ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 42, NUMBER 6
TUESDAY, DECEMBER 1, 2015

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, November 13, 2015.

ARRS – DECEMBER 9, 2015 TENTATIVE AGENDA..... 1695
REGULATION REVIEW PROCEDURE 1698

EMERGENCIES
Department of Fish and Wildlife Resources 1699
CHFS: Office of Inspector General 1706

AS AMENDED
Board of Pharmacy..... 1710
Board of Physical Therapy..... 1710
Board of Podiatry..... 1713
Board of Examiners of Psychology 1716
Board of Licensure of Marriage and Family Therapists 1719
Department of Fish and Wildlife Resources 1724
Economic Development Finance Authority 1729
Department of Corrections..... 1730
Transportation Cabinet: Department of Vehicle Regulation..... 1732
Board of Education..... 1735
Eastern Kentucky University..... 1736
Labor Cabinet: Department of Workers' Claims 1736
Department of Alcoholic Beverage Control 1736
Horse Racing Commission 1738
Department of Charitable Gaming 1772
CHFS: Office of Health Policy..... 1781
CHFS: Department for Aging and Independent Living..... 1786

AMENDED AFTER COMMENTS
Board of Alcohol and Drug Counselors..... 1792
Board of Licensed Professional Counselors..... 1795
Energy and Environment Cabinet: Department for Environmental Protection 1798
CHFS: Office of Inspector General 1805
CHFS: Department for Medicaid Services 1811

PROPOSED AMENDMENTS
Finance and Administration Cabinet..... 1906
Board of Medical Licensure..... 1907
Board of Nursing 1910
Board of Licensure for Pastoral Counselors 1916
Board of Licensed Diabetes Educators..... 1918
Department of Fish and Wildlife Resources..... 1919
Department of Corrections 1928
CHFS: Office of Inspector General 1972

NEW ADMINISTRATIVE REGULATIONS
None

ARRS Report 1986
OTHER COMMITTEE REPORTS 1991

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ..... **F - 2**
KRS Index..... **F - 13**
Technical Amendments..... **F - 23**
Subject Index ..... **F - 24**

MEETING NOTICE: EAARS

The **Education Assessment and Accountability Review Subcommittee** is **tentatively** scheduled to meet December 1. 2015, at 10:00 a.m. in room 129 Capitol Annex.

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet December 9, 2015, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1695-1697** of this Administrative Register.

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

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

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
© 2015 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Robert Stivers
Senate President

Representative Gregory D. Stumbo
House Speaker

Senate and House Members

Senator David P. Givens
President Pro Tempore

Senator Damon Thayer
Majority Floor Leader

Senator Ray Jones
Minority Floor Leader

Senator Daniel Seum
Majority Caucus Chair

Senator Gerald Neal
Minority Caucus Chair

Senator Jimmy Higdon
Majority Whip

Senator Julian Carroll
Minority Whip

Representative Jody Richards
Speaker Pro Tempore

Representative Rocky Adkins
Majority Floor Leader

Representative Jeffrey Hoover
Minority Floor Leader

Representative Sannie Overly
Majority Caucus Chair

Representative Stan Lee
Minority Caucus Chair

Representative Johnny Bell
Majority Whip

Representative Jim DeCesare
Minority Whip

David Byerman, Director
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 Will Coursey
Representative Tommy Turner

Staff

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, DECEMBER 9, 2015, at 1:00 p.m., Room 149 Capitol Annex

PERSONNEL BOARD

Board

101 KAR 1:325. Probationary periods.

GENERAL GOVERNMENT CABINET
Board of Medical Licensure

Board

201 KAR 9:470. Standardized medical order for scope of treatment form.

Board of Veterinary Examiners

Board

201 KAR 16:050. Continuing education. (Deferred from November)

Board of Architects

Board

201 KAR 19:035. Qualifications for examination and licensure.
201 KAR 19:087. Continuing education.

Board of Alcohol and Drug Counselors

Board

201 KAR 35:010 & E. Definitions for 201 KAR Chapter 35. ("E" expires 2/21/2016) (Deferred from November)
201 KAR 35:015 & E. Grandparenting of certification to licensure. ("E" expires 2/21/2016) (Deferred from November)
201 KAR 35:020 & E. Fees. ("E" expires 2/21/2016) (Deferred from November)
201 KAR 35:030 & E. Code of ethics. ("E" expires 2/21/2016) (Deferred from November)
201 KAR 35:040 & E. Continuing education requirements. ("E" expires 2/21/2016) (Deferred from November)
201 KAR 35:050 & E. Curriculum of study. ("E" expires 2/21/2016) (Deferred from November)
201 KAR 35:055 & E. Temporary registration or certification. ("E" expires 2/21/2016) (Deferred from November)
201 KAR 35:060 & E. Complaint procedure. ("E" expires 2/21/2016) (Deferred from November)
201 KAR 35:070 & E. Supervision experience. ("E" expires 2/21/2016) (Amended After Comments)
201 KAR 35:075 & E. Substitution for work experience for an applicant for certification as an alcohol and drug counselor. ("E" expires 2/21/2016) (Deferred from November)
201 KAR 35:080. Voluntary inactive status. (Deferred from November)
201 KAR 35:090 & E. Appeal from a denial of or refusal to renew or reinstate a registration, certificate, or license, or denial of continuing education hours by the board. ("E" expires 2/21/2016) (Deferred from November)

Board of Licensed Professional Counselors

Board

201 KAR 36:030. Continuing education requirement. (Amended After Comments)

Board of Licensure for Massage Therapy

Board

201 KAR 42:020. Fees.
201 KAR 42:035. Application process, exam, and curriculum requirements.
201 KAR 42:040. Renewal.
201 KAR 42:050. Complaint procedure and disciplinary action.
201 KAR 42:080. Programs of massage therapy instruction.
201 KAR 42:110. Continuing education requirements.

Board of Licensed Diabetes Educators

Board

201 KAR 45:110. Supervision and work experience. (Not Amended After Comments)(Deferred from November)

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

Game

301 KAR 2:030. Commercial guide license.
301 KAR 2:083. Holding and intrastate transportation of captive cervids.
301 KAR 2:142. Spring wild turkey hunting.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
Division of Environmental Services

Structural Pest Control

302 KAR 29:010. Definitions for 302 KAR Chapter 29. (Deferred from November)
302 KAR 29:020. General provisions for structural pest control. (Deferred from November)
302 KAR 29:040. Settlement proceedings. (Deferred from November)
302 KAR 29:050. Commercial structural pest control and fumigation. (Deferred from November)
302 KAR 29:060. Certification. (Deferred from November)

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water

Water Quality Standards

401 KAR 10:026. Designation of uses of surface waters. (Not Amended After Comments)

401 KAR 10:029. General provisions. (Not Amended After Comments)
401 KAR 10:030. Antidegradation policy implementation methodology. (Not Amended After Comments.)
401 KAR 10:031. Surface water standards. (Amended After Comments)

Division of Waste Management

Underground Storage Tanks
401 KAR 42:045. Delivery prohibition.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary
501 KAR 6:060. Northpoint Training Center.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation

Administration
781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety

Mining Safety Standards
805 KAR 3:100. Equipment use and operation.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing

Boilers and Pressure Vessels
815 KAR 15:010. Definitions for 815 KAR Chapter 15.
815 KAR 15:025. New installations, general design, construction, and inspection criteria for boilers, pressure vessels, and pressure piping.
815 KAR 15:026. Existing boilers and pressure vessels; testing, repairs, inspection, and safety factors.
815 KAR 15:027. Certificates and fees for boiler and pressure vessel inspection.
815 KAR 15:040. Power boiler and pressure vessel supplemental requirements.
815 KAR 15:051. Heating boiler supplemental requirements - steam heating, hot water heating, and hot water supply boilers.
815 KAR 15:060. Nuclear vessel requirements.
815 KAR 15:080. Licensing for boiler and pressure vessel contractors, owner facilities, owner's piping inspectors, and independent inspection agencies.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming

Charitable Gaming
820 KAR 1:044. Bingo equipment. (Not Amended After Comments) (Deferred from November)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

Certificate of Need
900 KAR 6:100. Certificate of need standards for implementation and biennial review.

Data Reporting and Public Use Data Sets
900 KAR 7:030. Data reporting by health care providers.

Department for Public Health
Division of Maternal and Child Health

Maternal and Child Health
902 KAR 4:030. Newborn screening program.

Office of Inspector General
Division of Health Care

Health Services and Facilities
902 KAR 20:180. Psychiatric hospitals; operation and services. (Deferred from June)
902 KAR 20:260. Special health clinics. (Amended After Comments)

Division of Public Health Protection and Safety

Radiology
902 KAR 100:037. Physical protection of category 1 and category 2 quantities of radioactive material.

Department for Medicaid Services
Division of Policy and Operations

Medicaid Services
907 KAR 1:026. Dental services' coverage provisions and requirements. (Amended After Comments) (Deferred from October)

Division of Community Alternatives

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)

Division of Community Alternatives

Medicaid Services

907 KAR 1:160. Home and community based waiver services Version 1.
907 KAR 1:170. Reimbursement for home and community based waiver services Version 1.
907 KAR 1:595. Model Waiver II service coverage and reimbursement policies and requirements. (Deferred from October)
907 KAR 1:626. Reimbursement of dental services. (Amended After Comments) (Deferred from October)
907 KAR 1:835. Michelle P. waiver services and reimbursements. (Amended After Comments)

Payment and Services

907 KAR 3:090. Acquired brain injury waiver services. (Amended After Comments)
907 KAR 3:210. Acquired brain injury long-term care waiver services and reimbursement. (Amended After Comments)

Certified Provider Requirements

907 KAR 7:010. Home and community based waiver services Version 2.
907 KAR 7:015. Reimbursement for home and community based waiver services Version 2.

Division of Policy and Operations

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)

Division of Community Alternatives

Supports for Community Living Waiver

907 KAR 12:010. New Supports for Community Living Waiver Service and coverage policies. (Amended After Comments)
907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver Services. (Amended After Comments)

REMOVED FROM DECEMBER AGENDA

GENERAL GOVERNMENT CABINET
Board of Licensure and Certification for Dietitians and Nutritionists

Board

201 KAR 33:015. Application; approved programs. (Comments Received, SOC ext.)
201 KAR 33:020. Renewals. (Comments Received, SOC ext.)
201 KAR 33:030. Continuing education requirements for licensees and certificate holders. (Comments Received, SOC ext.)

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality

New Source Standards

401 KAR 59:174. Stage II controls at gasoline dispensing facilities. (Comments Received, SOC ext.)

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

Administration

601 KAR 2:030 & E. Ignition interlock. (“E” expires 3/31/2016) (Comments Received, SOC Ext.)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care

Health Services and Facilities

902 KAR 20:091. Facilities specifications, operation and services; community mental health center. (Amended After Comments)(Deferred from May)
902 KAR 20:200. Tuberculosis (TB) testing for residents in long-term care settings. (Deferred from November)
902 KAR 20:205. Tuberculosis (TB) testing for health care workers. (Comments Received, SOC ext.)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
301 KAR 2:221E

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

GREGORY K. JOHNSON, Commissioner
STEVEN L. BESHEAR, Governor

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

301 KAR 2:221E Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21
EFFECTIVE: November 3, 2015
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements[~~procedures~~] for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

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

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

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

Section 7. Falconry Waterfowl Season and Limits. (1) The Light goose season shall be November 5 through January 31.
(2) Light Goose Conservation Order season.
(a) In the Western Duck Zone, the season shall be from February 1 through March 31, except:
1. The falconry season shall be closed during the first full

weekend in February; and

2. Youth waterfowl hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.

(b) In the remainder of the state, the season shall be from February 1 through March 31.

(3) The season for all other waterfowl shall be from November 5 through January 31.

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

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

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

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

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

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

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

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

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: October 23, 2015
FILED WITH LRC: November 3, 2015 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

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

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2015-2016 waterfowl hunting seasons in accordance with the USFWS.

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

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

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

(a) How the amendment will change the existing administrative regulation: This amendment will allow the Northeast Goose Zone to hunt until sunset bringing it in line with all other goose hunting zones. In addition, the amendment will adjust waterfowl daily bag and possession limits to reflect that allowed by federal waterfowl season frameworks under the current season structure.

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

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting season and bag limits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

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

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

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

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY
301 KAR 2:222E

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

GREGORY K. JOHNSON, Commissioner
STEVEN L. BESHEAR, Governor

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

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

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

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

EFFECTIVE: November 3, 2015

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

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

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

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

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

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

(5) "Party" means:

(a) A person hunting alone; or

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

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

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

(8) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife

Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind;

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or

c. An area closed to waterfowl hunting;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

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

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

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be the second[~~first~~] Wednesday in December through the last Sunday in January;

(b) Youth waterfowl season shall be the first full weekend in February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

3. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from the second[~~first~~] Wednesday in December through the last Sunday in January; and

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting;

(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January;

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat; and

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site in December and January during the regular waterfowl season.

(7) On the Peal unit of Boatwright WMA:

(a) More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

(b) More than four (4) parties shall not hunt at the same time on Fish Lake;

(c) More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and

(d) A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during December and January.

(8) On the Swan Lake Unit of Boatwright WMA:

(a) A person shall not hunt waterfowl from Thanksgiving Day through the second[~~first~~] Tuesday in December;

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

(c) Blind restrictions shall not apply to the Light Goose Conservation Order season.

(9) Lake Barkley WMA.

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

(b) Waterfowl refuge areas shall be:

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

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

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

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10) Barren River Lake WMA. A person hunting waterfowl:

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

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

(11) Big Rivers WMA.

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

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

(12) Cedar Creek WMA.

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

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

(13) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

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

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

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

(15) Dix River WMA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

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

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

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

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

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

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

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

(20)[~~(18)~~] Kentucky River WMA.

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

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

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

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

1. Long Creek Pond;

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

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

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

1. The Environmental Education Center; and

2. Energy Lake.

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

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

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

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

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

1. On an inland area; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(25) Pioneer Weapons WMA. A person hunting waterfowl:

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

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

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

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

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

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

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

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

1. Hunt:

a. From a department blind;

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

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

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

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

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

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

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

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

2. A person may occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;

3. A person shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be

twenty-five (25) if:

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

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

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

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

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

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

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

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

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

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

(b) A hunter shall use a department blind.

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

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

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

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

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

(a) The Greenbrier Creek embayment; and

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

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

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

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

(32)[~~(29) Cedar Creek WMA.~~

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

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

~~(30) Dix River WMA.~~

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

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

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

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

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

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

(a) Apply by:

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

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

(b) Apply from September 1 through September 30;

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

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

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

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

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

(a) Barren River;

(b) Grayson Lake;

(c) Greenbo Lake;

(d) Lake Barkley;

(e) Lincoln Homestead;

(f) Nolin Lake;

(g) Paintsville Lake;

(h) Pennyrile Lake;

(i) Rough River Lake; and

(j) Yatesville Lake.

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

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

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

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

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

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

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

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

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

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

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

(9) A person shall:

(a) Hunt from an established blind; and

(b) Not change blinds.

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

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

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

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

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

(15) A hunter shall:

(a) Cease hunting by noon; and

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

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

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

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

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

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

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

the Fish and Wildlife Commission

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 23, 2015

FILED WITH LRC: November 3, 2015 at 11 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

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

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2015-2016 waterfowl hunting requirements on public lands in accordance with the USFWS and Department management objectives.

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

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists the above statutes by managing waterfowl populations and hunting opportunity consistent with state and national management requirements and strategies.

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

(a) How the amendment will change the existing administrative regulation: This amendment sets a daily stop times for waterfowl hunting on Big Rivers WMA and allows for the creation of seasonally drawn blinds at Doug Travis WMA Town Creek Moist Soil Unit.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide quality public hunting opportunity with minimal area use conflict that is consistent with meeting state and federal waterfowl management objectives.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional or amended costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity for quality waterfowl hunting on public areas.

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

(a) Initially: This administrative regulation change will not result in any additional cost for the Department to administer initially.

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation amendment for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation amendment in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY
902 KAR 55:020E

On August 22, 2014, the U.S. Drug Enforcement Administration (DEA) published a final rule in the Federal Register reclassifying hydrocodone combination products from Schedule III to Schedule II. This change took effect on October 6, 2014. However, hydrocodone combination products remain listed in Kentucky as Schedule III controlled substances under KRS 218A.090(4)(c) and (d). Therefore, this emergency administrative regulation is being amended to ensure consistency with the DEA's rescheduling of hydrocodone combination products by adding these types of painkillers to Kentucky's list of Schedule II drugs. This action must be taken on an emergency basis to enhance the health, safety, and welfare of Kentucky's citizens in accordance with KRS 13A.190(1)(a) by allowing law enforcement agencies and prosecutors to appropriately charge individuals who traffic in hydrocodone combination products or who possess hydrocodone combination products without a valid prescription or beyond the scope of the prescription. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) will compromise the state's ability to act quickly in its efforts to address crimes involving hydrocodone combination products. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Emergency Amendment)

902 KAR 55:020E. Schedule II substances.

RELATES TO: KRS 218A.010-218A.030, 218A.060-218A.070, 21 C.F.R. 1308.12

STATUTORY AUTHORITY: KRS 218A.060

EFFECTIVE: November 4, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. KRS 218A.020(3) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances under federal law. This administrative regulation designates Schedule II controlled substances.

Section 1. **Substances, Vegetable Origin or Chemical Synthesis.** The Cabinet for Health and Family Services designates as a Schedule II controlled substance any material, compound, mixture, or preparation which contains any quantity of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subsection (1) of this section, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw; and

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine, ecgonine, or ioflupane.

Section 2. Opium and Derivatives. The Cabinet for Health and Family Services designates as a Schedule II controlled substance, in addition to those specified by KRS 218A.070, opium and opiates, and a salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxegol, naloxone, and naltrexone, and their respective salts, including the following:

(1) Raw opium;
(2) Opium extracts;
(3) Opium fluid;
(4) Powdered opium;
(5) Granulated opium;
(6) Tincture of opium;
(7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy);
(8) Codeine;
(9) Dihydroetorphine;
(10) Ethylmorphine;
(11) Etorphine hydrochloride;
(12) Hydrocodone (dihydrocodeinone), including all hydrocodone combination products;
(13) Hydromorphone;
(14) Metopon;
(15) Morphine;
(16) Oripavine;
(17) Oxycodone;
(18) Oxymorphone; and
(19) Thebaine.

Section 3. Opiates. The Cabinet for Health and Family Services designates as a Schedule II controlled substance, in addition to those specified by KRS 218A.070, the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers if the existence of such isomers, esters, ethers, or salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene except:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Bulk dextropropoxyphene, in nondosage forms;
(6) Carfentanil;

(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Isomethadone;
(11) Levo-alphacetylmethadol (some other names include levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone;
(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
(17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(18) Pethidine (meperidine);
(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(22) Phenazocine;
(23) Piminodine;
(24) Racemethorphan;
(25) Racemorphan;
(26) Remifentanil;
(27) Sufentanil; and
(28) Tapentadol.

Section 4. Stimulants. The Cabinet for Health and Family Services designates as a Schedule II controlled substance a material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical position or geometric), and salts of those isomers if the existence of the salts, isomers, or salts of isomers is possible within the specific chemical designation:
(1) Amphetamine;
(2) Methamphetamine;
(3) Phenmetrazine;
(4) Methylphenidate; and
(5) Lisdexamfetamine.

Section 5. Depressants. (1) Except as provided in subsection (2) of this section, the Cabinet for Health and Family Services designates as a Schedule II controlled substance[~~substances~~], in addition to those specified by KRS 218A.070, a material, compound, mixture, or preparation which contains a quantity of the following substances:
(a) Amobarbital;
(b) Glutethimide;
(c) Pentobarbital;[~~and~~]
(d) Phencyclidine; and
(e) Secobarbital.
(2) A suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any of their salts, which has been approved by the United States Food and Drug Administration for marketing only as a suppository, shall be in Schedule III.

