815 KAR 20:130</td>
</tr>
<tr>
<td>803 KAR 2:317</td>
<td>117</td>
<td>As Amended</td>
<td>815 KAR 35:015</td>
</tr>
<tr>
<td>Amended</td>
<td>683</td>
<td></td>
<td>815 KAR 35:015</td>
</tr>
<tr>
<td>803 KAR 2:402</td>
<td>119</td>
<td>As Amended</td>
<td>815 KAR 35:020</td>
</tr>
<tr>
<td>Amended</td>
<td>684</td>
<td></td>
<td>820 KAR 1:001</td>
</tr>
<tr>
<td>803 KAR 2:421</td>
<td>121</td>
<td>As Amended</td>
<td>820 KAR 1:005</td>
</tr>
<tr>
<td>Amended</td>
<td>684</td>
<td></td>
<td>820 KAR 1:015</td>
</tr>
<tr>
<td>803 KAR 2:505</td>
<td>124</td>
<td>As Amended</td>
<td>820 KAR 1:016</td>
</tr>
<tr>
<td>Amended</td>
<td>685</td>
<td></td>
<td>820 KAR 1:016</td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>198</td>
<td></td>
<td>820 KAR 1:017</td>
</tr>
<tr>
<td>Withdrown</td>
<td>208</td>
<td>8-27-15</td>
<td>820 KAR 1:025</td>
</tr>
<tr>
<td>804 KAR 4:015</td>
<td>525</td>
<td>Amended</td>
<td>820 KAR 1:027</td>
</tr>
<tr>
<td>Amended</td>
<td>375</td>
<td></td>
<td>820 KAR 1:029</td>
</tr>
<tr>
<td>804 KAR 4:370</td>
<td>See 41 Ky.R.</td>
<td>820 KAR 1:032</td>
<td>927</td>
</tr>
<tr>
<td>AmComments</td>
<td>685</td>
<td></td>
<td>820 KAR 1:032</td>
</tr>
<tr>
<td>804 KAR 4:390</td>
<td>126</td>
<td>As Amended</td>
<td>820 KAR 1:033</td>
</tr>
<tr>
<td>Amended</td>
<td>771</td>
<td></td>
<td>820 KAR 1:033</td>
</tr>
<tr>
<td>804 KAR 4:400</td>
<td>527</td>
<td>Amended</td>
<td>820 KAR 1:034</td>
</tr>
<tr>
<td>Amended</td>
<td>528</td>
<td></td>
<td>820 KAR 1:036</td>
</tr>
<tr>
<td>8804 KAR 9:040</td>
<td>530</td>
<td>Amended</td>
<td>820 KAR 1:044</td>
</tr>
<tr>
<td>Regulation Number</td>
<td>42 Ky.R. Page No.</td>
<td>Effective Date</td>
<td>Regulation Number</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------</td>
<td>----------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>820 KAR 1:046</td>
<td>Amended 941</td>
<td></td>
<td>907 KAR 3:090</td>
</tr>
<tr>
<td>820 KAR 1:050</td>
<td>Amended 944</td>
<td></td>
<td>907 KAR 3:210</td>
</tr>
<tr>
<td>820 KAR 1:055</td>
<td>Amended 946</td>
<td></td>
<td>907 KAR 9:005</td>
</tr>
<tr>
<td>820 KAR 1:056</td>
<td>Amended 948</td>
<td></td>
<td>907 KAR 9:010</td>
</tr>
<tr>
<td>820 KAR 1:057</td>
<td>Amended 950</td>
<td></td>
<td>907 KAR 9:015</td>
</tr>
<tr>
<td>820 KAR 1:058</td>
<td>Amended 952</td>
<td></td>
<td>907 KAR 9:020</td>
</tr>
<tr>
<td>820 KAR 1:120</td>
<td>Amended 957</td>
<td></td>
<td>907 KAR 9:020</td>
</tr>
<tr>
<td>820 KAR 1:125</td>
<td>Amended 959</td>
<td></td>
<td>907 KAR 10:014</td>
</tr>
<tr>
<td>820 KAR 1:130</td>
<td>Amended 960</td>
<td></td>
<td>907 KAR 10:016</td>
</tr>
<tr>
<td>900 KAR 5:020</td>
<td>AmComments 772</td>
<td>See 41 Ky.R.</td>
<td>907 KAR 10:020</td>
</tr>
<tr>
<td>900 KAR 6:055</td>
<td>Amended 542</td>
<td></td>
<td>907 KAR 10:020</td>
</tr>
<tr>
<td>900 KAR 6:070</td>
<td>Amended 544</td>
<td></td>
<td>907 KAR 10:020</td>
</tr>
<tr>
<td>900 KAR 6:075</td>
<td>Amended 546</td>
<td></td>
<td>907 KAR 10:030</td>
</tr>
<tr>
<td>900 KAR 6:090</td>
<td>Amended 550</td>
<td></td>
<td>907 KAR 12:010</td>
</tr>
<tr>
<td>900 KAR 6:090</td>
<td>Amended 550</td>
<td></td>
<td>907 KAR 12:010</td>
</tr>
<tr>
<td>900 KAR 10:010</td>
<td>AmComments 773</td>
<td>See 41 Ky.R.</td>
<td>907 KAR 15:080</td>
</tr>
<tr>
<td>900 KAR 10:020</td>
<td>As Amended 301</td>
<td>See 41 Ky.R.</td>
<td>907 KAR 10:020</td>
</tr>
<tr>
<td>900 KAR 10:040</td>
<td>As Amended 306</td>
<td>See 41 Ky.R.</td>
<td>908 KAR 3:050</td>
</tr>
<tr>
<td>900 KAR 10:050</td>
<td>As Amended 309</td>
<td>See 41 Ky.R.</td>
<td>908 KAR 3:060</td>
</tr>
<tr>
<td>900 KAR 10:100</td>
<td>As Amended 311</td>
<td>See 41 Ky.R.</td>
<td>910 KAR 1:170</td>
</tr>
<tr>
<td>900 KAR 10:110</td>
<td>As Amended 315</td>
<td>See 41 Ky.R.</td>
<td>910 KAR 1:240</td>
</tr>
<tr>
<td>902 KAR 20:160</td>
<td>AmComments 377</td>
<td>See 41 Ky.R.</td>
<td>910 KAR 1:270</td>
</tr>
<tr>
<td>902 KAR 20:160</td>
<td>As Amended 690</td>
<td></td>
<td>910 KAR 1:270</td>
</tr>
<tr>
<td>902 KAR 20:260</td>
<td>Amended 962</td>
<td></td>
<td>921 KAR 1:400</td>
</tr>
<tr>
<td>902 KAR 20:320</td>
<td>As Amended 698</td>
<td>See 41 Ky.R.</td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td>902 KAR 20:400</td>
<td>As Amended 316</td>
<td>See 41 Ky.R.</td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td>902 KAR 20:420</td>
<td>Amended 553</td>
<td></td>
<td>921 KAR 2:017</td>
</tr>
<tr>
<td>902 KAR 45:110</td>
<td>As Amended 320</td>
<td>See 41 Ky.R.</td>
<td>921 KAR 2:046</td>
</tr>
<tr>
<td>902 KAR 45:120</td>
<td>AmComments 780</td>
<td>See 41 Ky.R.</td>
<td>921 KAR 2:050</td>
</tr>
<tr>
<td>902 KAR 45:160</td>
<td>As Amended 321</td>
<td>See 41 Ky.R.</td>
<td>921 KAR 2:055</td>
</tr>
<tr>
<td>902 KAR 115:010</td>
<td>Amended 145</td>
<td>See 41 Ky.R.</td>
<td>921 KAR 2:060</td>
</tr>
<tr>
<td>907 KAR 1:026</td>
<td>Amended 719</td>
<td></td>
<td>921 KAR 2:370</td>
</tr>
<tr>
<td>907 KAR 1:055</td>
<td>AmComments 782</td>
<td>See 41 Ky.R.</td>
<td>921 KAR 2:500</td>
</tr>
<tr>
<td>907 KAR 1:595</td>
<td>Amended 968</td>
<td></td>
<td>921 KAR 2:510</td>
</tr>
<tr>
<td>907 KAR 1:626</td>
<td>Amended 155</td>
<td></td>
<td>921 KAR 2:520</td>
</tr>
<tr>
<td>907 KAR 1:835</td>
<td>Amended 972</td>
<td></td>
<td>921 KAR 3:000</td>
</tr>
</tbody>
</table>