Section 6.[~~2.~~] Immediate Precursors. The Cabinet for Health and Family Services designates as a Schedule II controlled substance[~~substances~~], in addition to those specified by KRS 218A.070, a material, compound, mixture, or preparation which contains a quantity of the following substances:
(1) Immediate precursors to amphetamine and methamphetamine and substances:
(a) Phenylacetone;
(b) Phenyl-2-propanone;
(c)[~~(b)~~] P2P;
(d)[~~(c)~~] Benzyl methyl ketone; and
(e)[~~(d)~~] Methyl benzyl ketone;[~~and~~]
(2) Immediate precursors to phencyclidine:
(a) 1-phenylcyclohexylamine; and
(b) 1-piperidinocyclohexanecarbonitrile, also known as PCC; and
(3) Immediate precursors of fentanyl, 4-anilino-N-phenethyl-4-piperidine (ANPP).

Section 7.[~~3.~~] Hallucinogenic Substances. The Cabinet for Health and Family Services designates as a Schedule II controlled substance[~~substances~~], in addition to those specified by KRS 218A.070, a material, compound, mixture, or preparation which contains a quantity of the following substances: Nabilone, also known as (plus or minus) - trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo{b,d}pyran-9-one.

[~~Section 4. Opium and Derivatives. The Cabinet for Health Services designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, opium and opiates, and a salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:~~
~~(1) Raw opium;~~
~~(2) Opium extracts;~~
~~(3) Opium fluid;~~
~~(4) Powdered opium;~~
~~(5) Granulated opium;~~
~~(6) Tincture of opium;~~
~~(7) Codeine;~~
~~(8) Ethylmorphine;~~
~~(9) Etorphine hydrochloride;~~
~~(10) Hydrocodone;~~
~~(11) Hydromorphone;~~
~~(12) Metopon;~~
~~(13) Morphine;~~
~~(14) Oxycodone;~~
~~(15) Oxymorphone; and~~
~~(16) Thebaine.~~

~~Section 5. Opiates. The Cabinet for Health Services designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers if the existence of such isomers, esters, ethers, or salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:~~
~~(1) Alfentanil;~~
~~(2) Bulk dextropropoxyphene, in nondosage forms;~~
~~(3) Carfentanil;~~
~~(4) Levo-alphacetylmethadol (LAAM);~~
~~(5) Remifentanil; and~~
~~(6) Sufentanil.~~]

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: October 28, 2015
FILED WITH LRC: November 4, 2015 at 4 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation designates Schedule II controlled substances.
(b) The necessity of this administrative regulation: This administrative regulation is needed to designate Schedule II controlled substances.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.020 which allows the Cabinet for

Health and Family Services to add substances to or delete or reschedule all substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by designating Schedule II controlled substances.

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

(a) How the amendment will change this existing administrative regulation: On August 22, 2014, the US Drug Enforcement Administration (DEA) published a final rule in the Federal Register reclassifying hydrocodone combination products (HCP) from Schedule III to Schedule II. Therefore, to ensure consistency with the DEA's rescheduling of these painkillers, this amendment adds HCPs to Kentucky's list of Schedule II drugs. In addition, this amendment adds other drugs to Kentucky's list of Schedule II drugs to ensure consistency with the federal Schedule II regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to promote consistency between the state listing of Schedule II drugs and the federal listing of Schedule II drugs at 21 C.F.R. 1308.12. This amendment further assures that the Cabinet is carrying out its responsibility to establish and amend the state's list of Schedule II controlled substances based upon high potential for abuse, currently accepted medical use, as well as potential for psychic or physical dependence if abused.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to or delete or reschedule substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring the Cabinet is carrying out its responsibility to establish and amend the state's list of Schedule II controlled substances based upon high potential for abuse, currently accepted medical use, as well as potential for psychic or physical dependence if abused.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs as well as law enforcement agencies and prosecutors who use this administrative regulation to charge individuals for crimes related to controlled substances, including HCPs, under KRS Chapter 218A.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, Kentucky's law enforcement agencies and prosecutors will use this administrative regulation to charge individuals for crimes related to controlled substances under KRS Chapter 218A. No additional action needed for pharmacists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By making this administrative regulation consistent with the federal regulations for Schedule II substances, this amendment reduces confusion for pharmacists, law enforcement agencies, and prosecutors who rely on state and federal regulations for scheduling information.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement 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 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 fees or additional 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.

(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 affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs as well as law enforcement agencies and prosecutors who use this administrative regulation to charge individuals for crimes related to controlled substances, including HCPs, under KRS Chapter 218A.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020, KRS 218A.060, KRS 218A.070, 21 C.F.R. 1308.12

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effective.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 1308.12

2. State compliance standards. KRS 218A.020

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.12 lists controlled substances that have been classified by the DEA as Schedule II drugs.

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

administrative regulation does not impose stricter requirements than those required by federal mandate.

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(As Amended at ARRS, November 10, 2015)

201 KAR 2:220. Collaborative care agreements.

RELATES TO: KRS 315.010(4), ***315.121,*** 315.040(4), 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to regulate and control matters relating to pharmacists, pharmacist interns, pharmacy[~~pharmacist~~] technicians, pharmacies, wholesale distributors, and manufacturers. This administrative regulation establishes minimum requirements for the development and maintenance of collaborative care agreements between[~~an individual~~] pharmacist and[~~an individual~~] practitioner.

Section 1. A collaborative care agreement shall:

(1) Be in writing;

(2) Be signed and dated by***[~~the~~]***:

(a) Each[~~Individual~~] practitioner; and

(b) Each[~~Individual~~] pharmacist who is a party to the agreement;[~~and~~

~~(c) Patient or care giver;~~]

(3) Provide the method for referral of patients to be managed under the agreement[~~that upon termination of the agreement the individual practitioner or individual pharmacist shall notify the patient in writing~~]; **and**

(4) State the method for termination of the agreement**[~~; and~~**

~~(5) Contain the information specified by Section 2 of this administrative regulation~~].

Section 2. The following information relating to a patient managed under the collaborative care agreement shall be maintained by the pharmacist[~~A collaborative care agreement shall contain the following information~~]:

(1) [~~Patient~~]Name;

(2) [~~Patient~~]Address and phone[~~telephone~~] number;

(3) Emergency notification contact[~~Protocol, criteria, standing orders, or other method by which services are authorized~~];

(4) Date of birth, weight, height, and gender;[~~The method established for the assessment of patient outcomes, if appropriate; and~~]

(5) Medical history, including:

(a) Known diseases;

(b) Known allergies;

(c) Reactions and conditions relating to:

1. Prescription medications; and

2. Nonprescription medications;

(d) Current prescription regimen; and

(e) Current nonprescription regimen;

(6) Lab tests ordered, including results of lab tests;

(7) Assessment of patient outcomes;**[~~and~~]**

(8) Notes relating to the care and course of therapy of the patient**; and**

(9) Documentation of patient consent to receive care under the collaborative care agreement[~~Lab tests that may be ordered~~].

Section 3. **Documentation[~~Notes~~]** relating to the care and course of therapy of the patient **pursuant to the agreement**[~~The following information relating to a collaborative care agreement shall be maintained by a pharmacist~~]**[~~and~~]** shall be **documented in the patient's record maintained by the pharmacist,** provided to the collaborating practitioner**, and be readily available to other healthcare professionals providing care to the patient**[~~:~~

~~(1) Emergency notification contact;~~

~~(2) Date of birth, weight, height, and gender;~~

~~(3) Prescription regimen;~~

~~(4) Nonprescription regimen;~~

~~(5) Medical history; including:~~

~~(a) Known diseases;~~

~~(b) Known allergies; and~~

~~(c) Reactions and conditions relating to:~~

~~1. Prescription regimens; and~~

~~2. Nonprescription regimens;~~

~~(6) Lab tests ordered, including results of lab tests;~~

~~(7) Assessments of patient outcomes;~~

~~(8) Notes relating to contacts between the individual pharmacist and the individual practitioner concerning the care and course of therapy of the patient; and~~

~~(9) Documentation of the specific counseling information provided to the patient or care giver~~].

Section 4. A collaborative care agreement shall ***comply with KRS 315.010(4) and*** contain the following information:

(1) Protocol, criteria, standing orders, or other method by which services are authorized;

(2) The method established for the assessment of patient outcomes, if appropriate; and

(3) Lab tests that may be ordered.

Section 5. A collaborative care agreement and information and records required by the provisions of this administrative regulation[~~,~~] shall be maintained:

(1) At the pharmacist's practice site; and

(2) For at least five (5) years after termination.

JOEL THORNBURY, President

APPROVED BY AGENCY: October 15, 2015

FILED WITH LRC: October 15, 2015 at 4 p.m.

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

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, November 10, 2015)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772,[~~214.615(1),~~] 327.010, 327.050, 327.060, 327.075, 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

(1) Examination;
(2) Endorsement; or
(3) Reinstatement.

Section 2. Examination Candidate.
(1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:
(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;
(b) Submit certification of completion by the educational administrator of that program;
(c)[~~Have completed an educational course at least two (2) hours in length that has been approved by the Cabinet for Health and Family Services (CHFS) on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS;~~
~~(d)~~] Have successfully completed the Jurisprudence Exam;
(d)[~~(e)~~] Submit a complete Application for Credentialing that includes a photo taken within one (1) year;
(e)[~~(f)~~] Submit the correct, nonrefundable fee as required in 201 KAR 22:135;
(f)[~~(g)~~] If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability; and
(g)[~~(h)~~] Register for the NPTE examination.
(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:
(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and
(b) Complete the requirements of subsection (1)(b) through (g)[~~(h)~~]of this section.
(3) After three (3) failed attempts in taking the examination, an applicant ***for licensure or certification*** shall complete a board-approved remediation plan based on identified deficits as provided on the Federation of State Boards of Physical Therapy (FSBPT) Examination Performance Feedback report prior to registering for each subsequent examination.
(4) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant ***for licensure or certification*** shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:
(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:
(1) Meet the qualifications of Section 2 or 3 of this administrative regulation***, except for the retake and remediation provisions in Section 2(3) and (4) of this administrative regulation***;
(2) Complete a Supervisory Agreement with one (1) or more physical therapists; and
(3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. ***(1)*** Upon issuance of a temporary permit***[:***
~~(1)~~] the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:
(a) Has practiced in Kentucky for more than one (1) year; and
(b) Has an unrestricted license.
(2) The supervising physical therapist:
(a) Shall be on-site at all times during the practice of the applicant with a temporary permit;
(b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;
(c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit within twenty-four (24) hours of when the service was provided;
(d) May designate a temporary supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The temporary supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and
(e) Shall notify the board immediately if the supervisory relationship is terminated.
(3) The applicant with a temporary permit shall:
(a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;
(b) Sign documentation with ***the*** temporary permit number and designation as ***required[~~defined~~]*** in 201 KAR 22:053, Section 5(5)(a) or (b); and
(c) Notify the board immediately if the supervisory relationship is terminated.
(4) The temporary permit shall expire the earlier of:
(a) Six (6) months from the date of issuance; or
(b) Notice of exam results by the board.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:
(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
(2) Meet the requirements established in Section 2(1)(b) through ***(e)[~~(f)~~]*** of this administrative regulation;
(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:
(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or
(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;
(4) Have an active credential in this profession in another jurisdiction; and
(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Credentialing", December 2011;
(b) "Supervisory Agreement", December 2011; and
(c) "Applicant Special Accommodations Request Form", December 2012.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director
APPROVED BY AGENCY: July 30, 2015.
FILED WITH LRC: September 15, 2015 at 11 a.m.
CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, November 10, 2015)

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.

RELATES TO: KRS 12.355, 164.772,[~~214.610(1),~~] 327.050(8), (9), 327.070, 327.075
STATUTORY AUTHORITY: KRS 327.040(10), (11)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327, and KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:
(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each ***odd[~~uneven~~]*** numbered year. The fee shall be waived for renewal of license or certificate held by active duty member of Armed Forces as established in KRS 12.355;
(2) Submission of the completed Renewal Application or Reinstatement Application; and
(3) Verification of continued competence as established in 201 KAR 22:045[~~;~~
~~(4) Compliance with the course requirement in KRS 327.050(8), verification of completion of a Cabinet for Health and Family Services (CHFS) approved two (2) hour course on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS, pursuant to KRS 214.610(1), but not more than one (1) time every ten (10) years. The course shall be completed within the renewal biennial period that it is due; and~~
~~(5) Verification that, since the last renewal period, the credential holder has not:~~
~~(a) Been in violation of KRS 327.070;~~
~~(b) Had a professional license or credential disciplined or under current disciplinary review in this state or another jurisdiction;~~
~~(c) Had a civil claim made against the credential holder which related to the credential holder's practice of physical therapy; or~~
~~(d) Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) pursuant to KRS 164.772~~].

Section 2. Credentials not renewed by the board by March 31 of each ***odd[~~uneven~~]*** numbered year shall lapse.

Section 3. (1) A credential holder who has a credential that has lapsed may, within three (3) years of the lapsed date, reinstate upon:
(a) Meeting the requirements of Section 1(2)[~~, (4), and (5)~~] of this administrative regulation for the current renewal period;
(b) Verification of having obtained within two (2) years prior to the date of submission of the completed Renewal Application or Reinstatement Application:
1. Thirty (30) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(a)1, 2, and 3 and (c) for a physical therapist; or
2. Twenty (20) hours of continued competency as established in 201 KAR 22:045, Section 2(1)(b)1, 2, and 3 and (c) for a physical therapist assistant; and
(c) Submission of payment of the reinstatement fee established in 201 KAR 22:135.
(2) Continued competency hours submitted under subsection (1)(b) of this section for reinstatement shall satisfy the continued competency hours for the next renewal period as established in 201 KAR 22:045, Section 2(2) and (3).

Section 4. A credential holder who has a credential that has lapsed may, more than three (3) years of the lapsed date, reinstate upon:
(1) Meeting the requirements of Section 3 of this administrative regulation;
(2) Submission of all credentials from other jurisdictions since last renewal; and
(3) Completing the following requirements of the board if not holding a current credential from any other jurisdiction since last renewal:
(a) Submission of evidence of professional competency;
(b) An agreement to practice physical therapy under direct supervision not to exceed six (6) months;
(c) Successful completion of the board-approved examination; or
(d) Any combination of paragraphs (a) through (c) of this subsection.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Renewal [~~or Reinstatement~~] Application", July 2015; and
(b) "Reinstatement Application", July 2015[~~June 2012, is incorporated by reference~~].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director
APPROVED BY AGENCY: July 30, 2015
FILED WITH LRC: September 15, 2015 at 11 a.m.
CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, November 10, 2015)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060
STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:
(1) Complies with the requirements of KRS 327.060(1)(b); and
(2) In accordance with KRS 327.060(1)(b), meets the following requirements:
(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the

appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution;

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFLE Internet-based test (TOEFL iBT): Writing, twenty-four (24), Speaking, twenty-six (26), Listening, eighteen (18), Reading, twenty-one (21); with an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin;

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d)[~~Completes the HIV/AIDS education requirement as specified in KRS 327.050;~~

~~(e)~~] Completes the Jurisprudence Exam;

(e)[~~(f)~~] Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3) and (4), shall be applicable to examination candidates; and

(f)[~~(g)~~] Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing. The clinical supervisor shall submit the evaluation to the board after three (3) months of practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f)[~~(g)~~] of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (e)[~~(f)~~] of this administrative regulation; and

(b) Submitted an approved ["]Supervisory Agreement for Physical Therapists Educated in a Foreign Country["].

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

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

(a) "Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing", ***August, 2011[~~9/2/04~~]***["]; and

(b) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country", ***February, 2009[~~10/12/00~~]***["].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director
APPROVED BY THE BOARD: July 30, 2015
FILED WITH LRC: September 15, 2015 at 11 a.m.
CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

GENERAL GOVERNMENT CABINET
Board of Podiatry
(As Amended at ARRS, November 10, 2015)

201 KAR 25:011. Approved schools; *licensure[~~examination~~]* application; fees.

RELATES TO: KRS 218A.205, 311.420***, 311.480***

STATUTORY AUTHORITY: KRS 218A.202(2), 311.420(4)[~~311.410(4)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.420 requires all persons engaging in the practice of podiatry in Kentucky to be licensed by the[~~State~~] Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation establishes the procedures to be followed in obtaining an application, the fees to be charged, and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

Section 1. (1) The board approves the following schools or colleges of podiatry as having standards and requirements adequate to satisfy the educational requirement for taking the podiatry examination for licensure:

(a) Barry University School of Podiatric Medicine, Miami Shores, Florida;

(b) California School of Podiatric Medicine at Samuel Merritt University, Oakland, ***California[~~CA~~]***[~~College of Podiatric Medicine, San Francisco, California~~];

(c) Des Moines University College of Podiatric Medicine and Surgery, Des Moines, Iowa;

(d) Kent State University College of Podiatric Medicine, Independence, ***Ohio[~~OH~~]***[~~Dr. William M. Scholl College of Podiatric Medicine, Chicago, Illinois~~];

(e) Midwestern University Arizona School of Podiatric Medicine, Glendale***, Arizona***;

(f) New York College of Podiatric Medicine, New York, New York;[~~(f) Ohio College of Podiatric Medicine, Cleveland, Ohio~~];

(g) Dr. William M. Scholl College of Podiatric Medicine at the Rosalind Franklin University of Medicine and Science,***[~~North~~]*** Chicago, ***Illinois[~~IL~~]***;[~~Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania;~~]

(h) Temple University School of Podiatric Medicine, Philadelphia, ***Pennsylvania[~~PA~~]***; and

(i) Western University of Health Sciences College of Podiatric Medicine, Pomona, ***California[~~CA~~]***[~~Arizona Podiatric Medicine Program at Midwestern University, Glendale, Arizona~~].

(2) All other schools or colleges of podiatry shall have academic standards and requirements equivalent to the schools or colleges listed above as evaluated by the board in order to be approved by the board. Evaluation of the academic standards and requirements shall be made by the board after an applicant has

filed an Application for ***Podiatry[a]*** License with the board.

Section 2. (1) Every applicant, otherwise eligible to take the examination pursuant to the provisions of KRS 311.420, shall file a completed ***and notarized*** Application for ***Podiatry License[~~Examination~~]*** with the board at its principal office at least forty (40) days prior to the date of the examination in order to be eligible to take the examination.

(2) The president of the board may permit a partially completed application to be filed if good cause is shown by the applicant. ***For the purposes of this subsection, good cause includes situations such as an applicant applying late, having to retake the board examination, or waiting for pending board examination results.***

(3) The fee for the examination or reexamination shall be $250 and shall be paid when the Application for ***Podiatry License[~~examination or reexamination~~]*** is filed with the board. The fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, or postal money order and shall not be refundable.

(4) Any applicant who fails to attain a passing score as required by the board may apply to the board for reexamination.

(5) The applicant along with the application shall:

(a) Have three (3) letters of recommendation sent to the board verifying good moral character and not addicted to alcohol or drugs;

(b) Have verification of licensure sent directly from the state or states from which the applicant has or has ever held a license;

(c) Attach a dated photo taken within the past six (6) months;

(d) Have schools, colleges, or institutions send official transcripts directly to the board; and

(e) Have the Federal Bureau of Investigation background check results sent directly to the board.

Section 3. (1) Prior to approval for ***licensure[~~examination~~]***, an applicant shall:

(a) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police ***and[~~or~~]*** the Federal Bureau of Investigation;

(b) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services; and

(c) Report to the board, with the Application for ***Podiatry License[~~Examination~~]***, any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 4. (1) Pursuant to KRS 218A.205(3)(e), an applicant for licensure by the board:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on an application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the board may take any other action provided for in KRS 311.480 against a licensee or applicant that comes under the provisions of that subsection.

Section 5. Requirements for a person issued a license by the board. (1) A person who has been approved for a license from the board shall register with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services after issuance of the license and immediately submit proof of the registration to the board.

(2) A person who has received a license from the board shall not prescribe any controlled substance before he or she is registered with KASPER.

(3)(a) The board shall temporarily suspend a license pursuant to 201 KAR 25:051, Section 6[~~23:051, Section 5 of this administrative regulation~~], if a licensee:

[~~(a)~~]1. Fails to register with KASPER after the approval for licensure by the board; or

2. Prescribes a controlled substance prior to registration with KASPER.

(b) In addition to the temporary suspension, the board may take additional disciplinary action against a license pursuant to KRS 311.480.

Section 6. Incorporation by Reference. (1) "Application for ***Podiatry License[~~Examination~~]*** ", ***February, 2014[~~1994~~]***, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky[~~State~~] Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT G. LEVINE, DPM, President

APPROVED BY AGENCY: August 19, 2015

FILED WITH LRC: August 24, 2015 at 1 p.m.

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.

GENERAL GOVERNMENT CABINET
Board of Podiatry
(As Amended at ARRS, November 10, 2015)

201 KAR 25:021. Annual renewal of licenses, fees.

RELATES TO: KRS 218A.205, 311.450***, 311.480***

STATUTORY AUTHORITY: KRS 218A.202(2), 311.410(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450 requires the board to send notices to all podiatrists licensed by the board to their last known address on or before June 1 of each year. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation requires all licensed podiatrists to complete the annual renewal ***application[~~notice~~]*** and return it, along with the annual renewal fee**.** to the board. This administrative regulation further establishes an annual license renewal fee and a delinquent penalty fee.

Section 1. (1) The annual renewal fee[~~,~~] in the amount of $175[~~$150~~] shall be attached to the completed annual ***Kentucky Board of Podiatry License Renewal Application[~~renewal notice~~]*** when the ***application[~~notice~~]*** is returned to the board by the podiatrist seeking licensure renewal.

(2) The annual renewal fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, postal money order, personal check, or credit card.

(3) All information requested on the annual renewal ***application[~~notice~~]*** form shall be furnished to the board when the completed annual renewal ***application[~~notice~~]*** form is returned to the board, together with a statement of compliance with the continuing education ***requirements in 201 KAR 25:031[~~administrative regulations of the board~~]***.

(4) Every renewal application shall include proof of current registration with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services.

Section 2. (1) Failure to complete the requirements for annual renewal of the license by July 1 of each year shall result in a delinquent penalty fee of $200[~~$100~~].

(2) A licensee shall immediately report to the board any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 3. (1) Pursuant to KRS 218A.205(3)(e), a licensee:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on an[~~a~~] application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the board may take additional disciplinary action against a licensee pursuant to KRS 311.480.

Section 4. Incorporation by Reference. (1) "Kentucky Board of Podiatry License Renewal Application", 8/15, is incorporated by reference

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT G. LEVINE, DPM, President

APPROVED BY AGENCY: August 19, 2015

FILED WITH LRC: August 24, 2015 at 1 p.m.

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.

GENERAL GOVERNMENT CABINET
Board of Podiatry
(As Amended at ARRS, November 10, 2015)

201 KAR 25:031. Continuing education.

RELATES TO: KRS 218A.205, 311.450(2)

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 311.410(4), 311.450(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. KRS 218A.205(3)(h) requires the board to mandate continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete twenty (20) hours of continuing education relating to the practice of podiatry.

(2) The twenty (20) hours shall include:

(a) At least fifteen (15) Category A continuing education hours; and

(b) Not more than five (5) Category B continuing education hours.

(3) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.(4)(a) Beginning on July 1, 2012, and annually thereafter, each podiatrist licensed by the board shall complete at least one and one-half (1.5) hours of continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER), pain management, or addiction disorders.

(b) This requirement shall be included in the twenty (20) hours of continuing education required by this administrative regulation.

Section 2. Categories of Continuing Education Hours. (1) A Category A continuing education hour shall specifically relate to podiatric medicine, surgery, or science and shall:

(a) Be earned by attendance at:

1. A professional seminar, including the Kentucky Podiatric Medical Association's annual conference;

2. An accredited school of podiatry continuing education program; or

3. Another program approved by the board under Section 6 of this administrative regulation; and

(b) Be approved by the American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME), except if the course provider or the licensee that intends to take a course has requested and received board approval of the course under Section 6 of this administrative regulation prior to the course's presentation.

(2) A Category B continuing education hour may[~~shall~~] relate to non-podiatric medical issues or general practice issues and may[~~shall~~] be earned by attendance at or participation in:

(a) Home study courses;

(b) Hospital, clinic, or in-house staff lectures; or

(c) Local or regional medical society or medical association meetings.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

(a) Include a receipt or certification received for the program;

(b) Be kept for three (3) years;[~~, except for the continuing education records related to the course of study required by subsection (4) of this section on HIV, which shall be kept for twelve (12) years; and~~]

(c) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the requested proof of continuing education to the board within fifteen (15) days of the request; and

(d) For Category A programs, include proof of APMA/CPME certification or a written letter of approval from the board.

(2) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

[~~(3) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall result in suspension or revocation of the license.~~]

[~~(4) Every ten (10) years, each licensed podiatrist shall successfully complete two (2) hours of continuing education which:~~

~~(a) Complies with the requirements of KRS 214.610(1); and~~

~~(b) Is approved by:~~

~~1. The Kentucky Cabinet for Health and Family Services as pertaining to the transmission, control, treatment, and prevention of the human immunodeficiency syndrome and acquired immunodeficiency syndrome; or~~

~~2. The board.~~]

Section 4. (1) On application, the board shall consider granting 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; or

(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 the license; and

(b) Accompanied by a document verifying the illness or disability signed by the:

1. Licensee's personal physician; or

2. Immediate family member's personal 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 licensee shall reapply for the waiver or extension.

Section 5. Inactive Status. (1) A licensee may apply for inactive status by submitting a written letter to the board.

(2) A licensee granted inactive status shall be relieved of the obligation to meet the requirements for continuing education established in this administrative regulation.

(3) A person on inactive status ***may[shall be permitted to]*** use the term "podiatrist" but the licensee shall not***[be permitted to]*** engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.

(4) A licensee seeking relicensure from inactive to active status shall fulfill the ***requirements established in this subsection.[following requirements:]***

(a) If the licensee has been inactive for no more than five (5) consecutive years, ***the licensee[he]*** shall:

1. Provide written notice to the board requesting reactivation to active status by filing a ***Kentucky Board of Podiatry*** License Renewal Application***, as incorporated by reference in 201 KAR 25:021,*** and requesting in writing that the license be made active;

2. Have completed twenty (20) hours of Category A continuing education requirements within a period of six (6) months preceding the request for active status***[, including the course on acquired immunodeficiency syndrome required by Section 3(4) of this administrative regulation]***; and

3. Pay:

a. The renewal fee of $175[$150] established in 201 KAR 25:021, Section 1; and

b. A reactivation fee of $200[$100].

(b) If a licensee has been in inactive status for more than five (5) consecutive years, ***the licensee[he]*** shall:

1. File a completed Application for ***Podiatry License[Examination]*** in accordance with 201 KAR 25:011 and pay the required fee;

2. Be approved by the board to take the examination; and

3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25:012.

Section 6. Board Approval of Continuing Education. (1) A course provider or a licensee shall submit a written request to the board for approval of a continuing education course.

(2) A written request for board approval shall contain:

(a) A brief summary of the continuing education;

(b) The educational objectives of the continuing education;

(c) The date, time, and place of the provision of the continuing education;

(d) The name and credentials of the individual providing the continuing education; and

(e) The name of the organization providing the continuing education, if applicable.

(3) In determining whether to approve continuing education, the board shall consider whether the continuing education:

(a) Is designed to provide current developments, skills, procedures, or treatments related to the practice of podiatry;

(b) Is developed and provided by an individual with knowledge and experience in the subject area; and

(c) Contributes directly to the professional competence of a licensee.

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

(a) "Application for Examination", 4/00; and

(b) "Kentucky Board of Podiatry License Renewal Application", 8/15[1/02]***[.***

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, P.O. Box 174, Glasgow, Kentucky 42142-0174, Monday through Friday, 8 a.m. to 4:30 p.m.]

ROBERT G. LEVINE, DPM, President

APPROVED BY AGENCY: August 19, 2015

FILED WITH LRC: August 24, 2015 at 1 p.m.

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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, November 10, 2015)

201 KAR 26:121. Scope of practice and dual licensure[credentialing].

RELATES TO: KRS ***319.010, 319.015,*** 319.032(1)(b), 319.050(7)

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the board to promulgate administrative regulations establishing and defining scope of practice within the field of psychology. This administrative regulation establishes the required scope of practice for licensed psychologists who hold the health service provider designation, licensed psychologists, certified psychologists, certified psychologists with autonomous functioning, licensed psychological associates, and licensed psychological practitioners.***[It also provides guidance about scope of practice for license]***[credential]***[holders of this board who also hold mental health credentials from another regulatory board.]***

Section 1. A license[credential] holder shall not practice or present himself or herself outside the area or areas of competency specified in the application for a license[credential] and approved by the board based upon examination and review of qualifications, training, and experience, unless the credential holder has obtained additional education, training, experience, or supervision appropriate to the new practice area.

Section 2. Scope of Practice. (1) A licensed psychologist who holds the health service provider designation, a licensed psychologist, a certified psychologist with autonomous functioning, a certified psychologist, a licensed psychologist associate, or a licensed psychological practitioner may:

(a) Work in various health care service delivery settings; and

(b) Provide one (1) or more of the following direct or supportive services:

1. Diagnosis of an emotional, mental,[or] nervous, or addictive disorder, including mental health conditions[substance abuse] or an adjustment problem of an individual or group through the use of psychological testing or other techniques[technique];

2. Evaluation or assessment of the functioning of an individual, group, or organization;

3. Treatment***[and amelioration]*** of an emotional, mental,[or] nervous, or addictive disorder, including mental health conditions[substance abuse], or an adjustment problem of an individual or group;

4. Intervention or a preventive technique that facilitates the functioning of an individual, group, or organization;

5. Consultation services;

6. Program planning or development services;

7. Evaluation of a psychological or human service program; or

8. Supervision of health service delivery by a licensed psychologist who holds the health service provider designation, as ***established[described]*** in 201 KAR 26:171.

(2) All license[credential] holders from this board shall restrict their practice to the delivery of specific services for which they are competent based on professional education, training, and experience.

Section 3. Dual Credentialing. (1) An individual who holds both a license[credential] to practice psychology from this board and a mental health credential from another regulatory board authorized by a Kentucky statute shall:

(a)[Maintain separate and distinct practices in relation to each credential;

(b)] Inform the recipient of a particular service under which license[credential] the provider is practicing;

[(c) Demonstrate that representations about the practice, including letterhead, signs, invoices, and advertisements, and the activities of the practice, are designed to maintain those distinctions;] and

(b)[(d)] Not ***participate in the "practice of psychology"[deliver psychological services]*** as defined by KRS 319.010 under the auspices of another credential, recognizing that some activities are exempted by KRS 319.015.

(2) Psychological testing as defined by 201 KAR 26:115[,] shall not be delivered under a credential other than a license[that] issued by the Board of Examiners of Psychology.

OWEN T. NICHOLS, Psy.D., MBA, ABPP, ABMP, Chairperson

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 15, 2015 at 8 a.m.

CONTACT PERSON: Chessica Louden, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8812, fax (502) 696-5898.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, November 10, 2015)

201 KAR 26:175. Continuing education.

RELATES TO: KRS ***210.366,*** 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program beyond the basic educational requirements that meet the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education***[(CE)]*** hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each[license holder shall document the completion of at least thirty (30) continuing education hours approved by the board within each three (3) year renewal period. Commencing on the first license renewal date after June 30, 2013, each] license holder shall document the completion of at least thirty-nine (39) continuing education hours approved by the board ***pursuant to this administrative regulation*** within each[the] three (3) year renewal period[and for each subsequent renewal period].

(2) A person holding a license shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management within the first year of licensure and every six (6) years thereafter as required by KRS 210.366.

(a) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management **for the licensee's first six (6) years of licensure** if the licensee **completes[:**

1. Is a graduate of a psychology program accredited by the American Psychological Association;

2. Holds board certification from the American Board of Professional Psychology; or

3. Completed] a three (3) semester hour graduate course in suicide and crisis assessment, prevention, and intervention during the course of the licensee's graduate education.

(b) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management **from the six year continuing education** if**, during the six (6) year requirement,** the licensee:

1. Is primarily employed in a clinical setting accredited by the Joint Commission or another nationally accrediting healthcare entity that requires the completion of a suicide risk assessment with each patient being seen within the setting;

2. Teaches a graduate-level psychology course in suicide**[and crisis]** assessment, **training, and management[prevention, and intervention]**; or

3. Teaches a continuing education course in suicide**[and crisis]** assessment, **training, and management[prevention, and intervention]** at least once during the six (6) year period.

(c) The continuing education course in suicide assessment, treatment, and management shall be approved in accordance with Section **5[3]** of this administrative regulation.

(3) The continuing education shall:

(a) Provide specific content planned and evaluated to improve the license holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the habits of critical inquiry and balanced judgment; and

(d) Include a minimum of three (3) hours in either ethical practice or risk management with each three (3) year renewal period.

(4)[(3)] Continuing educational hours shall not carry over from one (1) renewal period to the next.

(5)[(4)](a) Except as provided in paragraph (b) of this subsection, a licensed psychologist with the health service provider designation who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the **thirty-nine (39)[thirty (30)]** hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques for each three (3) year renewal period.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. Hours required to satisfy the continuing education requirement shall be completed and reported at***[the time of]*** license renewal. The license holder shall:

(1) Maintain and provide adequate records including certificates of attendance and documentation of completion of the required continuing education hours;[,] or

(2) Provide documentation through a board-approved registry**,** which shall certify the name and license number of the license holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a license. A license holder shall determine prior to attending a specific continuing education program that the program:

(1) Has been approved by the board; or

(2) Is offered or sponsored by an organization approved by the board to sponsor continuing education programs.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is offered or sponsored by an organization listed in this subsection shall be accepted toward the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) ***An affiliated state chapter of*** the American Psychological Association,[;] American Medical Association,[;] American Psychiatric Association, ***or***[;] National Association of Social Workers***[, or an affiliated state chapter]***;

(b) A recognized state, regional, national, or international psychological association; or

(c) A state or provincial psychology licensure board.[;]

(2) The following programs shall be approved for continuing education:

(a) A course for graduate-level academic credit or a workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution or an affiliated hospital or medical center;

(b) The Kentucky Mental Health Institute or the Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department for Behavioral Health, Developmental and Intellectual Disabilities; ***and***

(c) Interactional videoconferencing, internet-based course or a home study course provided by an organization listed in subsection (1) of this section.

(3)(a) The board ***shall[may]*** approve an organization that is not listed in subsection (1) of this section[5(1) of this administrative regulation] as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a written request for approval;

2. Pays an initial application fee of $250; and

3. Proposes to sponsor continuing education programs that meet the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a $150 renewal fee annually.

(4)(a) The board ***shall[may]*** approve a specific continuing education program that is not listed in subsection (2) of this section[5(2) of this administrative regulation] if the sponsor of the program:

1. Files a written request for approval;

2. Pays an application fee of fifty (50) dollars; and

3. Provides information about a continuing education program that it proposes to sponsor which meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. A continuing education program ***that[which]*** satisfies the requirements for license renewal shall***[meet the following criteria]***:

(1) ***[The program shall]***Be:

(a) Offered or sponsored by an organization ***that[which]*** has been approved by the board; or

(b) A specific program approved by the board;

(2)***[The program shall:]***(a) Have a clearly-stated purpose and defined content area; and

(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) ***Have*** a presenter ***who is[shall be]*** a professional qualified in the defined content area;

(4) ***Clearly state*** the program's time***[shall be clearly stated]***. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) ***Include*** attendance***[shall be]*** recorded by the program's sponsor;

(6) ***Document[Documentation of]*** completion ***that*** shall be provided to the participant; ***and***

(7) ***Include each participant's[A participant shall complete an]*** evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours ***pursuant to paragraphs (a) and (b) of this subsection.[on the following basis:]***

(a) Each one (1) hour **quarter[semester]** course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation***.[; and]***

(b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:

1. Credit more than once for teaching a particular course during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:

1. Credit more than once for teaching a particular workshop or program during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(4) A person who completes home study or internet-based courses shall not receive:

(a) Credit for repeating a specific study course during a renewal period; and

(b) More than twelve (12) total continuing education hours through home study or internet-based courses in a renewal period.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive more than twenty-four (24) continuing education hours through interactive videoconferencing participation.

OWEN T. NICHOLS, Psy.D., MBA, ABPP, ABMP, Chairperson

APPROVED BY AGENCY: October 15, 2015

FILED WITH LRC: October 15, 2015 at 11 a.m.

CONTACT PERSON: Chessica Louden, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8812, fax (502) 696-5898.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, November 10, 2015)

201 KAR 26:200. *[~~Definitions of terms used by the Board of Examiners of Psychology~~]*[Psychologists]*[~~for meeting~~]*Education[~~educational~~] requirements for licensure as a*[~~licensed~~]* psychologist.

RELATES TO: KRS 319.050
STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(b) requires that to obtain licensure, a psychologist shall have a doctoral degree in psychology from a regionally accredited educational institution. This administrative regulation ***establishes requirements for licensure as a psychologist***[~~defines terms as they relate to licensed psychologists~~].

Section 1. ***For purposes of licensure,*** a doctoral degree in psychology*[~~acceptable to the board~~]* shall:
(1) Be from a recognized institution of higher learning as ***established***[~~defined~~] in this administrative regulation;
(2) Be clearly identified by the granting institution as a psychology program wherever the program may be administratively housed;
(3) Be specified in pertinent institutional catalogs and brochures as intended to educate and train professional psychologists;
(4) Require a dissertation for the degree as psychological in method and content and an expected product of doctoral training in psychology;
(5) Stand as a recognizable, coherent, organized entity within the institution;
(6) Require within the psychology faculty clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;
(7) Be an integrated, organized sequence of study;
(8) Require an identifiable psychology faculty and a psychologist responsible for the program;
(9) Require an identifiable body of students who are matriculated in that program for a degree; and
(10) Require in areas of training for psychologists who deliver or supervise psychological health services,*[~~the program includes~~]* educational experiences with titles such as practicum, internship, or field training.

Section 2. (1) In determining the ***approval***[~~acceptability~~] of curricular experiences and course work, the ***board shall consider compliance with the requirements established in paragraphs (a) through (d) of this subsection.***[~~following factors shall be considered:~~]
(a) The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study.
(b) A minimum of one (1) full academic year shall be spent in residence at the institution. The year in residence shall consist of a minimum of 250 contact hours or its equivalent of curricular experiences and course work delivered through face-to-face in person context with other students and with faculty of the institution, without regard to the specific physical location in which the course work is conducted.
(c) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence*[~~in each of the following content areas. This shall be met~~]* by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:
1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, and psychopharmacology;
2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, and emotion;
3. Social bases of behavior, including the subject matters of social psychology group process and organizational psychology and systems;
4. Individual differences, including the subject matters of personality theory, human development, and abnormal psychology.
(d) In addition to the core program, the curriculum shall include *[~~appropriate~~]*course work[~~coursework~~]*[~~in accordance with subsection (1) of this section~~]*[~~2(1) of this administrative regulation~~] in the specialty area of training. For candidates who seek to deliver or supervise psychological health services, that training shall include specific training in diagnosis, psychological testing,[~~and~~] assessment of individual differences, and the design and implementation of appropriate intervention techniques, such as psychotherapy, counseling, and consultation.
(2) ***A***[~~At the discretion of the board, any~~]* deficiency in course work or other requirements ***shall***[~~may~~]* be corrected by appropriate remedial work.

Section 3. ***(1)*** A regionally accredited educational institution ***shall be accredited***[~~means accreditation~~]* by ***the***[~~any one (1) of the following:~~]* Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, ***or***[~~and~~]* Western Association of Schools and Colleges.
(2)[~~Section 4.~~]* Accreditation ***shall include***[~~means~~]* accreditation by one (1) of the*[~~aforementioned~~]* associations ***established in subsection (1) of this section*** at Level 4 (doctoral degree granting accreditation) or at Level 5 (graduate or professional degree granting accreditation).