C - 8
<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>42 Ky.R. Page No.</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>42 Ky.R. Page No.</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended 921 KAR 3:042</td>
<td>614</td>
<td></td>
<td>Amended 921 KAR 3:050</td>
<td>617</td>
<td></td>
</tr>
<tr>
<td>Amended 921 KAR 3:060</td>
<td>620</td>
<td></td>
<td>921 KAR 3:090</td>
<td>624</td>
<td></td>
</tr>
<tr>
<td>Amended 922 KAR 1:310</td>
<td>170</td>
<td></td>
<td>Amended 922 KAR 1:340</td>
<td>216</td>
<td></td>
</tr>
<tr>
<td>Amended 922 KAR 1:350</td>
<td>184</td>
<td></td>
<td>922 KAR 1:495</td>
<td>219</td>
<td></td>
</tr>
</tbody>
</table>

--------------------------------------------------------------------------------
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.
<table>
<thead>
<tr>
<th>KRS SECTION</th>
<th>REGULATION</th>
<th>KRS SECTION</th>
<th>REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.015</td>
<td>922 KAR 1:310</td>
<td>45A.180</td>
<td>200 KAR 5:365</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:340</td>
<td>45A.183</td>
<td>200 KAR 5:365</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:350</td>
<td>45A.340</td>
<td>900 KAR 6:990</td>
</tr>
<tr>
<td>13B</td>
<td>503 KAR 1:140</td>
<td>45A.690-45A.725</td>
<td>200 KAR 5:365</td>
</tr>
<tr>
<td></td>
<td>908 KAR 3:060</td>
<td>61.590</td>
<td>105 KAR 1:200</td>
</tr>
<tr>
<td></td>
<td>910 KAR 1:240</td>
<td>61.595</td>
<td>105 KAR 1:200</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:055</td>
<td>61.623</td>
<td>105 KAR 1:200</td>
</tr>
<tr>
<td>15A.065</td>
<td>505 KAR 1:100</td>
<td>61.637</td>
<td>105 KAR 1:200</td>
</tr>
<tr>
<td></td>
<td>505 KAR 1:110</td>
<td>61.680</td>
<td>105 KAR 1:200</td>
</tr>
<tr>
<td></td>
<td>505 KAR 1:130</td>
<td>61.705</td>
<td>105 KAR 1:200</td>
</tr>
<tr>
<td>15A.067</td>
<td>505 KAR 1:100</td>
<td>61.805-61.850</td>
<td>702 KAR 7:065</td>
</tr>
<tr>
<td></td>
<td>505 KAR 1:110</td>
<td>61.870</td>
<td>922 KAR 1:495</td>
</tr>
<tr>
<td></td>
<td>505 KAR 1:130</td>
<td>61.870-61.884</td>
<td>922 KAR 1:350</td>
</tr>
<tr>
<td>15A.0652</td>
<td>505 KAR 1:100</td>
<td>61.878</td>
<td>601 KAR 1:113</td>
</tr>
<tr>
<td></td>
<td>505 KAR 1:110</td>
<td>61.930</td>
<td>601 KAR 1:113</td>
</tr>
<tr>
<td></td>
<td>505 KAR 1:130</td>
<td>61.931</td>
<td>601 KAR 1:113</td>
</tr>
<tr>
<td>15.330</td>
<td>503 KAR 1:140</td>
<td>61.932</td>
<td>702 KAR 1:170</td>
</tr>
<tr>
<td>15.380</td>
<td>503 KAR 1:140</td>
<td>61.933</td>
<td>702 KAR 1:170</td>
</tr>
<tr>
<td>15.382</td>
<td>503 KAR 1:140</td>
<td>67.750</td>
<td>30 KAR 7:010</td>
</tr>
<tr>
<td>15.384</td>
<td>503 KAR 1:140</td>
<td>67.767</td>
<td>30 KAR 7:010</td>
</tr>
<tr>
<td>15.392</td>
<td>503 KAR 1:140</td>
<td>72.020</td>
<td>501 KAR 6:050</td>
</tr>
<tr>
<td>15.394</td>
<td>503 KAR 1:140</td>
<td>72.025</td>
<td>501 KAR 6:050</td>
</tr>
<tr>
<td>15.396</td>
<td>503 KAR 1:140</td>
<td>78.545</td>
<td>105 KAR 1:200</td>
</tr>
<tr>
<td>15.3971</td>
<td>503 KAR 1:140</td>
<td>136</td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td>15.400</td>
<td>503 KAR 1:140</td>
<td>146.200-146.360</td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td>15.540</td>
<td>503 KAR 1:140</td>
<td>146.380</td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td>15.545</td>
<td>503 KAR 1:140</td>
<td>146.360</td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td>15.580</td>
<td>503 KAR 1:140</td>
<td>146.410-146.535</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>16.576</td>
<td>105 KAR 1:200</td>
<td>146.840</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>16.577</td>
<td>105 KAR 1:200</td>
<td>146.850</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>16.645</td>
<td>105 KAR 1:200</td>
<td>146.930</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>17.165</td>
<td>907 KAR 3:210</td>
<td>146.933</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>17.500</td>
<td>501 KAR 6:241</td>
<td>146.550-146.570</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>922 KAR 1:310</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
<td></td>
</tr>
<tr>
<td>17.550</td>
<td>501 KAR 6:241</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.005</td>
<td>101 KAR 2:020</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.030</td>
<td>101 KAR 2:020</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.032</td>
<td>101 KAR 2:020</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.110</td>
<td>101 KAR 2:020</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.120</td>
<td>101 KAR 2:020</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.150</td>
<td>101 KAR 2:020</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.155</td>