OWEN T. NICHOLS, Psy.D., MBA, ABPP, ABMP, Chairperson
APPROVED BY AGENCY: July 10, 2015
FILED WITH LRC: July 15, 2015 at 8 a.m.
CONTACT PERSON: Chessica Louden, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8812, fax (502) 696-5898.

GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Licensure for Marriage and Family Therapists
(As Amended at ARRS, November 10, 2015)

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 or contracts***[~~contract(s)~~]*[~~contract~~] with the designated ***supervisor or supervisors***[~~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) **Notwithstanding previous associate experience,** effective January 1, 2016, **all current and future**[~~the~~] associate **permits**[~~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 and may submit a request in writing to the board for one (1) 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 ***log or logs[log(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 in writing.

(2) The approved supervisor shall enter into a Supervision Plan[~~of Supervision~~] 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 welfare of the clients served by the marriage and family 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 supervision 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 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[~~supervisor~~] 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[~~of Supervision~~] for Clinical Experience", 6/2015[~~10/2011~~];

(c) "Marriage and Family Therapist Associate Permit Renewal[~~Form~~]", 6/2015; and

(d) "Supervisory Log", Form 6/2015[~~2008~~].

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

MARY BADAMI, Chairperson

APPROVED BY AGENCY: September 24, 2015

FILED WITH LRC: October 13, 2015 at 4 p.m.

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.

GENERAL GOVERNMENT CABINET
Board of Licensure for Marriage And Family Therapists
(As Amended at ARRS, November 10, 2015)

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[~~of~~] Marriage and Family Therapy[~~Therapists~~] (AAMFT) approved supervisor in good standing;

(b) An AAMFT supervisor candidate[~~in training~~]; 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[~~; or~~

~~(d) A person licensed and in good standing with a minimum of five (5) years of experience as a marriage and family therapist in another state, and who meets the licensure requirements for Kentucky~~].

(2) ***Except as established in subsection (3) of this section,*** effective January 1, 2016, a board-approved supervisor shall be:

(a) An American Association for[~~of~~] Marriage and Family Therapy[~~Therapists~~] (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[~~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[~~in training who has been licensed in Kentucky for a minimum of five (5) years~~]; 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, with the last eighteen (18) months of experience being in Kentucky.

(3) 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 training~~] 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)[~~(4)~~] 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:

(a)[1.] Kentucky law governing the practice of marriage and family therapy, both in KRS 335.300 to 335.399 and 201 KAR Chapter 32;

(b)[2.] Theories of supervision;

(c)[3.] Ethical issues involved in supervision; and

(d)[4.] Supervisor responsibilities such as logs, treatment planning, and recording.

(6)[~~(5)~~] 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-4-TR: Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (2000), or~~]** DSM 5: Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (2013)[~~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.

Section 10. Incorporation by Reference. (1) "Supervisory Log", ***7/2015[6/2015]***[~~"Supervision Log", 8/2014~~], is incorporated by reference.

(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: September 24, 2015

FILED WITH LRC: October 13, 2015 at 4 p.m.

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.

GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Licensure for Marriage and Family Therapists
(As Amended at ARRS, November 10, 2015)

201 KAR 32:045. Examination.

RELATES TO: KRS 335.320, 335.332(1)

STATUTORY AUTHORITY: KRS 335.320(9), 335.330

NECESSITY, FUNCTION, AND CONFORMITY[~~AND FUNCTION~~]: 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~~].

(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 applicant's results~~].

(4) If an applicant for licensure fails the objective examination, the candidate shall, with payment of the required fee ***established in 201 KAR 32:030***, be permitted[~~rescheduled~~] to retake[~~take~~] 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.

Section 2.[~~3.~~] Incorporation by Reference. (1) "Application for Permit[~~Licensure~~] as a Marriage and Family Therapist Associate", 6/2015[~~10/2011 Edition, Board of Marriage and Family Therapists~~], is incorporated by reference.

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

MARY BADAMI, Chairperson

APPROVED BY AGENCY: September 24, 2015

FILED WITH LRC: October 13, 2015 at 4 p.m.

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.

GENERAL GOVERNMENT CABINET
Board of Licensure of Marriage and Family Therapists
(As Amended at ARRS, November 10, 2015)

201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 194.540, 210.366, ***335.300(4),*** 335.340

STATUTORY AUTHORITY: KRS 335.320(4), (9), 335.340(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.340(7) authorizes the board to promulgate administrative regulations to establish the fees and other requirements for a permit as a marriage and family therapist and associate[~~requiring marriage and family therapists to complete continuing education requirements as a condition of renewal of their license~~]. This administrative regulation ***establishes[~~delineates~~]*** the requirements for continuing education and ***the[~~prescribes~~]*** methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours; Computation of Accrual. (1) Effective January 1, 2017, a minimum of fifteen (15) approved continuing education hours shall be accrued by each licensee and a minimum of ten (10) approved continuing education hours shall be accrued by each associate during each[~~the~~] one (1) year renewal period[~~licensure period for renewal~~].

(2) All hours shall be in[~~or related to~~] ***"***the ***practice[~~field~~]*** of marriage and family therapy***"*** as defined ***by[~~in~~]*** KRS 335.300(4) and shall relate to the professional application of psychotherapeutic and systems theories and techniques in the

delivery of services to individuals, couples, and families.

(3) Three (3) hours of the fifteen (15) hours required by subsection (1) of this section shall be accrued in the field[~~fields~~] of professional ethics.

(4) **Commencing on January 1, 2017, each licensee and associate shall be required to show proof of completion of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years beginning January 1, 2015[~~Every six (6) years licensees and associates shall be required to show proof of completion of six (6) of the hours of continuing education on suicide assessment, treatment, and management~~]** as required by KRS 210.366. These hours shall be in addition to the requirements set forth in subsection (1) of this section unless preapproved by the board as meeting the requirements set forth in subsection (2) of this section or meets requirements of Section 2 of this administrative regulation.

(5) Within three (3) years of initial licensure or certification, all mental health professionals shall successfully complete a three (3) hour training ***that[~~which~~]*** covers dynamics of domestic violence, elder abuse, neglect, and exploitation; effects of domestic violence and elder abuse, neglect, and exploitation on adult and child victims; legal remedies for protection; lethality and risk issues; model protocols for addressing domestic violence and elder abuse, neglect, and exploitation; available community resources and victim services and reporting requirements as required by KRS 194.540.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license or permit shall be directly related to the professional growth and development of marriage and family therapy practitioners and associates. ***Education hours shall[~~They may~~]*** be earned by completing any of the[~~following~~] educational activities established in this subsection.[~~:~~]

(1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be approved without further review by the board:

(a) Programs provided or approved by the American Association for Marriage and Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as defined in 201 KAR 32:010; and

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and may be determined to be relevant and***[~~therefore~~]*** subsequently approved by the board:

(a) Relevant programs ***including[~~may include~~]*** online study courses, manualized training, and face-to-face workshops,[~~including home study courses and in-service training provided~~] by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; and

(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except for those publications that were published within the one (1) year period immediately preceding the renewal date. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication. More than one (1) publication shall not be counted during each renewal period[~~; and~~

~~(d) Related areas not specifically a part of the field of marriage and family therapy may be approved for up to two (2) continuing education hours out of the fifteen (15) required if the board believes the related areas may serve to enhance the licensee's ability to practice~~].

Section 3. Continuing Education Sponsors. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall pay the fee as established in 201 KAR 32:030, Section 7, and submit an ["]Application for Continuing Education Sponsor Approval["] to the board at least sixty (60) days in advance of the program. The application shall include the:

(a) Type of learning activity;

(b) Subject matter;

(c) Names and qualifications of the instructors; and

(d) Number of continuing education hours offered.

(2) A continuing education activity shall be qualified for preapproval if***[~~the board determines~~]*** the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters ***that[~~which~~]*** integrally relate to the practice of marriage and family therapy;

(c) Contributes to the professional competency of the licensee or associate; and

(d) Is conducted by individuals who have ***relevant*** educational training or experience***[~~acceptable to the Board~~]***.

Section 4. Responsibilities and Reporting Requirements of Licensees and Associates. (1) Licensees and associates shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify personal continuing education needs;

(c) Take the initiative in seeking continuing professional education activities to meet these needs; and

(d) Seek ways to integrate new knowledge, skills, and attitudes.

(2) Each person holding a license or permit shall:

(a)[~~A licensee shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure shall:~~

~~(1)~~] Select approved activities by which to earn continuing education hours;

(b) ***If seeking approval for continuing education from a program not already approved pursuant to Section 3 of this administrative regulation and not exempted from requiring board approval pursuant to Section 2(1) of this administrative regulation,[~~An individual licensee or associate seeking to obtain approval of a continuing education program for which the sponsor has not applied or been approved by the board may~~]*** submit an application to the board for consideration. The application shall include the:

1. Agenda that is detailed, timed, and includes topics and presenters;

2. ***Presenter's biography, including[~~Presenter(s) bio which contains~~]*** education;

3. Credentials of all presenters;

4. All presenters' experience related to topic;

5. Description of training; and

6. Objectives and goals;

(c)[~~(2) Submit to the board when applicable a request for approval for continuing education activities not approved by the board as set forth in Section 3 of this administrative regulation;~~

~~(3)~~] Maintain records of continuing education hours. Each licensee and associate shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours. During each[~~licensure~~] renewal period, up to fifteen (15) percent of all licensees and associates shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall not otherwise be reported to the board;

(d)[~~(4)~~] Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, or affidavits signed by instructors[~~, receipts for fees paid to the sponsor, or less formal evidence including~~

~~written summaries of experiences that are not otherwise formally or officially documented in any way~~]. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(e)[~~(5)~~] Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) and may result in the refusal to renew, suspension, or revocation of the license or permit[~~licensure~~].

Section 5. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 of this administrative regulation into the immediately following[~~licensure~~] renewal period.

Section 6. Board to Approve Continuing Education Hours; Appeal ***Upon[~~When~~]*** Approval ***Denial[~~Denied~~]***. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee or associate shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 7. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship***[~~as determined by the board~~]***, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A request for waiver or extension shall be in writing[~~,~~] and submitted within the[~~ninety (90) day license~~] renewal grace period.

(3) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee or associate[~~and shall be~~] accompanied by a verifying document signed by a licensed physician**, a physician's assistant, or a nurse practitioner,** and shall be received by the board within the grace period.

(4) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(5) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or associate shall reapply for the waiver or extension in writing prior to the expiration of the previous extension or waiver.

Section 8. Incorporation by Reference. (1) "Application for Continuing Education Program Sponsor Approval", 10/2011 Edition, Board of Marriage and Family Therapists, is incorporated by reference.

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

MARY BADAMI, Chairperson

APPROVED BY AGENCY: September 24, 2015

FILED WITH LRC: October 13, 2015 at 4 p.m.

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.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at IJC on Natural Resources & Environment, November 5, 2015)

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(7) "Processed fish" means a fish that has been gutted and head removed.

(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(9) "Single hook" means a hook with no more than one (1) point.

(10) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(11) "Slot limit" means a size range of a fish species that shall be released by an angler.

(12) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(13) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the ***[~~following~~]***daily creel limits and size limits ***established in paragraphs (a) through (k) of this subsection***, except as established in Section 3 of this administrative regulation or pursuant to 301 KAR 1:180***:[~~.~~]***

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily creel limit, fifteen (15);

(c) Sauger, walleye, and their hybrids daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger;

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily creel limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily creel limit, singly or

in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily creel limit, thirty (30); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout and brown trout daily creel limit, singly or in combination, eight (8), no more than three (3) of which shall be brown trout.

3. No size limit on rainbow trout.

4. Twelve (12) inch size limit on brown trout.

5. Brook trout, catch and release only;

(j) Redear sunfish daily creel limit, twenty (20); no size limit; and

(k) Yellow bass daily creel limit, thirty (30); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the[~~following~~] methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purposes of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the[~~following~~] items established in paragraphs (a) through (h) of this subsection to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (77)[~~(76)~~] of this section:

(1)[~~AJ Jolly Lake. A person shall release all flathead catfish;~~

~~(2)~~] Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2)[~~(3)~~] Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches; daily creel limit, twenty (20).

(c) Sauger size limit, fourteen (14) inches;

(3)[~~(4)~~] Barren River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge;

(4)[~~(5)~~] Beaver Lake, Anderson County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait;

(5)[~~(6)~~] Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;

(6)[~~(7)~~] Beshears Lake, Caldwell County. Channel catfish size limit, twelve (12) inches;

(7)[~~(8)~~] Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Channel catfish size limit, twelve (12) inches;

(8)[~~(9)~~] Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;

(9)[~~(10)~~] Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, thirty-six (36) inches.

(c) Crappie size limit, nine (9) inches;

(10)[~~(11)~~] Bullock Pen Lake, Grant County. Channel catfish size limit, twelve (12) inches;

(11)[~~(12)~~] Carnico Lake, Nicholas County. Largemouth bass size limit, fifteen (15) inches;

(12)[~~(13)~~] Carpenter Lake, Daviess County. A person shall not possess shad or use shad as bait;

(13)[~~(14)~~] Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(14)[~~(15)~~] Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass.

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;

(15)[~~(16)~~] Cave Run Lake.

(a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

(16)[~~(17)~~] Cedar Creek Lake, Lincoln County.

(a) Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1).

(b) Channel catfish size limit, twelve (12) inches[~~. (c) A person shall not possess shad or use shad as bait~~];

(17)[~~(18)~~] Chimney Top Creek, Wolfe County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

(18)[~~(19)~~] Corinth Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Channel catfish size limit, twelve (12) inches;

(19)[~~(20)~~] Cumberland Lake***.[~~shall extend up:~~]***

(a)***1. Largemouth bass size limit, fifteen (15) inches.***

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).

4. Crappie size limit, ten (10) inches.

(b) Cumberland Lake shall extend up:

1. The Cumberland River to Cumberland Falls;

2.[~~(b)~~] The Big South Fork to Devils Jump;

3.[~~(c)~~] The Rockcastle River to The Narrows; and

4.[~~(d)~~] The Laurel River to Laurel River Dam***.[~~:~~***

~~1. Largemouth bass size limit, fifteen (15) inches.~~

~~2. Smallmouth bass size limit, eighteen (18) inches.~~

~~3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).~~

~~4. Crappie size limit, ten (10) inches;~~]

(20)[~~(21)~~] Cumberland River downstream from Barkley Lake Dam. Sauger size limit, fourteen (14) inches;

(21)[~~(22)~~] Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except for a portion of Hatchery Creek in Russell County as established in subsection (37)[~~(38)~~] of this section.

(a) Brown trout size limit, twenty (20) inches; daily creel limit one (1).

(b) Brook trout size limit, fifteen (15) inches; daily creel limit one (1).

(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required ***in order*** to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle;

(22)[~~(23)~~] Dale Hollow Lake.

(a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and any walleye hybrid daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.

(e) Largemouth bass size limit, fifteen (15) inches.

(f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

(23)[~~(24)~~] Dewey Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

(24)[~~(25)~~] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;

(25)[~~(26)~~] Doe Run Lake, Kenton County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(26)[~~(27)~~] Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(27)[~~(28)~~] Elkhorn Creek downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.

(a) There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;

(28)[~~(29)~~] Elmer Davis Lake, Owen County.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait;

(29)[~~(30)~~] Fishtrap Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;

(30)[~~(31)~~] Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(31)[~~(32)~~] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish, daily limit, five (5); size limit, fifteen (15) inches;

(32)[~~(33)~~] General Butler State Park Lake, Carroll County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(33)[~~(34)~~] Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;

(34)[~~(35)~~] Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad as bait.

(b) Bluegill and sunfish daily and possession limit, fifteen (15) fish;

(35)[~~(36)~~] Green River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Muskellunge size limit, thirty-six (36) inches;

(36)[~~(37)~~] Guist Creek Lake, Shelby County. Channel catfish size limit twelve (12) inches;

(37)[~~(38)~~] Hatchery Creek, Russell County.

(a) A person fishing for trout in the upper rip-rap area of the creek shall follow the size and creel limits for trout for the Cumberland River below Wolf Creek Dam established in subsection (21)[~~(22)~~] of this section.

(b) A person fishing for trout in the lower portion of the creek, as denoted by signs, shall:

1. Only use artificial bait; and

2. Release all trout;

(38)[~~(39)~~] Jerrico Lake, Henry County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(39)[~~(40)~~] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches; daily limit, twenty (20).

(c) Sauger size limit, fourteen (14) inches;

(40) Kentucky River WMA, Boone Tract, Benjy Kinman Lake.

(a) Largemouth bass. Catch and release only.

(b) Crappie daily creel limit, fifteen (15).

(c) Sunfish daily creel limit, fifteen (15).

(d) Catfish daily creel limit, four (4);

(41) Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Crappie daily creel limit, fifteen (15).

(c) Sunfish daily creel limit, fifteen (15).

(d) Catfish daily creel limit, four (4);

(42) Kincaid Lake, Pendleton County. Channel catfish size limit, twelve (12) inches;

(43)[~~(42)~~] Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(44)[~~(43)~~] Lake Malone, Muhlenberg and Logan County.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches;

(45)[~~(44)~~] Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;

(46)[~~(45)~~] Lake Pollywog, Grant County. A person shall not possess shad or use shad as bait;

(47)[~~(46)~~] Lake Reba, Madison County.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches; daily creel limit three (3).

(b) Channel and blue catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait;

(48)[~~(47)~~] Lake Shelby, Shelby County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(49)[~~(48)~~] Laurel River Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);

(50)[~~(49)~~] Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(51)[~~(50)~~] Leary Lake, Grant County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish daily limit, four (4);

(52)[~~(51)~~] Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish daily creel limit, four (4).

(d) A person shall not possess shad or use shad as bait;

(53)[~~(52)~~] Marion County Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(54)[~~(53)~~] McNeely Lake, Jefferson County.

(a) Channel and blue catfish size limit, twelve (12) inches.

(b) A person shall not possess shad or use shad as bait;

(55)[~~(54)~~] Mill Creek Lake, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad as bait;

(56)[~~(55)~~] New Haven Optimist Lake, Nelson County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(57)[~~(56)~~] Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(58)[~~(57)~~] Ohio River.

(a) Walleye, sauger, and any hybrid thereof, no size limit; daily creel limit, ten (10), singly or in combination.

(b) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(c) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(d) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(e) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;

(59)[~~(58)~~] Otter Creek, Meade County.

(a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;

(60)[~~(59)~~] Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

(61)[~~(60)~~] Paintsville Lake.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches;

(62)[~~(61)~~] Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(63)[~~(62)~~] Pennyrile Lake, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(64)[~~(63)~~] Pikeville City Lake, Pike County. A person shall release largemouth bass;

(65)[~~(64)~~] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;

(66)[~~(65)~~] Reformatory Lake, Oldham County. Channel and blue catfish size limit, twelve (12) inches;

(67)[~~(66)~~] Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches;

(68)[~~(67)~~] Shanty Hollow Lake, Warren County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait;

(69)[~~(68)~~] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;

(70)[~~(69)~~] Sportsman's Lakes, Franklin County. A person shall not possess or use shad as bait;

(71)[~~(70)~~] Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;

(72)[~~(71)~~] Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;

(73)[~~(72)~~] Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);

(74)[~~(73)~~] Tennessee River downstream from Kentucky Lake Dam. Sauger size limit, fourteen (14) inches;

(75)[~~(74)~~] Trammel Creek, Allen County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1);

(76)[~~(75)~~] Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and

(77)[~~(76)~~] Yatesville Lake: Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.
(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;
(b) Cumberland River and tributaries above Cumberland Falls;
(c) Kentucky River and tributaries upstream from Lock and Dam 14;
(d) Middle Fork Kentucky River and tributaries;
(e) North Fork Kentucky River below Carr Creek Dam and tributaries;
(f) South Fork Kentucky River and tributaries;
(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;
(h) Martins Fork Lake; ***and***
(i)***[Rockcastle River and tributaries; and***
(j)] Wood Creek Lake.
(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established[~~listed~~] in subsection (3) of this section.
(2) A person shall:
(a) Only use artificial bait; and
(b) Release all trout.
(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:
(a) Bark Camp Creek in Whitley County;
(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;
(c) Big Bone Creek within Big Bone Lick State Park in Boone County;
(d) Cane Creek in Laurel County;
(e) Casey Creek in Trigg County;
(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
(g) East Fork of Indian Creek in Menifee County;
(h) Elk Spring Creek in Wayne County;
(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;
(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;
(k) Middle Fork of Red River in Natural Bridge State Park in Powell County;
(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;
(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and
(n) Trammel Creek in Allen County.
(4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 6.[~~5.~~] Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:
(a) Size limits for selected species;
(b) Daily creel limits for selected species;
(c) Eligible participants; and
(d) Dates and times of special limits.
(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 7.[~~6.~~] Creel and Size Limits for Special Lakes and Ponds. (1) The requirements established in paragraphs (a) through (d) of this subsection shall apply to all bodies of water established[~~listed~~] in subsection (2) of this section:
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);
(b)[~~Channel~~] Catfish daily creel limit, four (4);
(c) Sunfish or bream daily creel limit, fifteen (15); and
(d) Rainbow trout daily creel limit, five (5).
(2) Special lakes and ponds:
(a) Alexandria Community Park Lake, Campbell County;
(b) Anderson County Community Park Lake, Anderson County;
(c) Bloomfield Park Lake, Nelson County;
(d) Bob Noble Park Lake, Nelson County;
(e) Brickyard Pond, Knox County;
(f) Camp Ernst, Boone County;
(g) Carlson Lake, Meade County in Fort Knox;
(h) Cherokee Park Lake, Jefferson County;
(i) Dickerson Lake, Meade County in Fort Knox;
(j) Easy Walker Park Pond, Montgomery County;
(k) Fisherman's Park lakes, Jefferson County;
(l) Kingdom Come State Park Lake, Harlan County;
(m) Jacobsen Park Lake, Fayette County;
(n) James D. Beville Park Lake, Grayson County;
(o) Lake Mingo, Jessamine County;
(p) Lake Pollywog, Grant County;
(q) Lower Sportsman's Lake, Franklin County;
(r) Lusby Lake, Scott County;
(s) Madisonville City Park lakes, Hopkins County;
(t) Martin County Lake, Martin County;
(u) Maysville-Mason County Recreation Park Lake, Mason County;
(v) Middleton Mills Long Pond, Kenton County;
(w) Middleton Mills Shelterhouse Pond, Kenton County;
(x) Mike Miller Park Lake, Marshall County;
(y) Miles Park lakes, Jefferson County;
(z) Millennium Park Pond, Boyle County;
(aa) Panther Creek Park Lake, Daviess County;
(bb) Prisoners Lake, Kenton County;
(cc) Scott County Park Lake, Scott County;
(dd) Southgate Lake, Campbell County;
(ee) Three Springs Lake, Warren County;
(ff) Tom Wallace Park Lake, Jefferson County;
(gg) Upper Sportsman's Lake, Franklin County;
(hh) Watterson Park Lake, Jefferson County;
(ii) Waverly Park Lake, Jefferson County;
(jj) Waymond Morris Park Lake, Daviess County;
(kk) Whitehall Park Lake, Madison County; and
(ll) Yellow Creek Park Lake, Daviess County.

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary
APPROVED BY AGENCY: July 10, 2015
FILED WITH LRC: July 14, 2015 at 4 p.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(As Amended at ARRS, November 10, 2015)

307 KAR 1:005. Applications for Kentucky Incentive Programs.

RELATES TO: KRS 154.12-100, 154.20-234-154.20-236, 154.20-255-154.20-256, 154.26-080, 154-27-020-154.27-030, 154.30-030-154.30-060, 154.31-020-154.31-030, 154.32-020-154.32-030, 154.34-070, 154.60-020[~~154.20-033, 154.31, 154.32-010~~]

STATUTORY AUTHORITY: KRS 154.12-100(2), ***154.20-033(1)(b),*** 154.20-236(3), 154.20-256(11), 154.26-080(1), 154.27-030(10), 154.30-030(2)(b)[~~154.20-033~~], 154.31-030(2), 154.32-030(2)(a), 154.34-070(2), 154.60-030

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)[~~154.20-033~~], 154.31-030(2),[~~and~~] 154.32-030(2)(a), 154.34-070(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[~~these~~] incentives and establishes the fee structure.

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) Program. In addition to the requirements of KRS 154.27-030, the applicant shall provide:

(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 154.26-080, 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***:***

(1) All information required by the Application for Kentucky Investment Fund Act (KIFA) Tax Credit Program***;***

(2) A non-refundable application fee of $1,000;

(3) A one (1) time administrative fee equal to one-tenth (1/10) of one (1) percent of the total approved tax credits at the time of execution of the KIFA Agreement and prior to its effectiveness; and

(4) An annual fee of one-tenth (1/10) of one (1) percent of the fund's allocated tax credits.

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 KRA 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 Small Business Certification", 7/2015;

(e) "Application for: Kentucky Angel Investment Act Qualified Investor Certification", 7/2015;

(f) "Application for: Kentucky Angel Investment Act Qualified Investment", 7/2015;

(g) "Kentucky Economic Development Finance Authority (KEDFA) Application for Incentives for Energy Independence Act (IEIA) Tax Incentive Program", 6/2011;

(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) "Instruction Sheet, 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.

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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 10, 2015)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Luther Luckett Correctional Complex.

Section 1. Incorporation by Reference. (1) "Luther Luckett Correctional Complex policies and procedures", ***November 10[~~October 14~~]*[~~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 4 p.m. and 8 a.m. Weekdays (Amended 5/15/12)
LLCC 05-02-02	Outside Consultation and Research (Amended 5/15/12)
LLCC 06-01-01	Offender Information (Amended

10/14/15[~~8/7/15~~][~~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 ***11/10/15[~~10/14/15~~]*****[~~8/7/15~~]**[~~11/14/14~~])
LLCC 11-01-01 Dining Room Guidelines (Amended 8/7/15 [~~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 ***11/10/15[~~8/7/15~~]***[~~7/10/12~~])
LLCC 11-07-01 Food Services: Purchasing, Storage and Farm Products (Amended 5/15/12)
LLCC 12-01-01 Sanitation, Living Condition Standards and Clothing Issues (Amended 11/14/14)
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 [~~5/15/12~~])
LLCC 13-02-02 Specialized Health Services (Amended 8/7/15 [~~5/15/12~~])
LLCC 13-02-03 Vision Care, Prostheses and Orthodontic Devices (Amended 8/7/15 [~~7/10/12~~])
LLCC 13-02-05 Medical Services Co-pay (Amended 8/7/15 [~~11/12/13~~])
LLCC 13-03-01 Mental Health Services (Amended 5/15/12)
LLCC 13-03-02 Use of Psychotropic Medications (Amended 5/15/12)
LLCC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 7/26/13)
LLCC 13-04-02 Health Education and Special Health Programs (Added 7/26/13)
LLCC 13-04-06 Psychological and Psychiatric Records (Added 5/15/12)
LLCC 13-05-02 Self-Administration of Medication (Inmate) (Amended 7/26/13)
LLCC 13-06-01 Health Records (Amended 7/26/13)
LLCC 13-06-03 Notification of Inmate Family of Serious Illness, Surgery or Inmate Death (Amended 7/26/13)
LLCC 13-07-01 Serious and Infectious Diseases (Amended 7/26/13)
LLCC 13-07-02 Medical Waste Management (Amended 8/7/15 [~~5/15/12~~])
LLCC 13-08-01 Restraint Approval (Amended 5/15/12)
LLCC 13-09-01 Substance Abuse and Chemical Dependency Program (Amended 5/15/12)
LLCC 14-03-01 Inmate Legal Services (Amended 8/7/15 [~~11/14/14~~])
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 [~~11/14/14~~])
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 *18-02-02[~~18-02-03~~]* Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Added 10/14/15)
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 9/12/14)
LLCC 22-02-01 Inmate Clubs and Organizations (Amended 8/7/15 [~~5/15/12~~])
LLCC 22-02-02 Inmate Photographs Project (Amended 8/7/15 [~~5/15/12~~])
LLCC 22-05-02 Arts and Crafts Program (Amended 8/7/15 [~~5/15/12~~])
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 8/7/15[~~5/15/12~~])
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, Students, and Volunteers (Amended 5/15/12)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: September 30, 2015
FILED WITH LRC: October 14, 2015 at 4 p.m.
CONTACT PERSON**:** Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, November 10, 2015)

601 KAR 1:113. Transportation Network Company.

RELATES TO: KRS 17.500, 61.878(1)(c)1., 61.930(6), 61.931(6), 186.050, 186.281, 189.290, 189A.010, ***281.010,*** 281.600, 281.630, 281.6301, 281.631, 281.640, 281.650, 281.655, 281.656, 281.912, 281.990, 304.3-070, 304.10-010-304.10-070, ***304.20-020,*** 304.39-020(2), 304.39-040, 304.39-320, ***Chapter 365,*** 532.060

STATUTORY AUTHORITY: KRS 281.600, 281.630, 281.655

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) "Transportation network company vehicle" or "TNC vehicle" is defined by KRS 281.010(55).

(18) "Underinsured vehicle coverage" is defined by KRS 304.39-320(1).

(19) "Uninsured vehicle coverage" is defined by KRS 304.20-020(2).

Section 2. Application and Renewal. (1) A TNC shall register as a business organization with the Kentucky Secretary of State***[unless the applicant is a sole proprietor]***.

(2) The department may waive the filing of the certificate of assumed name if a TNC:

(a) Demonstrates compliance with the relevant provisions of KRS Chapter 365;

(b) Certifies in writing to the department that Kentucky law either prohibits or does not require the filing; and

(c) States the reasons in writing why the filing is not required.

(3) In order to apply for a certificate to operate, a TNC shall submit **directly** to the Division of Motor Carriers:

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of $250 pursuant to KRS 281.630(3)(b); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(4) **A TNC with fifty-one (51) or more vehicles may qualify vehicles to operate by providing to the department through an online data access point:**

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of $250 pursuant to KRS 281.630(3)(b); and

(c) A calendar year bulk qualification fee pursuant to the following schedule:

1. $3,000 for fifty-one (51) to 100 vehicles;

2. $4,500 for 101 to 150 vehicles;

3. $6,000 for 151 to 200 vehicles;

4. $7,500 for 201 to 250 vehicles;

5. $9,000 for 251 to 300 vehicles;

6. $10,500 for 301 to 350 vehicles;

7. $12,000 for 351 to 400 vehicles;

8. $15,000 for 401 to 500 vehicles; and

9. $22,500 for 501 or more vehicles.

(5) A TNC shall annually submit the following to the Division of Motor Carriers to renew a certificate:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605;

(b) A certificate renewal fee of $250 pursuant to KRS 281.630(4)(d); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle **prorated for the month the vehicle is qualified** pursuant to KRS 281.631(3)(a)1. and (8).

(6) If a TNC elects to use the bulk vehicle registration payment option in the TNC's initial or renewal TNC application, the TNC shall not be required to submit additional vehicle qualification information and fees to the Division of Motor Carriers in connection with vehicles that are added during the duration of the period for which the bulk payment was made.

(7) A TNC shall pay a renewal bulk fee by December 15 of each calendar year.

(8)[~~(5)~~] A TNC vehicle shall be added ***to the TNC's current list*** by submitting the following to the Division of Motor Carriers:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; and

(b) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(9)[~~(6)~~] An application ***shall[~~may~~]*** be submitted electronically, by mail, or by hand delivery.

(10)[~~(7)~~] Operating authority obtained pursuant to this section shall not be transferable.

(11)*(a)*[~~(8)~~] The TNC shall submit the following documents if submitting an application for certificate, annual renewal, or adding a driver during the year:

1.[~~(a)~~] An affidavit from the corporate officer in charge of Kentucky operations certifying that the national criminal background check of TNC drivers established in KRS 281.630 and 281.6301 shall be completed prior to allowing the TNC driver to accept rides through the TNC mobile application; and

2.[~~(b)~~] One (1) copy of the current contractual agreement between the TNC and TNC drivers.

(b)[~~(12)~~][~~(9)~~] A deficient application shall be returned to the applicant with no formal action taken by the department.

Section 3. Demonstration of Financial Responsibility and Insurance. (1) A TNC shall maintain primary automobile insurance that:

(a) Recognizes that a driver is a TNC driver or using a vehicle to transport passengers for compensation; and

(b) Provides insurance coverage for a TNC driver who is:

1. Logged on to the TNCs mobile application; or

2. Engaged in a prearranged ride.

(2) The following pre-trip acceptance liability ***policy insurance coverage[~~automobile insurance~~]*** requirements shall apply if a TNC driver is logged on to the TNC's mobile application and

available to receive transportation requests but not engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(12);

(b) Basic reparation benefits **in accordance with KRS 304.39-020**;

(c) Uninsured vehicle coverage **in accordance with KRS 304.20-020**; and

(d) Underinsured vehicle coverage **in accordance with KRS 304.39-320**.

(3) The pre-trip acceptance liability ***policy*** insurance coverage requirements of KRS 281.655(12) shall be satisfied by one (1) of the following:

(a) Automobile insurance maintained by the TNC;

(b) Automobile insurance maintained by the TNC driver; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(4) The following automobile insurance requirements shall apply while a TNC driver is engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(4);

(b) Basic reparation benefits **in accordance with KRS 304.39-020**;

(c) Uninsured vehicle coverage **in accordance with KRS 304.20-020**; and

(d) Underinsured vehicle coverage **in accordance with KRS 304.39-320**.

(5) The prearranged ride liability insurance coverage requirements of KRS 281.655(4) shall be satisfied by one (1) of the following:

(a) Automobile insurance maintained by the TNC;

(b) Automobile insurance maintained by the TNC driver; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(6) If the insurance maintained by a TNC driver has lapsed or does not provide the required coverage, the TNC shall provide the required insurance coverage beginning with the first dollar of a claim. The TNC shall have the duty to defend a claim for damages.

(7) Coverage under an automobile insurance policy maintained by the TNC shall not be dependent on a personal automobile insurer or policy first denying a claim.

(8) The insurance required by this section shall be placed with an insurer licensed pursuant to KRS 304.3-070, or with a surplus lines insurer eligible under KRS 304.10-010 through***[KRS]*** 304.10-070.

(9) A TNC driver shall carry proof of insurance coverage satisfying KRS Chapter 304, KRS 281.655, and this administrative regulation during his or her use of a vehicle in connection with a TNC's mobile application. In the event of an accident, and upon request, a TNC driver shall provide this insurance coverage information directly to interested parties, automobile insurers, and investigating police officers.

(10) A TNC driver shall disclose directly to interested parties, automobile insurers, the department, and investigating police officers, whether ***or not*** he or she was logged on to the TNC's mobile application or on a prearranged ride at the time of an accident.

Section 4. Insurance Exclusions. (1) A Kentucky automobile insurer may exclude the following coverage under a TNC driver's insurance policy for loss or injury that occurs while a TNC driver is logged on to a TNC's mobile application or while a TNC driver provides a prearranged ride:

(a) Liability coverage for bodily injury and property damage;

(b) Personal injury protection coverage as established in KRS Chapter 304;

(c) Uninsured and underinsured motorist coverage;

(d) Medical payments coverage;

(e) Comprehensive physical damage coverage; and

(f) Collision physical damage coverage.

(2) Nothing in this administrative regulation shall require a personal automobile insurer to provide coverage while a driver is:

(a) Logged on to the TNC mobile application;

(b) Engaged in a prearranged ride; or

(c) Using a vehicle to transport passengers for compensation.

(3) Nothing in this administrative regulation shall preclude an insurer from providing coverage for the TNC driver's vehicle.

(4) An automobile insurer whose policy excludes coverage for a TNC vehicle or TNC driver shall have no duty to defend or indemnify a claim for personal or property damages.

(5) An automobile insurer that defends or indemnifies a claim against a TNC driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver.

(6) In a claims coverage investigation, the TNC and an insurer potentially providing coverage shall cooperate to facilitate the exchange of relevant information with directly involved parties.

(7) Information relevant to a claims coverage situation ***shall[may]*** include:

(a) The name of the insurer or potential insurer of the TNC driver;

(b) The precise times the TNC driver logged off and on the TNC mobile application in the twelve (12) hour period immediately before and after the incident; and

(c) A complete description of the insurance coverage including the exclusions and limits.

Section 5. Vehicles. (1) A vehicle used by a driver for TNC services shall be qualified by the department to operate by submitting a completed Transportation Network Company Authority Application, TC 95-627 and submitting the fees required in Section 2 of this administrative regulation.

(2) The TNC shall ensure that the vehicles used by TNC drivers to transport passengers shall be subject to an annual inspection **approved** by an automotive technician who holds a valid automotive service excellence (A.S.E.) certification from the National Institute for Automotive Service Excellence.

(3) The annual inspection shall be completed on***[one (1) of the following forms:***

(a)] the vehicle inspection form provided in Transportation Network Company Authority Application, TC 95-627***, or[;***

(b) Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; or

(c)] an equivalent ***vehicle inspection*** form provided by the TNC***[and approved by the Division of Motor Carriers]***.

(4) A TNC shall collect and maintain information on the vehicles being used to provide service by TNC drivers including:

(a) The VIN and license plate number; and

(b) Records of official vehicle inspections by the automotive technician.

(5) Records of vehicle inspection and VIN and license plate numbers shall be kept by the TNC for a minimum of three (3) years from the date of inspection**.** and the TNC shall make the records available to the department or its representative on request. The information and records may be submitted as personal or proprietary information pursuant to KRS 61.878(1)(c)1 and 61.931(6).

(6) A vehicle used to provide TNC services shall be readily identifiable by the following:

(a) A **company specific emblem or** decal affixed to the front windshield on the passenger side of the vehicle provided by the **TNC[department to the TNC to distribute to qualified vehicles]**; **and**

(b) **An electronic copy of the current TNC certificate[An optional decal or trade dress that is company specific and issued by the TNC; and**

(c) A vehicle fee receipt card that shall be presented on inspection].

(7) A driver who is no longer providing TNC service shall **destroy or** return the**[department issued]** decal **or emblem[and the vehicle fee receipt card]** to the TNC**[who shall return it to the Division of Motor Carriers]**.

(8) A TNC shall ensure that the vehicles used by drivers to provide TNC services shall:

(a) Have at least four (4) doors;

(b) Be designed to carry no more than eight (8) persons including the driver; and

(c) Be no more than ten (10) model years old with an odometer

reading of less than 200,000 miles.

Section 6. TNC Drivers. (1) A TNC shall require each driver to undergo a national criminal background check before providing TNC services pursuant to KRS 281.6301.

(2) The TNC shall certify the criminal background check during the application process established in Section 2 of this administrative regulation. The national criminal background check shall be either:

(a) A comprehensive background check using fingerprint analysis; or

(b) An individual analysis using a social security number.

(3) The analysis required in subsection (1) of this section shall be conducted by a business or firm engaged in determining criminal background history.

(4) A TNC shall also require that each TNC driver:

(a) Is at least twenty-one (21) years old;

(b) Is the owner or lessee of the TNC vehicle or has a statement from the registered owner authorizing the use of the vehicle for TNC services pursuant to KRS 281.631;

(c) Is listed as an insured of the TNC vehicle;

(d) Has a valid state-issued driver's license and vehicle registration;

(e) Has personal ***vehicle[~~automobile~~]*** insurance coverage as established in Section 3 of this administrative regulation;

(f) Has completed an annual driver safety training course approved by the department;

(g) Provides a written or electronic affirmation that he or she is fit and able to operate a motor vehicle to provide TNC services; and

(h) Is in compliance with applicable state law and local ordinances ***related to the operation of a motor vehicle***.