<td>101 KAR 2:020</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.165</td>
<td>101 KAR 2:020</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.202</td>
<td>101 KAR 2:120</td>
<td>146.600-146.619</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>18A.205</td>
<td>101 KAR 3:045</td>
<td>154.20-234 - 154.20-236</td>
<td>307 KAR 1:005</td>
</tr>
<tr>
<td>45.237</td>
<td>921 KAR 2:055</td>
<td>154.20-255 - 154.20-256</td>
<td>307 KAR 1:005</td>
</tr>
<tr>
<td>45A.030</td>
<td>200 KAR 5:365</td>
<td>154.30-030 - 154.30-060</td>
<td>307 KAR 1:005</td>
</tr>
<tr>
<td>45A.085</td>
<td>200 KAR 5:365</td>
<td>154.31-020 - 154.31-030</td>
<td>307 KAR 1:005</td>
</tr>
<tr>
<td>KRS SECTION</td>
<td>REGULATION</td>
<td>KRS SECTION</td>
<td>REGULATION</td>
</tr>
<tr>
<td>------------</td>
<td>------------</td>
<td>------------</td>
<td>------------</td>
</tr>
<tr>
<td>154.32-020</td>
<td>307 KAR 1:005</td>
<td>164.7871</td>
<td>804 KAR 4:400</td>
</tr>
<tr>
<td>154.34-070</td>
<td>307 KAR 1:005</td>
<td>164.7871</td>
<td>11 KAR 15:090</td>
</tr>
<tr>
<td>154.60-020</td>
<td>307 KAR 1:005</td>
<td>164.7877</td>
<td>11 KAR 15:090</td>
</tr>
<tr>
<td>154A.130</td>
<td>11 KAR 15:090</td>
<td>164.7874</td>
<td>11 KAR 15:090</td>
</tr>
<tr>
<td>156.029</td>
<td>705 KAR 4:041</td>
<td>164.7881</td>
<td>11 KAR 15:090</td>
</tr>
<tr>
<td>156.070</td>
<td>702 KAR 7:065</td>
<td>176.050</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>156.095</td>
<td>704 KAR 3:303</td>
<td>164.7879</td>
<td>11 KAR 15:090</td>
</tr>
<tr>
<td>156.802</td>
<td>705 KAR 4:041</td>
<td>164.7885</td>
<td>11 KAR 15:090</td>
</tr>
<tr>
<td>157.250</td>
<td>922 KAR 1:310</td>
<td>164.7889</td>
<td>11 KAR 15:090</td>
</tr>
<tr>
<td>157.3175</td>
<td>922 KAR 1:495</td>
<td>176.430</td>
<td>401 KAR 10:030</td>
</tr>
<tr>
<td>158.181</td>
<td>705 KAR 4:041</td>
<td>177.106</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>158.6451</td>
<td>704 KAR 3:303</td>
<td>177.572-177.576</td>
<td>603 KAR 10:002</td>
</tr>
<tr>
<td>158.6453</td>
<td>704 KAR 3:303</td>
<td>177.580-177.890</td>
<td>603 KAR 12:002</td>
</tr>
<tr>
<td>159.080</td>
<td>16 KAR 3:030</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>160.290</td>
<td>704 KAR 3:303</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>160.380</td>
<td>702 KAR 7:065</td>
<td>177.830</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>160.445</td>
<td>702 KAR 7:065</td>
<td>177.830-177.890</td>
<td>603 KAR 12:002</td>
</tr>
<tr>
<td>161.010</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>161.020</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>161.028</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>161.030</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>161.046</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>161.048</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>161.052</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>161.120</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>161.124</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>161.126</td>
<td>16 KAR 2:100</td>
<td>177.990</td>
<td>603 KAR 5:155</td>
</tr>
<tr>
<td>164.298</td>
<td>201 KAR 20:064</td>
<td>199.555</td>
<td>101 KAR 2:120</td>
</tr>
<tr>
<td>164.516</td>
<td>106 KAR 3:010</td>
<td>199.570</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>164.5161</td>
<td>106 KAR 3:010</td>
<td>199.570</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>164.5165</td>
<td>106 KAR 3:010</td>
<td>199.570</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>164.5169</td>
<td>106 KAR 3:010</td>
<td>199.570</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>164.518</td>
<td>11 KAR 16:060</td>
<td>199.640</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>164.772</td>
<td>201 KAR 20:225</td>
<td>199.640</td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td>KRS SECTION</td>
<td>REGULATION</td>
<td>KRS SECTION</td>
<td>REGULATION</td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>199.645</td>
<td>922 KAR 1:495</td>
<td>210.366</td>
<td>201 KAR 36:030</td>
</tr>
<tr>
<td>199.650-199.670</td>
<td>922 KAR 1:310</td>
<td>210.710</td>
<td>908 KAR 3:050</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:310</td>
<td></td>
<td>908 KAR 3:060</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:340</td>
<td>210.720</td>
<td>908 KAR 3:050</td>
</tr>
<tr>
<td></td>
<td>505 KAR 1:100</td>
<td>210.730</td>
<td>908 KAR 3:050</td>
</tr>
<tr>
<td>200.080-200.120</td>
<td>505 KAR 1:110</td>
<td>210.730</td>
<td>908 KAR 3:050</td>
</tr>
<tr>
<td></td>
<td>505 KAR 1:130</td>
<td>210.730</td>
<td>908 KAR 3:060</td>
</tr>
<tr>
<td></td>
<td>902 KAR 1:350</td>
<td>211</td>
<td>902 KAR 115:010</td>
</tr>
<tr>
<td></td>
<td>202A.241</td>
<td>211.180</td>
<td>902 KAR 45:120</td>