(5) A current list of drivers shall be kept on file with the TNC and made available for inspection by the department on request. A TNC driver's electronic file shall include the following:

(a) A current driving history record to be updated annually;

(b) The current address of the driver;

(c) A copy of a valid state-issued driver's license and the operator's license number;

(d) Proof of his or her personal ***vehicle[~~automobile~~]*** insurance coverage;

(e) Proof of personal vehicle registration;

(f) Proof of the written or electronic affirmation that a TNC driver is fit and able to operate a motor vehicle to provide TNC services;

(g) Verification of the criminal background check required in subsection (1) of this section;

(h) Records indicating ***if[~~whether~~]*** a driver has refused to accept a prearranged ride and the reason for doing so;**[~~and~~]**

(i) Records of complaints against a driver**; and**

(j) A copy of the most current vehicle inspection.

Section 7. Passenger Service. (1) A TNC shall adopt a policy of non-discrimination based on the following:

(a) Destination;

(b) Race or color;

(c) National origin;

(e) Religious belief or affiliation;

(f) Sex and sexual orientation or identity;

(g) Disability;

(h) Age; and

(i) The presence of a passenger's service animal.

(2) A TNC shall notify TNC drivers of the adopted policy of non-discrimination established in subsection (1) of this section.

(3) After acceptance, a TNC driver may refuse to transport a passenger who is acting in an unlawful, disorderly, or endangering manner but shall comply with the non-discriminatory policy in subsection (1) of this section. A driver may also refuse to transport a passenger with a service animal if the driver has a documented medical allergy.

(4) A TNC driver shall not transport a passenger under the age of fourteen (14) unless accompanied by a person over the age of eighteen (18).

(5) A TNC shall establish policies regarding TNC driver behavior that shall include the following prohibitions:

(a) Being under the influence of alcohol or another substance or combination of substances that impair the driving ability while providing TNC services;

(b) Accepting a street hail by a potential rider;

(c) Directly soliciting a passenger or responding to a direct solicitation; and

(d) Providing services for cash.

(6) A driver shall immediately report the following to the driver's affiliated TNC:

(a) A refusal to transport a passenger and the reasons for the refusal within forty-eight (48) hours after the refusal ***if[~~where~~]*** the refusal occurred after the ride had been accepted by the driver;

(b) Information regarding a driving citation, incident, or accident within twenty-four (24) hours after the event; or

(c) Information regarding a conviction within twenty-four (24) hours.

(7) A TNC shall provide the following information to the public on its Web site and mobile device application software:

(a) A schedule of its rates or the method used to calculate rates and peak pricing; and

(b) Information indicating a zero tolerance policy related to drug and alcohol usage by its drivers while performing TNC services and a passenger support telephone number or email address where a suspected violation may be immediately reported.

(8) A TNC shall provide the following information to a person requesting a ride through its mobile application:

(a) The expected cost of the trip if requested by a potential passenger;

(b) The first name and a photograph of the TNC driver accepting the ride request; and

(c) A photograph or description, including license plate number, of the vehicle that will be used for the ride.

(9) At the completion of the prearranged ride, a TNC shall electronically provide the passenger with a receipt showing:

(a) The point of origin and destination of the ride;

(b) The duration and distance of the ride;

(c) The cost of the ride broken down into base fare and additional charges; and

(d) The driver's first name.

[~~(10) Hours of service for a TNC driver shall be the same as established in KRS 281.730(1).~~]

Section 8. Terms of Service. (1) The TNC shall not require a hold harmless or indemnification clause in the terms of service for a TNC driver or passenger that may be used to evade the insurance requirements of this administrative regulation and KRS Chapter 281.

(2) A TNC shall not disclose to a third party the personally identifiable information of a user of the TNC's mobile application unless:

(a) The TNC obtains the user's consent to disclose personally identifiable information;

(b) The disclosure is required to comply with a legal obligation; or

(c) The disclosure is required to protect or defend the terms of use of the service or to investigate violations of the terms of use.

(3) A TNC may disclose a passenger's name and telephone number to the TNC driver in order to facilitate correct identification of the passenger by the driver***[,]*** or to facilitate communication between the passenger and the driver.

Section 9. Penalties. (1) A TNC that operates in violation of the requirements of this administrative regulation shall be fined $200 pursuant to KRS 281.990(1).

(2) A TNC that operates in violation of the terms of its certificate or permit or operates without a valid permit shall be fined $500 per occurrence pursuant to KRS 281.990(2).

(3) A TNC that fails to produce requested records and information pursuant to KRS 281.820 within forty-eight (48) hours of the request by the department shall be fined $200.

(4) A TNC shall be responsible for an affiliated TNC driver's

failure to comply with this administrative regulation if the driver's violation has been previously reported to the TNC in writing and the TNC has failed to take action within ten (10) days of the report.

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

(a) "Transportation Network Company Authority Application," TC 95-627, November, 2014; and

(b) "Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application," TC 95-605, May, 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained by accessing the department's Web site at http://transportation.ky.gov/.

MICHAEL W. HANCOCK, P.E., Secretary
RODNEY KUHL, Commissioner
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: October 14, 2015 at 3 p.m.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 10, 2015)

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 ***requires[~~authorizes~~]*** the KBE to promulgate administrative regulations ***establishing[~~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 ***by[~~in~~]*** KRS 61.931(6).

(2) "Reasonable security and breach investigation procedures and practices" is defined ***by[~~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 ***shall not be[~~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.

Section 6. Incorporation by Reference. (1) "Data Security and Breach Notification Best Practice Guide", September 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, Ph.D.
ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: August 13, 2015

FILED WITH LRC: August 13, 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.

EASTERN KENTUCKY UNIVERSITY
(As Amended at ARRS, November 10, 2015)

775 KAR 1:070. Capital construction procedures.

RELATES TO: KRS 164A.575, 164A.580, 164A.585, 164A.590, 64A.595, 164A.600

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION AND CONFORMITY: KRS 164A.560 ***authorizes[~~permits~~]*** governing boards of each public institution of higher education to ***promulgate an administrative regulation to*** elect to perform financial management functions in accordance with KRS 164A.550 to 164A.630 ***and to delegate these functions to an official of the institution[~~by issuing administrative regulations to do so~~]***. This administrative regulation ***delegates the responsibilities[~~implements the provisions~~]*** of KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, and 164A.600 ***to the President of [~~at~~]*** Eastern Kentucky University.

Section 1. ***(1) The Board of Regents of Eastern Kentucky University shall elect to perform in accordance with KRS 164A.555 to 164A.630 regarding capital construction.***

(2) In accordance with the authority established in KRS 164A.560, the board shall delegate the responsibilities listed in subsection (1) to the President of Eastern Kentucky University[~~The president, acting on behalf of the Board of Regents and under the provisions of KRS 164A.560, elects to~~

perform all functions relating to capital construction in accordance with KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595 and 164A.600].

CRAIG TURNER, Chair
DAVID TANDY, Secretary
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 15, 2015 at 8 a.m.
CONTACT PERSON: Mr. Paul Gannoe, Director, Capital Construction and Project Administration, Eastern Kentucky University 521 Lancaster Drive, Richmond, Kentucky 40475, phone (859) 622-1497, fax (859) 622-8822.

LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, November 10, 2015)

803 KAR 25:185. Procedure for e-mail notification of cancellation or removal of location of specific workers' compensation coverage.

RELATES TO: KRS ***342.0011(9), (16),*** 342.260, 342.340
STATUTORY AUTHORITY: KRS 342.260(2), 342.340
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(2) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations on or before December 31, 2015, establishing information necessary to be received to create an e-mail notification system ***for[where]*** a person ***to[may]*** enter his or her e-mail address into the Insurance Coverage Look-up database and be notified of any cancellation of a specific business workers' compensation coverage. This administrative regulation establishes procedures and standards for e-mail notification of cancellation of specific business workers' compensation coverage to persons registered with the Department of Workers' Claims Insurance Coverage Look-up database.

Section 1. Definitions. (1) "Cancellation of coverage" means coverage lapse notice or an employer location has been removed from the policy.
(2) "Commissioner" is defined by KRS 342.0011(9).
(3) "Insurance Coverage Look-up database" means a location in Department of Workers' Claims (DWC) Litigation Management System (LMS) Web site that links a subscriber to the DWC Insurance Coverage database.
(4) "Litigation Management System" or "LMS" means the electronic filing system utilized in the filing and processing of workers' compensation claims in the Commonwealth of Kentucky.
(5) "Person" is defined by KRS 342.0011(16).
(6) "Workers' compensation coverage" means the insurance required by KRS 342.340(1)(a).

Section 2. Subscription Requirements. (1) Any person who wishes to receive electronic mail notification of cancellation of a specific business' workers' compensation coverage shall subscribe with the Department of Workers' Claims at its Web site at www.labor.ky.gov/workersclaims by using the specific link to the LMS.
(a) The ***subscriber[person]*** shall provide through the link the name and address of each business whose policy is to be monitored.
(b) The subscriber shall provide through the link the e-mail address to which***[cancellation]*** notices ***of cancellation of coverage*** are to be sent.
(2)***(a)*** The term for a specific subscriber shall be for a period of one (1) year from the date of subscription.
(b) There ***shall not be a[is no]*** limit as to how many times subsequent consecutive subscriptions may occur.

Section 3. Notification by the Commissioner.
Upon notification from the insurance carrier that the specific policy selected has been cancelled, the commissioner shall notify the subscriber by e-mail to the registered e-mail address within five (5) days of the receipt of a notification of cancellation by the Department of Workers' Claims.

DWIGHT T. LOVAN, Commissioner
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 10, 2015 at 10 a.m.
CONTACT PERSON: Charles E. Lowther, General Counsel, Department of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4464, fax (502) 564-0681.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, November 10, 2015)

804 KAR 4:015. Interlocking substantial interest between licensees prohibited.

RELATES TO: KRS 243.030, 243.040, 243.110, 244.240, **244.570,** 244.590
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: ***[Pursuant to]*** KRS 241.060 ***authorizes[,]*** the board***[has authority]*** to promulgate administrative regulations regarding matters over which the board has jurisdiction. The control of alcoholic beverages in the Commonwealth of Kentucky, as codified in Chapters 241 - 244 of the Kentucky Revised Statutes, has been established by the Kentucky legislature as a "three tiered" system. The three (3) tiers of this system are designated as manufacturer/producer[producer], wholesaler[wholesale]/distributor, and retailer[retail]. Each of these three (3) levels operates[operate] separately**, distinctly,** and apart from each other for the purpose of control. In order for this control to be effectively administered by this board, it is necessary to prevent any type of interlocking substantial interest by and among[between] the three (3) separate **tier** levels.***[The purpose of]*** This administrative regulation ***provides[is to provide]*** **additional detail regarding incompatible licenses and prohibited[describe]**[clarify the] interlocking substantial interests **among the tiers[which will be prohibited by this board]**.

Section 1. Definitions.***[As used in this administrative regulation unless otherwise specified:]***
(1) "Manufacturer" means ***a[any]*** person **or entity** who is a distiller, rectifier,***[blender,]*** winery, brewer, or who **otherwise** produces alcoholic beverages,["Manufacturers" include distillers, rectifiers, blenders, wineries, and brewers] whether located within or without this state.
(2) "Retailer" means ***a[any]*** person **or entity** who sells alcoholic beverages at retail, whether located within or without this state, excepting manufacturers with limited retail privileges **or the right to hold certain retail licenses**.
(3) "Substantial interest" means:
(a) **Membership in, or** a direct or indirect ownership interest in,**[or membership in,]**a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity, **whether individually, or by a spouse, or in combination with a spouse,** which amounts to **ten (10)[five (5)]** percent or greater of the total ownership or membership interests;
(b) A common officer, director,**[or]** manager**, or employee with managerial responsibilities,** in a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity;
(c) A common owner, partner, or member, including **a spouse[an immediate family member]**, the aggregate share of which is **ten (10)[five (5)]** percent or greater of the total ownership of, or membership in, a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity; **or**
(d) Any other direct or indirect interest which provides an ability to control **or influence** decisions by a business, sole proprietorship, partnership, corporation, limited liability company,

limited liability partnership, or other legal entity.

(4) "Wholesaler" means ***a[any]*** person **or entity** who is a wholesaler, distributor, or who sells alcoholic beverages at wholesale["Wholesalers" include wholesalers of distilled spirits and wine and distributors of malt beverages], located within this state.

Section 2. ***A[No]*** manufacturer**[, or their immediate family members,]**[of distilled spirits or wine] shall ***not*** have or acquire a substantial interest[a financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation,] in the establishment, maintenance, or operation of[in] the business of a [liquor and wine] wholesaler or a retailer. ***A[No]*** manufacturer**[, or their immediate family members,]** shall ***not*** have or acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, a **substantial[financial]** interest in the premises of a retailer.

Section 3. ***A[No]***[manufacturer or] wholesaler**[, or their immediate family members,]** shall ***not*** have or acquire a substantial interest[a financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise,] in the establishment, maintenance, or operation of[in] the business of a manufacturer or retailer. ***A[No]***[A manufacturer or] wholesaler**[, or their immediate family members,]** shall ***not*** have or[not] acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, a **substantial[financial]** interest in the premises of a retailer.

Section 4. ***A[No]*** retailer**[, or their immediate family members,]** shall ***not*** have or acquire a substantial interest in the establishment, maintenance, or operation of the business of a manufacturer or wholesaler.

Section 5. The malt beverage administrator and[or] distilled spirits administrator**, as appropriate,** shall[may] examine **every applicant for a new or renewal license to determine whether issuance or renewal of the license is prohibited under applicable law or this administrative regulation. If the issuance or renewal of the license is prohibited, the appropriate administrator shall not issue or renew the license[the ownership and management of new applicants or existing licensees to determine the presence of any substantial]**[an interlocking]**[interest herein prohibited prior to issuance or renewal of licenses]**.

Section 6.[5.] This administrative regulation shall not apply to**:**

(1) Prohibit *an[any]* affiliated business arrangement which meets the requirements provided in 804 KAR 4:280, Section 2;

(2) A license issued prior to June 24, 2015, for any prohibited substantial interests resulting from the ownership interests of a spouse; or

(3) A license[licenses] issued prior to December 1, 1976.

FREDERICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: October 15, 2015 at 11 a.m.

CONTACT PERSON: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, November 10, 2015)

804 KAR 10:031. Local government regulatory license fees.

RELATES TO: KRS 243.075

STATUTORY AUTHORITY: KRS 243.075(5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 243.075(1)(a) authorizes a qualified city or county to establish by administrative regulation a fee upon the gross receipts from the sale of alcoholic beverages or each establishment licensed to sell alcoholic beverages.*** KRS 243.075(5)(a) requires the department to promulgate administrative regulations to establish a process by which a qualified city[of the third or fourth class,] or[a] county[that contains a city of the third or fourth class], in the first year following the discontinuance of prohibition, may estimate any additional policing, regulatory, or administrative expenses incurred by that city or county that are directly and solely related to the sale of alcoholic beverages. This administrative regulation establishes what specific costs and expenses may be subject to reimbursement, and a form is incorporated by reference to calculate and document the expense.

Section 1. Definition. "Qualified city or county" means a city on the registry maintained by the Department for Local Government under KRS 243.075(9)(b), a county containing a city on the registry, or a city or county that had been previously permitted to issue regulatory license fees.

Section 2.***[Pursuant to KRS 243.075(1)(a), a qualified city or county may impose a regulatory license fee upon the gross receipts of the sale of alcoholic beverages of each establishment therein licensed to sell alcoholic beverages.***

Section 3.] Allowable Costs and Expenses. The costs and expenses***[that may be]*** subject to reimbursement through a regulatory license fee shall directly and solely relate to the discontinuance of prohibition in the qualified city or county, including reasonable costs and expenses of:

(1) Employment, salary, and benefits of the city or county alcoholic beverage control administrator and staff who administer alcoholic beverage control laws;

(2) Office supplies and equipment for the city or county to administer an alcoholic beverage control office;

(3) Office space for an alcoholic beverage control administrator and staff;

(4) Travel costs and expenses for the city or county alcoholic beverage control administrator and staff;

(5) Additional policing expenses that are directly related to the discontinuance of prohibition***, which[and]*** shall include only those costs and expenses incurred solely as a result of the discontinuance of prohibition that are over and above any policing expenses previously incurred; and

(6) Miscellaneous costs and expenses solely and directly related to the discontinuance of prohibition, if the following information is included on the Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition:

(a) A description of the expenditure;

(b) A detailed explanation of the necessity of the expenditure as it related to the discontinuance of prohibition; and

(c) The cost of the expenditure.

Section ***3.[4. To the extent that a qualified city or county incurs the costs or expenses identified in Section 3 of this administrative regulation, a qualified city or county may seek reimbursement only for that portion of the costs and expenses that arise directly and solely because of the discontinuance of prohibition.***

Section 5.] A qualified city or county shall use the Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition to estimate permissible expenses and to establish the fee.

Section ***4.[6.]*** The Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition used by a qualified city or county to determine permissible regulatory fees shall be retained pursuant to 725 KAR 1:061.

Section ***5.[7.]*** Incorporation by Reference. (1) "Calculation Form for Alcohol Regulatory Fee in First Year Following Repeal of Prohibition", August 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, http://www.abc.ky.gov.

FREDERICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 9, 2015 at 3 p.m.
CONTACT PERSON: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

PUBLIC PROTECTION CABINET
Horse Racing Commission
(As Amended at ARRS, November 10, 2015)

810 KAR 1:018. Medication; testing procedures; prohibited practices.

RELATES TO: KRS[~~230.210,~~] 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370
STATUTORY AUTHORITY: KRS 230.215, 230.225, 230.240, 230.260, ***230.320,*** 230.370[~~230.320~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize[~~authorizes~~] the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to[~~the horse~~] participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.
(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.
(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.
(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).
(5) "Permitted NSAIDs" means the following permitted non-steroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.
(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 810 KAR 1:040, or 810 KAR 1:110, was present in the sample.
(a) For the drugs, medications, or substances listed in[~~Section 2(3), 6, or 8 of~~] this administrative regulation or 810 KAR 1:040 for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided[~~in this administrative regulation~~] for the finding to be considered a positive finding.
(b) Positive finding[~~findings~~] also includes[~~include~~]:
1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; ***except for[provided, however, that]*** gamma amino butyric acid and cobalt***, which have[***s***hall not be present in]*** concentrations***[greater than as]*** provided in Section 2(4) of this administrative regulation; and
2. Substances foreign to a horse at concentrations that cause interference with testing procedures.
(7) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.
(8) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.
(9) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.
(10) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining specimens for pre-race and post-race testing.
(11) "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.
(2) Except as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:
(a) Is a narcotic;
(b) Could serve as an anesthetic or tranquilizer;
(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or
(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.
(3) Therapeutic medications shall not be present in excess of established threshold concentrations set forth in this administrative regulation or in 810 KAR 1:040.[~~The threshold for furosemide is set forth in Section 6 of this administrative regulation.~~] The thresholds for permitted NSAIDs are set forth in Section 8 of this administrative[~~administrated~~] regulation.
(4) Except as provided by paragraphs (a) and (b) of this subsection, a substance shall not be present in a horse in excess of a concentration at which the substance could occur naturally[~~if it affects the performance of a horse~~]. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.
(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma***.[; and]***
(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.
(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:
(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race; and
(b) The commission laboratory presents to the commission a report of a positive finding.
(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 1:040, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 1:028.

Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a

location under the jurisdiction of the commission.

(2) The only injectable substance[~~injectables~~] allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as set forth in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to have a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Antiulcer Medications. The following antiulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 milligrams per kilogram[~~mg/kg~~];

(2) Omeprazole (Gastrogard®): two and two-tenths (2.2) grams;

(3) Ranitidine (Zantac®): eight (8) milligrams per kilogram[~~mg/kg~~]; and

(4) Sucralfate[~~Sulcrafate~~]: 2-4 grams.

Section 6. Furosemide Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race.

(2)(a) The commission veterinarian shall administer furosemide prior to a race.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, the commission shall approve a licensed veterinarian to perform the administration. The approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day.

(c) If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Furosemide may be used under the***[following]*** circumstances ***established in this subsection.[:]***

(a) Furosemide shall be administered at a location under the jurisdiction of the commission, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b) The furosemide dosage administered shall not exceed 500 milligrams[~~mg~~], nor be less than 150 milligrams[~~mg~~].

(c) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in[~~blood~~] serum or plasma shall be performed. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the[~~blood~~] serum or plasma specimen. Concentrations above 100 nanograms of furosemide per milliliter of[~~blood~~] serum or plasma shall constitute a violation of this section.

(4) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide. Notice that a horse will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine,[~~blood~~] serum, or plasma does not show a detectable concentration of furosemide in the post-race urine,[~~blood~~] serum, or plasma.

(c) Horses eligible for furosemide and entered to start may be monitored by a commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs). (1) One (1) of the following NSAIDs may be used by a single intravenous injection not less than twenty-four (24) hours prior to post time for the race in which the horse is entered if the concentration in the horse's specimen does not exceed the following levels when tested post-race[~~post race~~]:

(a) Phenylbutazone - not to exceed two (2) micrograms per milliliter of[~~blood~~] serum or plasma;

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of[~~blood~~] serum or plasma; and

(c) Ketoprofen - not to exceed two (2)[~~ten (10)~~] nanograms per milliliter of[~~blood~~] serum or plasma.

(2) NSAIDS, including the permitted NSAIDs, shall not be administered within twenty-four (24) hours prior to post time for the race in which the horse is entered. However, as provided in 810 KAR 1:040, the recommended withdrawal guideline for flunixin is thirty-two (32) hours prior to post time for the race in which the horse is entered.

(3)(a) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of three tenths (0.3)[~~one-half (.5)~~] microgram per milliliter of[~~blood~~] serum or plasma shall not constitute a violation of this section.

(c) A finding of flunixin below a concentration of three (3) nanograms per milliliter of[~~blood~~] serum or plasma shall not constitute a violation of this section.

(d) A finding of ketoprofen below a concentration of one (1) nanogram per milliliter of serum or plasma shall not constitute a violation of this section.

(4) A horse that has been administered an NSAID shall be subject to collection of a biologic specimen under the supervision of the commission veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse.

Section 9. Anabolic Steroids. (1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race or a pre-race sample after the horse has been entered shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone[~~(free and conjugated)~~]:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter[~~- 15 ng/ml~~] in urine or free boldenone 200 picograms per milliliter[~~pg/ml~~] in[~~blood~~] serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine[~~shall not be permitted~~].

(b) Nandrolone[~~(free and conjugated)~~]:

1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter[~~- 1 ng/ml~~] in urine or free nandrolone fifty (50) picograms per milliliter[~~50 pg/ml~~] in[~~blood~~] serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter[~~- 1 ng/ml~~] in urine or free nandrolone fifty (50) picograms per milliliter[~~50 pg/ml~~] in[~~blood~~] serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter[~~- 45 ng/ml~~] of metabolite, 5α-estrane-3β, 17α-diol in urine or a ratio in urine of 5α-estrane-3β, 17α-diol to 5α-estrene-3β, 17α-diol of >1:1.

(c) Testosterone[~~(free and conjugated)~~]:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter[~~- 20 ng/ml~~] in urine or free testosterone twenty-five (25) picograms per milliliter[~~25 pg/ml~~] in[~~blood~~] serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter[~~- 55 ng/ml~~] in urine or free testosterone twenty-five (25) picograms per milliliter[~~25 pg/ml~~] in[~~blood~~] serum or plasma.

(3) In accordance with this subsection, a horse may receive one (1) therapeutic AAS.

(a) The therapeutic AAS shall be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. An owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration.

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant specimen is taken from the horse;

3. The sample is tested for AAS by the commission[a] laboratory[~~from the approved list established by the commission~~] at the expense of the owner of the horse; and

4. The commission has received a report from the commission laboratory of a negative finding regarding the sample.

(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample.

(d) The horse shall not be entered into a race until at least sixty (60) days after the administration of the therapeutic AAS to the horse.

(e) Procedures for administration of therapeutic AAS.

1. A therapeutic AAS shall be administered by a licensed veterinarian.

2. Other treatment methods shall be investigated prior to considering the use of therapeutic AAS.

3. Medical records for the horse shall document:

a. Consideration of alternative treatment methods; and

b. The necessity for administering the therapeutic AAS.

4. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the therapeutic AAS is administered; and

d. The diagnosis and justification for administration of the therapeutic AAS to the horse.

5. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

6. The Therapeutic AAS Administration Form shall be delivered electronically to the commission equine medical director within seventy-two (72) hours after administration. If the Therapeutic AAS Administration Form cannot be delivered electronically, the veterinarian shall file the form with the equine medical director in person or through the mail. The submitting veterinarian shall confirm receipt by the equine medical director.

(4) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous AAS or for an amount of an endogenous AAS in excess of a concentration referred to in subsection (2) of this section shall be subject to the penalties referred to in 810 KAR 1:028.

(5)(a) The detection of a therapeutic AAS or metabolic derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.

(b) Each separate therapeutic AAS detected in excess of a threshold level shall constitute a separate violation.

(6) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(7)(a) A claimed horse may be tested for the presence of an AAS if the claimant requests the test when the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, expenses incurred after the date of the claim, and the costs of testing.

(c)[~~If the test is negative, the claimant shall reimburse the entity paying for the testing or the prior owner for the cost of the testing.~~

~~(d)~~] While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(8) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

(9) Only a licensed veterinarian may possess or administer a therapeutic AAS.

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens for pre-race and post-race testing.

(3) The test barn shall be under the supervision and control of

the commission veterinarian.

Section 11. Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 810 KAR 1:130, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission and in the presence of the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to effectively resolve the issue.

Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the***[following]*** procedures ***established in this subsection.[:]***

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as addressed in Section 11 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission***.[;]***

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection***.[;]***

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples***.[;]***

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened***.[;]***

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log***.[; and]***

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select[from] a laboratory solicited and[list of laboratories] approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

[(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.]

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 14. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum-allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring that this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation and 810 KAR 1:012, Section 14, governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses in his or her care;

(j) Promptly notifying the stewards and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 1:024, Section 4(1)(d) and (l) and 4(2);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at least twenty (20) minutes prior to post time, or at a time otherwise prescribed, before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the stewards pursuant to 810 KAR 1:008, Section 3(6); and

(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards.

(2) A veterinarian shall report to the stewards or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 1:028.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 18. Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission[~~veterinarian~~] shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365-[~~three hundred sixty-five (365)~~]day period - thirty (30) days;

(c) Third incident within a 365-[~~three hundred sixty-five (365)~~]day period – 180[~~one hundred eighty (180)~~] days; and

(d) Fourth incident within a 365-[~~three hundred sixty-five (365)~~]day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) For all races, purse money shall be paid pursuant to the process provided in 810 KAR 1:026, Section 28(3).

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding, the executive director of the commission or the stewards may[~~shall immediately~~] authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the executive director and chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices. (1) A drug, medication, or substance shall not be possessed or used by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin®;

(d) Hemopure®; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a rider.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the***[~~following~~]*** conditions ***established in this subsection*** are met***.[~~:~~]***

(a) A treated horse shall not race for a minimum of ten (10) days following treatment***.[~~;~~]***

(b) A veterinarian licensed to practice by the commission shall administer the treatment***.[~~;~~]***

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds***.[~~; and~~]***

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the[~~Kentucky Horse Racing Commission~~] Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy form within twenty-four (24) hours of treatment.

(6) Other than furosemide, an alkalizing substance that could alter the[~~blood~~] serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A[~~blood~~] serum or plasma total carbon dioxide (TCO_2) level shall not exceed thirty-seven (37.0)[~~37.0~~] millimoles per liter in a horse; except ***a[~~no~~]*** violation shall ***not*** exist if the TCO_2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.[~~; and~~]

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO_2 Testing and Procedures. (1)(a) The stewards or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the[~~blood~~] serum or plasma of the horse. The winning horse and other horses, as selected by the stewards, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race testing shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO_2 concentration in the[~~blood~~] serum or plasma of the horse. If the commission laboratory determines that the TCO_2 level exceeds thirty-seven (37.0)[~~(37)~~] millimoles per liter, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO_2 may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO_2 testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO_2 is determined to exceed thirty-seven (37.0)[~~(37)~~] millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse's level of TCO_2, as registered in the original test, is physiologically normal for that horse, the stewards:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO_2 level is physiologically normal.

Section 22. Postmortem Examination. (1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 1:012, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KRC-2, 8/97;

(b) "Split Sample Chain of Custody Form", KHRC 18-01, 4/12;

(c) "[~~Kentucky Horse Racing Commission~~]Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 18-02, 8/15[~~4/12~~]; and

(d) "Therapeutic AAS Administration Form", KHRC 18-03, 4/12.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works[~~Ironworks~~] Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at http://khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: September 14, 2015

FILED WITH LRC: September 14, 2015 at 4 p.m.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

PUBLIC PROTECTION CABINET
Horse Racing Commission
(As Amended at ARRS, November 10, 2015)

810 KAR 1:028. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.225, 230.260, 230.265, 230.290, 230.300, 230.310, 230.320, 230.361

STATUTORY AUTHORITY: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(8) authorizes the commission to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards and the commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 810 KAR Chapter 1 or KRS Chapter 230.

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 810 KAR 1:018, Section 8(1)(a), (b), and (c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 1:040.

(11) "Secondary threshold" means the thresholds for phenylbutazone,[~~ and~~] flunixin, and ketoprofen provided in 810 KAR 1:018, Section 8(3)(b), (c) and (d)[~~and (c)~~], respectively.

(12) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines ***Thoroughbred; Standardbred;[~~Thoroughbreds,~~]*** Quarter Horse, Appaloosa, and ***Arabian[~~Arabians~~]*** as provided in 810 KAR 1:040.

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or 810 KAR Chapter 1 shall be adjudicated in accordance with 810 KAR 1:029, KRS Chapter 230, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors.

(3) The stewards and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction, shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5) A suspension or revocation shall be calculated in Kentucky racing days, unless otherwise specified by the stewards or the commission in a ruling or order.

(6) A person assessed any penalty, including a written warning, pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission and the Association of Racing Commissioners International, or its successor. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 810 KAR 1:018 may be required to pass a commission-approved examination as determined by the stewards pursuant to 810 KAR 1:012, Section 10, or be placed on the veterinarian's list pursuant to 810 KAR 1:018, Section 18.

(8)(a) A claimed horse may be tested for the presence of prohibited substances if the claimant completes the Request for

Post-Race Testing of Claimed Horse form and includes the form in the claim blank envelope, which is deposited in the association's claim box. The request shall not be valid if the form is not filled out completely and included in the claim envelope. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) A person who claims a horse may void the claim if the post-race or TCO2 test indicates a Class A, B, or C drug violation, or a total carbon dioxide (TC02) level exceeding thirty-seven (37.0)[~~37.0~~] millimoles per liter. If the claim is voided, the person claiming the horse shall then be entitled to reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race or TCO2 testing, including the costs of transportation, board, training, veterinary or other medical services, testing, and any other customary or associated costs or fees.

(c) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(9) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(10) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 810 KAR 1:018 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(11) A veterinarian who administers, is a party to, facilitates, or is found to be responsible for any violation of KRS Chapter 230 or 810 KAR Chapter 1 shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(12) In accordance with KRS 230.320(6), an administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission.

(14) If a penalty for a medication violation requires a horse to be placed on the stewards' list for a period of time, the stewards may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive test result.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards and by the commission in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations. (1) Class A drugs[~~drug~~].

(a) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three (3) year suspension; AND $10,000 to $25,000 fine.	Three (3) to five (5) year suspension; AND $25,000 to $50,000 fine.	Five (5) year suspension to a lifetime ban; AND $50,000 to $100,000 fine.

(b) OWNER

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Ninety (90) day suspension; AND $50,000 fine; AND Horse shall be placed on the stewards' list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(2)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Class B drugs;

2. Gamma amino butyric acid in a concentration greater than 110 nanograms per milliliter; and

3. Cobalt in a concentration greater than fifty (50) parts per billion[~~drug~~].

(b)[~~(a)~~] TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $500 to $1,000 fine.	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	180 to 365 day suspension; AND $2,500 to $5,000 fine.

(c)[~~(b)~~] OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction in a	Third offense within a 365-day period in any racing jurisdiction

	horse owned by the same owner	in a horse owned by the same owner
Disqualification and loss of purse; [~~AND~~] Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards; AND For a cobalt violation, the horse shall be placed on the stewards' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.	Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

1. Phenylbutazone in a concentration greater than five (5.0) micrograms per milliliter[~~5.0 mcg/ml~~];

2. Flunixin in a concentration greater than 100 nanograms per milliliter[~~ng/ml~~]; and

3. Ketoprofen in a concentration greater than fifty (50) nanograms per milliliter[~~50 ng/ml~~].

(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension; AND $500 to $1,500 fine.	Ten (10) to thirty (30) day suspension; AND $1,500 to $2,500 fine.	Thirty (30) to sixty (60) day suspension; AND $2,500 to $5,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND $5,000 fine; AND If same horse as first and second offenses, horse shall be placed on the stewards' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(4)(a)The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Overage of permitted NSAIDs as follows:

a. Phenylbutazone in a concentration greater than two (2) micrograms per milliliter[~~2 mcg/ml~~] through five (5) micrograms per milliliter[~~5 mcg/ml~~];

b. Flunixin in a concentration greater than twenty (20) nanograms per milliliter through 100 nanograms per milliliter[~~ng/ml~~]; and

c. Ketoprofen in a concentration greater than two (2) nanograms per milliliter[~~10 ng/ml~~] through fifty (50) nanograms per milliliter[~~50 ng/ml~~];

2. Overage of furosemide in a concentration greater than 100 nanograms per milliliter[~~ng/ml~~];[~~and~~]

3. Furosemide not identified when notice made that the horse would run on furosemide; and

4. Cobalt in a concentration greater than twenty-five (25) parts per billion through fifty (50) parts per billion.

(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Written warning to a $500 fine.	Written warning to a $750 fine.	$500 to $1,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination	Horse may be required to pass a commission-approved examination before	If same horse as first and second offenses, disqualification and loss of purse;

before being eligible to enter as determined by the stewards; AND For a cobalt violation, the horse shall be placed on the stewards' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.	being eligible to enter as determined by the stewards.	AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenylbutazone, flunixin, and ketoprofen.

(a) TRAINER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Zero to sixty (60) day suspension; AND $500 to $1,000 fine.	Zero to fifteen (15) day suspension; AND $250 to $750 fine.	Zero to five (5) day suspension; AND $250 to $500 fine.
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	Fifteen (15) to thirty (30) day suspension; AND $750 to $1,500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension; AND $2,500 to $5,000 fine.	Thirty (30) to sixty (60) day suspension; AND $1,500 to $3,000 fine.	Ten (10) to fifteen (15) day suspension; AND $1,000 to $2,500 fine.

(b) OWNER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.
Second offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.

(6) Class D drugs[~~Drug~~].

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) TRAINER

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension; AND $250 to $500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.

Section 5. TCO2 Penalties. Penalties for violations of 810 KAR 1:018, Section 20(6), (7), or (8) shall be as follows:

(1) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Zero to ninety (90) day suspension; AND $1,000 to $1,500 fine.	Ninety (90) to 180 day suspension; AND $1,500 to $3,000 fine.	180 to 365 day suspension; AND $3,000 to $5,000 fine.	One (1) year suspension to lifetime ban.

(2)[~~(b)~~] OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND	Disqualification and loss of purse; AND	Disqualification and loss of purse; AND

	If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	If same horse as first, second, and third offenses, horse shall be placed on the stewards' list from 180 to 365 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. Penalties for violations of 810 KAR 1:018, Section 20(5), (9), or (10), shall be as follows:

(1) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $1,000 to $5,000 fine.	Sixty (60) to 180 day suspension; AND $5,000 to $10,000 fine.	180 to 365 day suspension; AND $10,000 to $20,000 fine.

(2) OWNER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 7. Out-of-Competition Testing. The penalties established in 810 KAR 1:110, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9. Other Disciplinary Measures. (1) A person who violates 810 KAR 1:018, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(2) A person who violates 810 KAR 1:018, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

Section 10. Disciplinary Measures by Stewards. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or 810 KAR Chapter 1, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the

honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 11. Disciplinary measures by the commission. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or 810 KAR Chapter 1, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission in keeping with the seriousness of the violation;

(3) Eject or exclude persons from association grounds for a length of time the commission deems necessary; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Request for Post-Race Testing of Claimed Horse", August 2014; and

(b) "Claim Blank envelope", 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: September 14, 2015

FILED WITH LRC: September 14, 2015 at 4 p.m.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email Susan.speckert@ky.gov.

PUBLIC PROTECTION CABINET
Horse Racing Commission
(As Amended at ARRS, November 10, 2015)

811 KAR 1:090. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290,[~~230.310,~~] 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.225, 230.240, 230.260, ***230.320,*** 230.370[~~230.320~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize the Kentucky Horse Racing Commission[~~commission~~] to promulgate administrative regulations prescribing[~~the~~] conditions under which all legitimate horse racing and wagering thereon is[~~shall be~~] conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to[~~the horse~~] participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities[~~responsibility~~] relating to the health and fitness of horses.

Section 1. Definitions. (1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses[~~a horse~~] taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).

(5) "Permitted NSAIDs" means the following permitted non-steroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 811 KAR 1:093, or 811 KAR 1:240, was present in the sample.

(a) For the drugs, medications or substances listed in[~~Section 2(3), 6, or 8 of~~] this administrative regulation or 811 KAR 1:093 for which an established concentration level is provided, it shall be necessary to have[~~,~~] a[~~positive~~] finding[~~means a finding~~] in excess of the established concentration level as provided for the finding to be considered a positive finding[~~prescribed in those sections~~].

(b) Positive finding[~~findings~~] also includes[~~include~~]:

1. Substances present in the horse in excess of concentrations at which the substances could[~~might~~] occur naturally; ***except for[provided, however, that]*** gamma amino butyric acid and cobalt***, which have[shall not be present in]*** concentrations***[greater than as]*** provided in Section 2(4) of this administrative regulation; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(8) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(9) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen taken from horses[~~a horse~~] under the supervision of the commission veterinarian.

(10) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining specimens for pre-race and post-race testing.

(11) "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided[~~specifically permitted~~] in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race (betting or nonbetting), qualifying race, time trial, or official workout, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications shall not be present in excess of established threshold concentrations set forth in this administrative regulation or in 811 KAR 1:093.[~~The threshold for furosemide is set forth in Section 6 of this administrative regulation.~~] The thresholds for permitted NSAIDS are set forth in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a) and (b) of this subsection, a substance shall not be present in a horse in excess of a concentration at which the substance could occur naturally. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms/milliliter in serum or plasma***[; and]***

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or nonbetting), qualifying race, time trial, or official workout, a drug, medication, substance, or metabolic derivative thereof[,] prohibited by this section[,] if:

(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or nonbetting), qualifying race, time trial, or official workout; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule[,] as provided in 811 KAR 1:093, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 811 KAR 1:095.

Section 3. Treatment Restrictions. (1) Except as set forth in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance[injectables] allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as set forth in Section 6 of this administrative regulation.

(3) Except as set forth in subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission[,] has a medical condition that makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The judges may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person other, than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Anti-Ulcer Medications. The following anti-ulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 milligrams per kilogram[mg/kg];

(2) Omeprazole (Gastrogard®): two and two-tenths (2.2) grams;

(3) Ranitidine (Zantac®): eight (8) milligrams per kilogram[mg/kg]; and

(4) Sucralfate[Sulcrafate]: 2-4 grams.

Section 6. Furosemide Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race (betting or nonbetting), qualifying race, time trial, or official workout.

(2)(a) The commission veterinarian shall administer furosemide prior to a race (betting or nonbetting), time trial, or official workout.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, the commission shall approve a licensed veterinarian to perform the administration. The approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day.