</tr>
<tr>
<td>205.010</td>
<td>921 KAR 2:006</td>
<td>213.046</td>
<td>921 KAR 1:400</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:046</td>
<td>214.610</td>
<td>201 KAR 9:305</td>
</tr>
<tr>
<td>205.170</td>
<td>921 KAR 2:060</td>
<td>214.615</td>
<td>201 KAR 9:310</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:016</td>
<td>214.615</td>
<td>201 KAR 20:070</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:017</td>
<td></td>
<td>201 KAR 9:310</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:370</td>
<td>214.620</td>
<td>201 KAR 9:310</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:500</td>
<td></td>
<td>201 KAR 20:110</td>
</tr>
<tr>
<td>205.210</td>
<td>921 KAR 2:520</td>
<td>216.300</td>
<td>910 KAR 1:240</td>
</tr>
<tr>
<td></td>
<td>205.211</td>
<td>216.595</td>
<td>910 KAR 1:240</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:016</td>
<td>216.789</td>
<td>910 KAR 1:240</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:017</td>
<td>216.793</td>
<td>910 KAR 1:240</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:055</td>
<td>216A.090</td>
<td>201 KAR 6:070</td>
</tr>
<tr>
<td>205.245</td>
<td>921 KAR 2:500</td>
<td>216B.010</td>
<td>900 KAR 6:075</td>
</tr>
<tr>
<td></td>
<td>205.220</td>
<td>216B.015</td>
<td>900 KAR 6:055</td>
</tr>
<tr>
<td>205.520</td>
<td>921 KAR 2:050</td>
<td></td>
<td>900 KAR 6:070</td>
</tr>
<tr>
<td>205.220</td>
<td>907 KAR 1:026</td>
<td></td>
<td>900 KAR 6:075</td>
</tr>
<tr>
<td></td>
<td>907 KAR 6:075</td>
<td></td>
<td>900 KAR 6:055</td>
</tr>
<tr>
<td></td>
<td>907 KAR 10:014</td>
<td>216B.020</td>
<td>900 KAR 6:090</td>
</tr>
<tr>
<td></td>
<td>907 KAR 10:016</td>
<td>216B.040</td>
<td>900 KAR 6:090</td>
</tr>
<tr>
<td></td>
<td>907 KAR 10:020</td>
<td>216B.062</td>
<td>900 KAR 6:070</td>
</tr>
<tr>
<td>205.560</td>
<td>907 KAR 12:010</td>
<td>216B.090</td>
<td>900 KAR 6:090</td>
</tr>
<tr>
<td></td>
<td>907 KAR 15:080</td>
<td></td>
<td>900 KAR 6:075</td>
</tr>
<tr>
<td>205.5605</td>
<td>907 KAR 1:055</td>
<td>216B.095</td>
<td>900 KAR 6:090</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:090</td>
<td>216B.105</td>
<td>900 KAR 6:090</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:210</td>
<td>216B.130</td>
<td>907 KAR 1:055</td>
</tr>
<tr>
<td></td>
<td>907 KAR 12:010</td>
<td>216B.445</td>
<td>900 KAR 6:075</td>
</tr>
<tr>
<td></td>
<td>907 KAR 12:010</td>
<td>216B.450</td>
<td>907 KAR 9:005</td>
</tr>
<tr>
<td></td>
<td>907 KAR 12:010</td>
<td>216B.455</td>
<td>907 KAR 9:005</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:090</td>
<td>216B.499</td>
<td>900 KAR 6:075</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:210</td>
<td>216B.990</td>
<td>900 KAR 6:075</td>
</tr>
<tr>
<td></td>
<td>907 KAR 12:010</td>
<td>900 KAR 6:090</td>
<td></td>
</tr>
<tr>
<td></td>
<td>907 KAR 12:010</td>
<td>900 KAR 6:090</td>
<td></td>
</tr>
<tr>
<td></td>
<td>205.703</td>
<td>216B.105</td>
<td>902 KAR 20:160</td>
</tr>
<tr>
<td>205.710-205.800</td>
<td>205.200</td>
<td>218A.175</td>
<td>902 KAR 20:215</td>
</tr>
<tr>
<td></td>
<td>205.8451</td>
<td>218A.205</td>
<td>201 KAR 5:030</td>
</tr>
<tr>
<td></td>
<td>205.8477</td>
<td></td>
<td>201 KAR 9:310</td>
</tr>
<tr>
<td></td>
<td>205.990</td>
<td></td>
<td>201 KAR 20:056</td>
</tr>
<tr>
<td></td>
<td>205.2001</td>
<td></td>
<td>201 KAR 20:056</td>
</tr>
<tr>
<td></td>
<td>205.2003</td>
<td></td>
<td>201 KAR 20:215</td>
</tr>
<tr>
<td></td>
<td>205.2005</td>
<td></td>
<td>201 KAR 45:120</td>
</tr>
<tr>
<td></td>
<td>205.520</td>
<td></td>
<td>201 KAR 45:120</td>
</tr>
<tr>
<td></td>
<td>205.5605</td>
<td></td>
<td>201 KAR 45:120</td>
</tr>
<tr>
<td>205.5605</td>
<td>907 KAR 1:835</td>
<td>224.1-010</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td></td>
<td>205.5606</td>
<td>224.1-400</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>205.5606</td>
<td>907 KAR 1:835</td>
<td></td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td></td>
<td>205.635</td>
<td>224.1-400</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td></td>
<td>205.8451</td>
<td></td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td></td>
<td>205.8477</td>
<td></td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td></td>
<td>205.990</td>
<td></td>
<td>401 KAR 10:031</td>
</tr>
<tr>
<td></td>
<td>205.2001</td>
<td></td>
<td>401 KAR 10:031</td>
</tr>
<tr>
<td>205.2001</td>
<td>902 KAR 20:160</td>
<td></td>
<td>401 KAR 10:031</td>
</tr>
<tr>
<td></td>
<td>205.2003</td>
<td></td>
<td>401 KAR 10:031</td>
</tr>
<tr>
<td></td>
<td>201.005</td>
<td>226.16-050</td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>210.336</td>
<td>201 KAR 32:060</td>
<td></td>
<td>401 KAR 10:026</td>
</tr>
<tr>
<td>KRS SECTION</td>
<td>REGULATION</td>
<td>KRS SECTION</td>
<td>REGULATION</td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.547</td>
<td>820 KAR 1:055</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:056</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.555</td>
<td>820 KAR 1:057</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.555</td>
<td>820 KAR 1:058</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:059</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:026</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:029</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:030</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>401 KAR 10:031</td>
<td>238.550</td>
<td>820 KAR 1:060</td>
<td></td>
</tr>
<tr>
<td>KRS SECTION</td>
<td>REGULATION</td>
<td>KRS SECTION</td>
<td>REGULATION</td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>309.304</td>
<td>201 KAR 39:030</td>
<td>301 KAR 20:110</td>
<td></td>
</tr>
<tr>
<td>309.312</td>
<td>201 KAR 39:030</td>
<td>201 KAR 20:370</td>
<td></td>
</tr>
<tr>
<td>309.331</td>
<td>201 KAR 39:070</td>
<td>314.111</td>
<td>201 KAR 20:062</td>
</tr>
<tr>
<td>310.200</td>
<td>201 KAR 45:110</td>
<td>314.131</td>
<td>201 KAR 20:062</td>
</tr>
<tr>
<td>311.560</td>
<td>815 KAR 20:130</td>
<td>314.161</td>
<td>201 KAR 20:056</td>
</tr>
<tr>
<td>311.571</td>
<td>902 KAR 20:160</td>
<td>314.470</td>
<td>201 KAR 20:056</td>
</tr>
<tr>
<td>311.840-311.862</td>
<td>902 KAR 20:160</td>
<td>201 KAR 20:070</td>
<td></td>
</tr>
<tr>
<td>311B.020</td>
<td>201 KAR 46:010</td>
<td>314.041</td>
<td>201 KAR 20:110</td>
</tr>
<tr>
<td>311B.050</td>
<td>201 KAR 46:040</td>
<td>314.991</td>
<td>201 KAR 20:370</td>
</tr>
<tr>
<td>311B.100</td>
<td>201 KAR 46:045</td>
<td>201 KAR 20:215</td>
<td></td>
</tr>
<tr>
<td>311B.120</td>
<td>201 KAR 46:045</td>
<td>315.010</td>
<td>201 KAR 22:20</td>
</tr>
<tr>
<td>311B.180</td>
<td>201 KAR 46:045</td>
<td>315.121</td>
<td>201 KAR 22:20</td>
</tr>
<tr>
<td>311B.190</td>
<td>201 KAR 46:045</td>
<td>315.191</td>
<td>201 KAR 22:20</td>
</tr>
<tr>
<td>311.565</td>
<td>201 KAR 9:310</td>
<td>317A.060</td>
<td>201 KAR 12:10</td>
</tr>
<tr>
<td>311.620</td>
<td>201 KAR 9:310</td>
<td>317A.090</td>
<td>201 KAR 12:10</td>
</tr>
<tr>
<td>311.720</td>
<td>922 KAR 1:310</td>
<td>318.010</td>
<td>815 KAR 20:130</td>
</tr>
<tr>
<td>311.840</td>
<td>922 KAR 1:310</td>
<td>318.130</td>
<td>815 KAR 20:060</td>
</tr>
<tr>
<td>311.901</td>
<td>201 KAR 9:305</td>
<td>319.010</td>
<td>201 KAR 26:115</td>
</tr>
<tr>
<td>311.905</td>
<td>201 KAR 9:305</td>
<td>319.032</td>
<td>201 KAR 26:121</td>
</tr>
<tr>
<td>313.909</td>
<td>201 KAR 9:305</td>
<td>319.056</td>
<td>902 KAR 20:160</td>
</tr>
<tr>
<td>314.011</td>
<td>201 KAR 20:056</td>
<td>319.050</td>
<td>201 KAR 26:175</td>
</tr>
<tr>
<td>314.041</td>
<td>201 KAR 20:062</td>
<td>201 KAR 26:121</td>
<td></td>
</tr>
<tr>
<td>314.042</td>
<td>201 KAR 20:390</td>
<td>201 KAR 26:175</td>
<td></td>
</tr>
<tr>
<td>314.051</td>
<td>902 KAR 20:160</td>
<td>319.071</td>
<td>201 KAR 26:175</td>
</tr>
<tr>
<td>314.071</td>
<td>201 KAR 20:390</td>
<td>319A.010</td>
<td>902 KAR 20:160</td>
</tr>
<tr>
<td>314.073</td>
<td>201 KAR 20:390</td>
<td>319C.010</td>
<td>902 KAR 20:160</td>
</tr>
<tr>
<td>314.075</td>
<td>201 KAR 20:100</td>
<td>319C.050</td>
<td>201 KAR 43:050</td>
</tr>
<tr>
<td>314.085</td>
<td>201 KAR 20:215</td>
<td>319C.060</td>
<td>201 KAR 43:080</td>
</tr>
<tr>
<td>314.091</td>
<td>201 KAR 20:225</td>
<td>319C.070</td>
<td>201 KAR 43:070</td>
</tr>
<tr>
<td>314.103</td>
<td>201 KAR 20:230</td>
<td>319C.080</td>
<td>201 KAR 43:070</td>
</tr>
<tr>
<td></td>
<td>201 KAR 20:056</td>
<td>320.210</td>
<td>201 KAR 5:110</td>
</tr>
<tr>
<td></td>
<td>201 KAR 20:370</td>
<td>320.240</td>
<td>201 KAR 5:110</td>
</tr>
<tr>
<td>314.051</td>
<td>201 KAR 20:070</td>
<td>320.280</td>
<td>201 KAR 5:030</td>
</tr>
<tr>
<td>314.071</td>
<td>201 KAR 20:110</td>
<td>322.180</td>
<td>201 KAR 18:142</td>
</tr>
<tr>
<td>314.073</td>
<td>201 KAR 20:225</td>
<td>322.290</td>
<td>201 KAR 18:104</td>
</tr>
<tr>
<td>314.075</td>
<td>201 KAR 20:370</td>
<td>322.340</td>
<td>201 KAR 18:142</td>
</tr>
<tr>
<td>314.085</td>
<td>201 KAR 20:230</td>
<td>324.010</td>
<td>201 KAR 11:170</td>
</tr>
<tr>
<td>314.091</td>
<td>201 KAR 20:230</td>
<td>324.040</td>
<td>201 KAR 11:210</td>
</tr>
<tr>
<td>314.103</td>
<td>201 KAR 20:230</td>
<td>324.045</td>
<td>201 KAR 11:210</td>
</tr>
<tr>
<td></td>
<td>201 KAR 20:056</td>
<td>324.046</td>
<td>201 KAR 11:170</td>
</tr>
<tr>
<td></td>
<td>201 KAR 20:110</td>
<td>201 KAR 11:210</td>
<td></td>
</tr>
<tr>
<td></td>
<td>201 KAR 20:225</td>
<td>201 KAR 11:230</td>
<td></td>
</tr>
<tr>
<td></td>
<td>201 KAR 20:230</td>
<td>201 KAR 11:232</td>
<td></td>
</tr>
</tbody>
</table>
### KRS INDEX

<table>
<thead>
<tr>
<th>KRS SECTION</th>
<th>REGULATION</th>
<th>KRS SECTION</th>
<th>REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>201 KAR 11:240</td>
<td>405.440</td>
<td>921 KAR 1:400</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:170</td>
<td>405.991</td>
<td>921 KAR 1:400</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:230</td>
<td>406.021</td>
<td>921 KAR 1:400</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:232</td>
<td>406.025</td>
<td>921 KAR 1:400</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:240</td>
<td>413</td>
<td>907 KAR 1:055</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:460</td>
<td>438.60</td>
<td>907 KAR 1:055</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:230</td>
<td>439</td>
<td>501 KAR 6:050</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:235</td>
<td>439.346</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:195</td>
<td>439.348</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:230</td>
<td>439.470</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:232</td>
<td>440.010</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:235</td>
<td>440.70</td>
<td>907 KAR 1:595</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:195</td>
<td>440.130</td>
<td>907 KAR 1:055</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:195</td>
<td>440.180</td>
<td>907 KAR 1:835</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:230</td>
<td>440.185</td>
<td>907 KAR 1:595</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:232</td>
<td>440.230</td>
<td>907 KAR 1:055</td>
<td></td>
</tr>
<tr>
<td>201 KAR 11:240</td>
<td>447.3251</td>
<td>907 KAR 1:055</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:081</td>
<td>447.272</td>
<td>907 KAR 12:020</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:050</td>
<td>454.220</td>
<td>921 KAR 1:400</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:071</td>
<td>491</td>
<td>907 KAR 1:055</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:063</td>
<td>503.110</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:050</td>
<td>520.010</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:081</td>
<td>527.100</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:050</td>
<td>527.110</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:140</td>
<td>532.060</td>
<td>601 KAR 1:113</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:150</td>
<td>532.200</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:140</td>
<td>532.210</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>201 KAR 1:081</td>
<td>532.220</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>907 KAR 3:210</td>
<td>532.240</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>902 KAR 20:160</td>
<td>532.250</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>902 KAR 20:160</td>
<td>532.260</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>201 KAR 32:025</td>
<td>532.292</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>902 KAR 20:160</td>
<td>533.020</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>907 KAR 3:210</td>
<td>533.030</td>
<td>501 KAR 6:241</td>
<td></td>
</tr>
<tr>
<td>201 KAR 32:035</td>
<td>Chapters 600-645</td>
<td>505 KAR 1:100</td>
<td></td>
</tr>
<tr>
<td>201 KAR 32:045</td>
<td>505 KAR 1:110</td>
<td></td>
<td></td>
</tr>
<tr>
<td>201 KAR 32:035</td>
<td>505 KAR 1:130</td>
<td></td>
<td></td>
</tr>
<tr>
<td>201 KAR 32:025</td>
<td>600.020</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>201 KAR 32:025</td>
<td>922 KAR 1:340</td>
<td></td>
<td></td>
</tr>
<tr>
<td>201 KAR 32:045</td>
<td>922 KAR 1:350</td>
<td></td>
<td></td>
</tr>
<tr>
<td>201 KAR 32:060</td>
<td>922 KAR 1:495</td>
<td></td>
<td></td>
</tr>
<tr>
<td>902 KAR 20:160</td>
<td>605.090</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>907 KAR 3:210</td>
<td>922 KAR 1:340</td>
<td></td>
<td></td>
</tr>
<tr>
<td>201 KAR 36:030</td>
<td>610.110</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>201 KAR 36:030</td>
<td>922 KAR 1:340</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 2:421</td>
<td>922 KAR 1:350</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 2:505</td>
<td>922 KAR 1:350</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 2:305</td>
<td>605.120</td>
<td>921 KAR 2:046</td>
<td></td>
</tr>
<tr>
<td>803 KAR 2:317</td>
<td>610.125</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>803 KAR 2:305</td>
<td>615.010-615.990</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>803 KAR 2:317</td>
<td>620.020</td>
<td>201 KAR 9:310</td>
<td></td>
</tr>
<tr>
<td>803 KAR 2:180</td>
<td>620.030</td>
<td>907 KAR 3:210</td>
<td></td>
</tr>
<tr>
<td>803 KAR 2:250</td>
<td>922 KAR 1:310</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 2:180</td>
<td>922 KAR 1:350</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:013</td>
<td>620.050</td>
<td>922 KAR 1:350</td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>620.090</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>620.140</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>922 KAR 1:340</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>922 KAR 1:350</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>620.230</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>620.360</td>
<td>922 KAR 1:350</td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>922 KAR 1:495</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>625</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>922 KAR 1:350</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>7 C.F.R.</td>
<td>921 KAR 3:035</td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>921 KAR 3:042</td>
<td></td>
<td></td>
</tr>
<tr>
<td>803 KAR 25:008</td>
<td>921 KAR 3:050</td>
<td></td>
<td></td>
</tr>
<tr>
<td>921 KAR 1:400</td>
<td>201 KAR 9:360</td>
<td></td>
<td></td>
</tr>
<tr>
<td>921 KAR 1:400</td>
<td>921 KAR 3:060</td>
<td></td>
<td></td>
</tr>
<tr>
<td>921 KAR 1:400</td>
<td>921 KAR 3:090</td>
<td></td>
<td></td>
</tr>
<tr>
<td>921 KAR 1:400</td>
<td>16 C.F.R.</td>
<td>922 KAR 1:310</td>
<td></td>
</tr>
</tbody>
</table>

C - 15
<table>
<thead>
<tr>
<th>KRS SECTION</th>
<th>REGULATION</th>
<th>KRS SECTION</th>
<th>REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>603 KAR 10:002</td>
<td></td>
<td>803 KAR 2:180</td>
</tr>
<tr>
<td></td>
<td>603 KAR 10:010</td>
<td></td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td></td>
<td>921 KAR 3:050</td>
<td></td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td></td>
<td>921 KAR 3:050</td>
<td></td>
<td>902 KAR 20:160</td>
</tr>
<tr>
<td>40 C.F.R.</td>
<td>902 KAR 20:160</td>
<td></td>
<td>907 KAR 1:055</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:055</td>
<td></td>
<td>907 KAR 1:055</td>
</tr>
<tr>
<td>42 C.F.R.</td>
<td>907 KAR 1:055</td>
<td></td>
<td>907 KAR 1:055</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:595</td>
<td></td>
<td>907 KAR 1:595</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:626</td>
<td></td>
<td>907 KAR 1:626</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:835</td>
<td></td>
<td>907 KAR 1:835</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:090</td>
<td></td>
<td>907 KAR 3:090</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:210</td>
<td></td>
<td>907 KAR 3:210</td>
</tr>
<tr>
<td></td>
<td>907 KAR 10:014</td>
<td></td>
<td>907 KAR 10:014</td>
</tr>
<tr>
<td></td>
<td>907 KAR 12:010</td>
<td></td>
<td>907 KAR 12:010</td>
</tr>
<tr>
<td></td>
<td>907 KAR 12:020</td>
<td></td>
<td>907 KAR 12:020</td>
</tr>
<tr>
<td>45 C.F.R.</td>
<td>900 KAR 10:010</td>
<td></td>
<td>902 KAR 20:160</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:055</td>
<td></td>
<td>910 KAR 1:270</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:006</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:016</td>
<td></td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:070</td>
<td></td>
<td>921 KAR 2:070</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:310</td>
<td></td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:350</td>
<td></td>
<td>922 KAR 1:350</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:495</td>
<td></td>
<td>922 KAR 1:495</td>
</tr>
<tr>
<td>7 U.S.C.</td>
<td>921 KAR 2:006</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>921 KAR 3:035</td>
<td></td>
<td>921 KAR 3:035</td>
</tr>
<tr>
<td></td>
<td>921 KAR 3:042</td>
<td></td>
<td>921 KAR 3:042</td>
</tr>
<tr>
<td></td>
<td>921 KAR 3:060</td>
<td></td>
<td>921 KAR 3:060</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:016</td>
<td></td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:030</td>
<td></td>
<td>921 KAR 2:030</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:310</td>
<td></td>
<td>922 KAR 1:310</td>
</tr>
<tr>
<td></td>
<td>922 KAR 1:350</td>
<td></td>
<td>922 KAR 1:350</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:016</td>
<td></td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td></td>
<td>603 KAR 10:010</td>
<td></td>
<td>603 KAR 10:010</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:016</td>
<td></td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td></td>
<td>33 U.S.C.</td>
<td></td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td></td>
<td>38 U.S.C.</td>
<td></td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td></td>
<td>42 U.S.C.</td>
<td></td>
<td>401 KAR 10:029</td>
</tr>
<tr>
<td></td>
<td>815 KAR 20:060</td>
<td></td>
<td>900 KAR 10:010</td>
</tr>
<tr>
<td></td>
<td>902 KAR 20:160</td>
<td></td>
<td>902 KAR 20:160</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:026</td>
<td></td>
<td>907 KAR 1:026</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:595</td>
<td></td>
<td>907 KAR 1:595</td>
</tr>
<tr>
<td></td>
<td>907 KAR 1:626</td>
<td></td>
<td>907 KAR 1:626</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:090</td>
<td></td>
<td>907 KAR 3:090</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:210</td>
<td></td>
<td>907 KAR 3:210</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:410</td>
<td></td>
<td>907 KAR 3:410</td>
</tr>
<tr>
<td></td>
<td>907 KAR 3:420</td>
<td></td>
<td>907 KAR 3:420</td>
</tr>
<tr>
<td></td>
<td>907 KAR 5:015</td>
<td></td>
<td>907 KAR 5:015</td>
</tr>
<tr>
<td></td>
<td>907 KAR 12:010</td>
<td></td>
<td>907 KAR 12:010</td>
</tr>
<tr>
<td></td>
<td>907 KAR 12:020</td>
<td></td>
<td>907 KAR 12:020</td>
</tr>
<tr>
<td></td>
<td>907 KAR 15:080</td>
<td></td>
<td>907 KAR 15:080</td>
</tr>
<tr>
<td></td>
<td>921 KAR 1:400</td>
<td></td>
<td>921 KAR 1:400</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:006</td>
<td></td>
<td>921 KAR 2:006</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:016</td>
<td></td>
<td>921 KAR 2:016</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:017</td>
<td></td>
<td>921 KAR 2:017</td>
</tr>
<tr>
<td></td>
<td>921 KAR 2:046</td>
<td></td>
<td>921 KAR 2:046</td>
</tr>
</tbody>
</table>

45 U.S.C.

Pub.L. 111-118
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.

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>Amendment Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 KAR 2:025</td>
<td>7/15/2015</td>
</tr>
</tbody>
</table>
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; 804 KAR 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
  Accurate records; 820 KAR 1:057
  Administrative actions; 820 KAR 1:130
  Allowable expenses; 820 KAR 1:120
  Bingo Equipment; 820 KAR 1:044
  Bingo rules of play; 820 KAR 1:046
  Charity fundraising event standards; 820 KAR 1:055
  Definitions; 820 KAR 1:001
  Distributor and manufacturer licensees; 820 KAR 1:016
  Electronic pulltabs; 820 KAR 1:033
  Exempt Organizations; 820 KAR 1:005
  Facility licensees; 820 KAR 1:029
  Financial reports of a licensed charitable organization; 820 KAR 1:025
  Gaming inspections; 820 KAR 1:125
  Gaming occasion records; 820 KAR 1:058
  Issuance of annual license for a charitable organization; 820 KAR 1:015
  Licensing inspections; 820 KAR 1:017
  Pulltab construction; 820 KAR 1:032
  Pulltab dispenser construction and use; 820 KAR 1:034
  Pulltab rules of play; 820 KAR 1:036
  Quarterly reports of a licensed distributor and a licensed manufacturer; 820 KAR 1:027
  Raffle standards; 820 KAR 1:050
  Special limited charity fundraising event standards; 820 KAR 1:056

COMMUNITY BASED SERVICES, DEPARTMENT FOR
  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

CORRECTIONS, DEPARTMENT OF
  Office of the Secretary
    Luther Luckett Correctional Complex; 501 KAR 6:050
    Probation and parole policies and procedures; 501 KAR 6:270
    Repeal of 501 KAR 6:240; 501 KAR 6:240

ECONOMIC DEVELOPMENT, CABINET FOR
  Economic Development Finance Authority
    Applications for Kentucky Incentive Programs; 307 KAR 1:005

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
  Education; Kentucky Board of
    Department of Education
      School district data security and breach procedures; 702 KAR 1:170
      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
      Director of special education; 16 KAR 3:040
      Endorsement for teachers for gifted education; 16 KAR 2:110
      Junior Reserve Officers Training Corps certification; 16 KAR 2:100
      Occupation-based career and technical education certification; 16 KAR 2:020
      Part-time adjunct instructor certificate; 16 KAR 9:040
      Probationary certificate for teachers of children, birth to primary; 16 KAR 2:140
      Probationary certificate for teachers of engineering and technology education; 16 KAR 2:150
      Probationary endorsement for teachers for English as a second language; 16 KAR 2:200
      Probationary certificate for teachers of exceptional children; 16 KAR 2:160
      Probationary certificate for middle school teachers; 16 KAR 2:170
      Professional certificate for college faculty; 16 KAR 9:030
      Professional certificate for directors and assistant directors of pupil personnel; 16 KAR 3:030

ENERGY AND ENVIRONMENT CABINET
  Environmental Protection, Department of
    Antidegradation policy implementation methodology; 401 KAR 10:030
    Designation of uses of surface waters; 401 KAR 10:026
    General Provisions; 401 KAR 10:029
Surface water standards; 401 KAR 10:031

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
Accountancy; Board of
Certificate of experience; 201 KAR 1:063
Firm license, renewal, and reinstatement; 201 KAR 1:081
License application; 201 KAR 1:050
Procedures for the dissemination of information relative to hearings held before the Kentucky State Board of Accountancy; 201 KAR 1:150
Procedures for the reinstatement or reissuance of a CPA license; 201 KAR 1:140
Repeal of 201 KAR 1:064; 201 KAR 1:071
Applied Behavior Analysis Licensing Board
Application procedures for licensure; 201 KAR 43:010
Application procedures for temporary licensure; 201 KAR 43:020
Renewals; 201 KAR 43:080
Requirements for supervision; 201 KAR 43:050
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
Interpreters for the Deaf and Hard of Hearing; Board of
Application and qualifications for temporary license; 201 KAR 39:070
Application; qualifications for licensure; and certification levels; 201 KAR 39:030
Licensed Diabetes Educators, Kentucky Board of
Supervision and work experience; 201 KAR 45:110
Licensed Professional Counselors, Board of
Continuing education requirements; 201 KAR 36:030
Licensure of Marriage and Family Therapists, Board of
Continuing education requirements; 201 KAR 36:030
Examination; 201 KAR 32:045
Marriage and family therapist associate; 201 KAR 32:025
Supervision of marriage and family therapist associates; 201 KAR 32:035
Licensure for Professional Engineers and Land Surveyors, Kentucky State Board of
Code of professional practice and conduct; 201 KAR 18:142
Seals and signatures; 201 KAR 18:104
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)
Optometric Examiners, Kentucky Board of
Annual courses of study required; 201 KAR 5:030
Expanded therapeutic procedures; 201 KAR 5:110
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) KAR Title 908
Health Policy, Office of (See Health Policy, Office of) KAR Title 900
Income Support, Department of (See Income Support, Department of) KAR Title 921
Inspector General, Office of (See Inspector General, Office of) KAR Title 902
Medicaid Services (See Medicaid Services, Department for) KAR 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
Kentucky Law Enforcement Council
Police office, telecommunicator, and court security officer professional standards; 503 KAR 1:140

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
SUBJECT INDEX

MEDICAID SERVICES, DEPARTMENT FOR
Payment and Services
  Acquired brain injury long-term care waiver services and reimbursement; 907 KAR 3:210
  Acquired brain injury waiver services; 907 KAR 3:090
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

MILITARY AFFAIRS, DEPARTMENT OF
National Guard Tuition Award Program
  Kentucky National Guard Tuition Award Program; 106 KAR 3:010

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
Office of Occupations and Professions;
  Licensure for Long-Term Care Administrators; Board of Continuing education requirements; 201 KAR 6:070

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
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

C - 20