(c) If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Furosemide may be used under the***[following]*** circumstances ***established in this subsection.[:]***[established in this section.]

(a) Furosemide shall be administered on the grounds of the racing association at which the horse will compete or work.

(b) Except for qualifying races, furosemide shall be administered by a single intravenous injection, not less than four (4) hours prior to post time for the race, time trial, or official workout in which the horse is entered.

(c) The furosemide dosage administered shall not exceed 500 milligrams[mg], nor be less than 150 milligrams[mg].

(d) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in[blood] serum or plasma shall be performed. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the[blood] serum or plasma specimen. Concentrations above 100 nanograms of furosemide per milliliter of[blood] serum or plasma shall constitute a violation of this section.

(4) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to qualify with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide. Notice that a horse eligible to receive furosemide will race with or without furosemide shall be made at the time of entry to ensure public notice, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine,[blood] serum, or plasma does not show a detectable concentration of furosemide in the post-race urine,[blood] serum, or plasma.

(c) Horses eligible for furosemide and entered to start may be

monitored by a commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-Inflammatory Drugs (NSAIDs). (1) One (1) of the following NSAIDs may be used by a single intravenous injection not less than twenty-four (24) hours prior to post time for the race in which the horse is entered if the concentration in the horse's specimen does not exceed the following levels when tested post-race:

(a) Phenylbutazone - not to exceed two (2) micrograms per milliliter of serum or plasma;

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of serum or plasma; and

(c) Ketoprofen - not to exceed two (2) nanograms per milliliter of serum or plasma.

(2) NSAIDS, including the permitted NSAIDs, shall not be administered within twenty-four (24) hours prior to post time for the race in which the horse is entered. However, as provided in 811 KAR 1:093, the recommended withdrawal guideline for flunixin is thirty-two (32) hours prior to post time for the race in which the horse is entered.

(3)(a) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of three tenths (0.3) microgram per milliliter of serum or plasma shall not constitute a violation of this section.

(c) A finding of flunixin below a concentration of three (3) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

(d) A finding of ketoprofen below a concentration of one (1) nanogram per milliliter of serum or plasma shall not constitute a violation of this section.

(4) A horse that has been administered an NSAID shall be subject to collection of a biologic specimen under the supervision of the commission veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse[~~NSAIDs listed in this section may be used not less than twenty-four (24) hours prior to post time for the race for which the horse is entered if the concentration in the horse's specimen does not exceed the levels set forth in this section when tested post-race.~~

~~(2) Phenylbutazone.~~

~~(a) A single intravenous administration of phenylbutazone may be administered not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.~~

~~(b) The phenylbutazone dosage administered shall not exceed two (2) mg/lb intravenous.~~

~~(c) A post-race biologic specimen of phenylbutazone reported to exceed a level of two (2) micrograms per milliliter of blood serum or plasma shall be considered a violation of this section.~~

~~(3) Flunixin.~~

~~(a) A single intravenous administration of flunixin may be administered not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.~~

~~(b) The flunixin dosage administered shall not exceed.5 mg/lb.~~

~~(c) A post-race biologic specimen of flunixin reported to exceed a level of twenty (20) nanograms per milliliter of blood serum or plasma shall be considered a violation of this section.~~

~~(4) Ketoprofen.~~

~~(a) A single intravenous administration of ketoprofen may be administered not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.~~

~~(b) The ketoprofen dosage administered shall not exceed 1 mg/lb.~~

~~(c) A post-race sample of ketoprofen reported to exceed a level of ten (10) nanograms per milliliter of blood serum or plasma shall be considered a violation of this section.~~

~~(5) Phenylbutazone, flunixin or ketoprofen, injected intravenously, shall be administered by a licensed veterinarian approved by the commission.~~

~~(6)(a) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs, shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.~~

~~(b) A finding of phenylbutazone below a concentration of one-half (.5) microgram per milliliter of blood serum or plasma shall not constitute a violation of this section.~~

~~(c) A finding of flunixin below a concentration of three (3) nanograms per milliliter of blood serum or plasma shall not constitute a violation of this section.~~

~~(7) A horse that has been administered phenylbutazone, flunixin, or ketoprofen shall be subject to having a biologic specimen collected under the supervision of the commission veterinarian to determine the quantitative phenylbutazone, flunixin, or ketoprofen level present in the horse or the presence of other drugs in the horse~~].

Section 9. Anabolic Steroids. (1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race or a pre-race sample after the horse has been entered shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone[~~(free and conjugated)~~]:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter[~~-15 ng/ml~~] in urine or free boldenone 200 picograms per milliliter[~~pg/ml~~] in[~~blood~~] serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine[~~shall not be permitted~~].

(b) Nandrolone[~~(free and conjugated)~~]:

1. In geldings, free and conjugated one (1) nanogram per milliliter[[~~- 1 ng/ml~~] in urine or free nandrolone fifty (50) picograms per milliliter[~~50 pg/ml~~] in[~~blood~~] serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter[~~-1 ng/ml~~] in urine or free nandrolone fifty (50) picograms per milliliter[~~50 pg/ml~~] in[~~blood~~] serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter[~~- 45 ng/ml~~] of metabolite, 5α-estrane-3β, 17α-diol in urine or a ratio in urine of 5α-estrane-3β, 17α-diol to 5α-estrene-3β, 17α-diol of >1:1.

(c) Testosterone[~~(free and conjugated)~~]:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter[~~- 20 ng/ml~~] in urine or free testosterone twenty-five (25) picograms per milliliter[~~25 pg/ml~~] in[~~blood~~] serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter[~~- 55 ng/ml~~] in urine or free testosterone twenty-five (25) picograms per milliliter[~~25 pg/ml~~] in[~~blood~~] serum or plasma.

(3) In accordance with this subsection, a horse may receive one (1) therapeutic AAS.

(a) The therapeutic AAS shall be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. An owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration.

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant specimen is taken from the horse;

3. The sample is tested for AAS by the commission[~~a~~] laboratory[~~from the approved list established by the commission~~] at the expense of the owner of the horse; and

4. The commission has received a report from the commission laboratory of a negative finding regarding the sample.

(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample.

(d) The horse shall not be entered to race until at least sixty (60) days after the administration of the therapeutic AAS to the horse.

(e) Procedures for administration of therapeutic AAS.

1. A therapeutic AAS shall be administered by a licensed veterinarian.

2. Other treatment methods shall be investigated prior to considering the use of therapeutic AAS.

3. Medical records for the horse shall document:

a. Consideration of alternative treatment methods; and

b. The necessity for administering the therapeutic AAS.

4. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the therapeutic AAS is administered; and

d. The diagnosis and justification for administration of the therapeutic AAS to the horse.

5. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

6. The Therapeutic AAS Administration Form shall be delivered electronically to the commission equine medical director within seventy-two (72) hours after administration. If the Therapeutic AAS Administrative Form cannot be delivered electronically, the veterinarian shall file the form with the equine medical director in person or through the mail. The submitting veterinarian shall confirm receipt by the equine medical director.

(4) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous AAS or for an amount of an endogenous AAS in excess of a concentration referred to in subsection (2) of this section shall be subject to the penalties referred to in 811 KAR 1:095.

(5)(a) The detection of a therapeutic AAS or metabolic derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.

(b) Each separate therapeutic AAS detected in excess of a threshold level shall constitute a separate violation.

(6) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(7)(a) A claimed horse may be tested for the presence of an AAS if the claimant requests the test when the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the presiding judge.

(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, expenses incurred after the date of the claim, and the costs of testing.

(c)[~~If the test is negative, the claimant shall reimburse the entity paying for the testing or the prior owner for the cost of the testing.~~]

~~(d)~~] While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(8) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

(9) Only a licensed veterinarian may possess or administer a therapeutic AAS.

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens for pre-race and post-race testing.

(3) The test barn shall be under the supervision and control of the commission veterinarian.

Section 11. Sample Collection, Testing and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 811 KAR 1:260, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission[~~of,~~] and in the presence of[~~,~~] the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The judges shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the judges determine that a continuance is necessary to effectively resolve the issue.

Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the***[~~following~~]*** procedures ***established in this subsection.[~~:~~]***:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as addressed in Section 11 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission***.[~~;~~]***

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection***.[~~;~~]***

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples***.[~~;~~]***

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples

deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened.***[;]***

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log.***[; and]***

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select[~~from~~] a laboratory solicited and[~~list of laboratories~~] approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, and shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

[~~(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.~~]

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof[~~,~~] and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy for the owner, trainer, or designee, if requested.

Section 14. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses[~~a horse~~] that are[~~is~~] on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses[~~a horse~~] in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse[~~,~~] in his or her care[~~,~~] at a location under the jurisdiction of the commission to the judges and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses[~~a horse~~] in his or her care;

(j) Promptly notifying the judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring proper bandages, equipment, and shoes;

(m) Ensuring the horse's presence in the paddock at least one (1) hour prior to post time, or at a time otherwise prescribed, by racing officials before the race in which the horse is entered;

(n) Personally attending in the paddock and supervising the

preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges; and

(o) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the judges.

(2) A veterinarian shall report to the judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his[~~or her~~] designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 1:095.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 18. Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list if, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission[~~veterinarian~~] shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian[~~or a licensed veterinarian approved by the commission~~].

(4) Every[~~A~~] horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or nonbetting), qualifying race, time trial, or official workout for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365-day period - thirty (30) days;

(c) Third incident within a 365-day period - 180 days; and

(d) Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) Purse money shall be distributed no later than twenty-four (24) hours after notice from the commission that a final laboratory report has been issued.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding, the executive director of the commission or the judges may[~~shall immediately~~] authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the executive director and chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the judges shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices. (1) A drug, medication, or substance shall not be possessed or[~~of~~] used by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the driver.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping[~~blood doping~~] agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoetin;

(c) Oxyglobin®;

(d) Hemopure®; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a driver.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the***[following]*** conditions ***established in this subsection*** are met***.[:]***

(a) A treated horse shall not race for a minimum of ten (10) days following treatment***.[;]***

(b) A veterinarian licensed to practice by the commission shall administer the treatment***.[;]***

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds***.[; and]***

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the[~~Kentucky Horse Racing Commission~~] Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy form within twenty-four (24) hours of treatment.

(6) Other than furosemide, an alkalizing substance that could alter the[~~blood~~] serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A[~~blood~~] serum or plasma total carbon dioxide (TCO2) level shall not exceed thirty-seven (37.0)[~~37.0~~] millimoles per liter in a horse to which furosemide has not been administered, or thirty-nine (39.0)[~~39.0~~] millimoles per liter in a horse to which furosemide has been administered; except, ***a[no]*** violation shall ***not*** exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO2 Testing and Procedures. (1)(a) The presiding judge or commission veterinarian may order the pre-race or post-race collection of blood specimens from[~~, and pre-race or post-race testing of,~~] a horse to determine the total carbon dioxide concentration in the[~~blood~~] serum or plasma of the horse. The winning horse and other horses, as selected[~~directed~~] by the presiding judge, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race and post-race testing shall be done at a reasonable time, place, and manner as directed by the presiding judge in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the[~~blood~~] serum or plasma of the horse. If the commission laboratory determines that the TCO2 exceeds thirty-seven (37.0)[~~37.0~~] millimoles per liter in a horse to which furosemide has not been administered, or thirty-nine (39.0)[~~39.0~~] millimoles per liter in a horse to which furosemide has been administered, the executive director of the commission shall be informed of the positive finding.

(d) If the specimen is taken prior to the race and the TCO2 exceeds thirty-seven (37.0)[~~37.0~~] millimoles per liter in a horse to which furosemide has not been administered, or thirty-nine (39.0)[~~39.0~~] millimoles per liter in a horse to which furosemide has been administered, the judges shall scratch the horse from the race.

(e) Split sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO2 testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(f) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO2 is determined to exceed thirty-seven (37.0)[~~37.0~~] millimoles per liter in a horse to which furosemide has not been administered, or thirty-nine (39.0)[~~39.0~~] millimoles per liter in a horse to which furosemide has been administered, and the licensed owner or trainer of the horse certifies in writing to the judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the judges but not for more than 120 hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested[~~re-tested~~] periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, water, and, subject to the specific approval of the commission veterinarian, the horse's usual feed ration and supplements. In addition, subject to approval of the commission veterinarian, the horse shall be administered furosemide by the commission veterinarian in the same manner and at the same dosage as was provided to horses eligible for furosemide on the day which the horse in quarantine raced.

(f) If the commission veterinarian is satisfied that the horse's level of TCO2, as registered in the original test, is physiologically normal for that horse, the judges:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO2 level is physiologically normal.

Section 22. Postmortem Examination. (1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 1:012, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may[~~that died during a pari-mutuel race shall~~] constitute a violation of this administrative regulation.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KRC-2, 8/97;

(b) "Split Sample Chain of Custody Form", KHRC 18-01, 4/12;

(c) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 18-02, 8/15[~~4/12~~]; and

(d) "Therapeutic AAS Administration Form", KHRC 18-03, 4/12.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at http://khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: September 14, 2015
FILED WITH LRC: September 14, 2015 at 4 p.m.
CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

PUBLIC PROTECTION CABINET
Horse Racing Commission
(As Amended at ARRS, November 10, 2015)

811 KAR 1:095. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.225, 230.260, 230.265, 230.290, 230.300, 230.310, 230.320, 230.361
STATUTORY AUTHORITY: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.320
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the judges and the commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse, or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 811 KAR Chapter 1 or KRS Chapter 230.

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 811 KAR 1:090, Section 8***(1)(a), (b), and(c)***~~[(2)(c), (3)(c), and (4)(c)]~~, respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 811 KAR 1:093.

(11) "Secondary threshold" means the thresholds for phenylbutazone***,*** ~~*[and]*~~ flunixin***, and ketoprofen*** provided in 811 KAR 1:090, Section 8***(3)(b), (c), and (d), respectively***~~[(6)(b) and (c)]~~.

(12) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines ***Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian***~~[Standardbreds]~~ as provided in 811 KAR 1:093.

Section 2. General Provisions. (1) An alleged violation of 811 KAR 1:090 shall be adjudicated in accordance with this administrative regulation, and with 811 KAR 1:100, 811 KAR 1:105, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Consortium or their respective successors.

(3) The judges and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the withdrawal guidelines shall be considered by the judges and the commission as a mitigating factor to be used in determining violations and penalties.

(4) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5) A suspension or revocation shall be calculated in calendar days, unless otherwise specified by the judges or the commission in a ruling or order.

(6) Written or printed notice of the assessment of a penalty, including a written warning, shall be made to the person penalized. The notice shall be posted immediately at the office of the association and sent to the commission, the United States Trotting Association, and the Association of Racing Commissioners International, or their successors, to be posted on their respective official Web sites. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 811 KAR 1:090 may be required to pass a commission-approved examination as determined by the judges pursuant to 811 KAR 1:020, Section 5, or be placed on the veterinarian's list pursuant to 811 KAR 1:090, Section 18.

(8) A person who claims a horse may void the claim if the post-race test indicates a Class A, B, or C drug violation, or a TCO2 level exceeding thirty-seven (37.0) millimoles per liter and receive reimbursement for reasonable costs associated with the claim as provided in 811 KAR 1:035, Section 3(14)(a)(3).

(9) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a prior Class A violation or for a prior Class B third offense violation under this administrative regulation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association and the cost shall be borne by the trainer.

(10) In addition to the penalties contained in Section ***4***~~[5]~~ of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 811 KAR 1:090 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(11) A veterinarian who administers, is a party to, facilitates, or is found responsible for any violation of KRS Chapter 230 or 811 KAR Chapter 1 shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing board of veterinary medicine by the judges.

(12) In accordance with KRS 230.320(6), an administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or

successive overages involving a Class C or Class D drug, medication, or substance, the judges or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the judges or the commission.

(14) If a penalty for a medication violation requires a horse to be placed on the judges' list for a period of time, the judges may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive result.

(15) Any person who has been fined under this administrative regulation shall be suspended until the fine has been paid in full.

(16) A fine shall not be paid directly or indirectly by a person other than the person upon whom it is imposed and any payment made shall not serve to abate or satisfy any penalty imposed.

(17) If the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in a race.

(18) A horse shall not have the right to compete while owned or controlled wholly or in part by a person whose license has been suspended or revoked. An entry made by or for a licensee whose license has been suspended or revoked or for a horse which has been suspended shall be held liable for the entrance fee without the right to compete unless the penalty is removed.

(19) An association shall not willfully allow a person whose license has been suspended or revoked to drive in a race, or a suspended or disqualified horse to start in a race or a performance against time.

(20) An association shall not willfully allow the use of its track or grounds by a licensee whose license has been suspended or revoked, or a horse that has been suspended.

(21) If a person is excluded from a pari-mutuel association by the association, the commission shall be notified.

(22) A person subject to current suspension, revocation, or expulsion shall not act as an officer of an association. An association shall not, after receiving notice of the penalty, employ or retain in its employ an expelled, suspended, disqualified, or excluded person at or on the track during the progress of a race meeting.

(23) A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;

(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or

(c) During a race meet at another operating track in this state where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

(24) A penalty imposed by the United States Trotting Association or the racing commission, or other governing body, of any racing jurisdiction shall be recognized and enforced by the commission unless application is made for a hearing before the commission, during which the applicant shall show cause as to why the penalty should not be enforced against him in Kentucky.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the judges and by the commission in assessing penalties. The judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.

Section 4.[~~Penalties for Violations Not Related To Drugs or Medications. (1) A licensee who commits a violation classified as a Category 1 violation shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) A suspension or revocation of licensing privileges from zero days to thirty (30) days; and~~

~~(b) Payment of a fine not to exceed $5,000.~~

~~(2) A licensee who commits a violation classified as a Category 2 violation shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days; and~~

~~(b) Payment of a fine not to exceed $10,000.~~

~~(3) A licensee who commits a violation classified as a Category 3 violation shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:~~

~~(a) A suspension or revocation of licensing privileges from sixty (60) days to permanent suspension or revocation; and~~

~~(b) Payment of a fine up to $50,000.~~

~~(4) A violation of 811 KAR Chapter 1 not otherwise specifically addressed shall be a Category 1 violation and shall be subject to the penalties set forth in subsection (1) of this section.~~

~~Section 5.~~] Penalties for***[~~Violations Relating to~~]*** Class A, B, C, ***and[~~or~~]*** D ***Drug Violations and NSAID and Furosemide Violations[~~Drugs~~]***. (1) Class A drugs[~~drug~~].

(a) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three (3) year suspension; AND $10,000 to $25,000 fine.	Three (3) to five (5) year suspension; AND $25,000 to $50,000 fine.	Five (5) year suspension to a lifetime ban; AND $50,000 to $100,000 fine.

(b) OWNER

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse shall be placed on the judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND Horse shall be placed on the judges' list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND Ninety (90) day suspension; AND $50,000 fine; AND Horse shall be placed on the judges' list for 180 days and may be required to pass a commission-approved examination before being eligible to

		enter as determined by the judges.

(2)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Class B drugs;

2. Gamma animo butyric acid in a concentration greater than 110 nanograms per milliliter; and

3. Cobalt in a concentration greater than fifty (50) parts per billion[~~drug~~].

(b)[~~(a)~~] TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $500 to $1,000 fine.	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	180 to 365 day suspension; AND $2,500 to $5,000 fine.

(c)[~~(b)~~] OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner	Third offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; [~~AND~~] Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges; AND For a cobalt violation, the horse shall be placed on the judges' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.	Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND Horse shall be placed on the judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

1. Phenylbutazone in a concentration greater than five (5.0) micrograms per milliliter[~~5.0 mcg/ml~~];

2. Flunixin in a concentration greater than 100 nanograms per milliliter[~~ng/ml~~]; and

3. Ketoprofen in a concentration greater than fifty (50) nanograms per milliliter[~~50 ng/ml~~].

(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension; AND $500 to $1,500 fine.	Ten (10) to thirty (30) day suspension; AND $1,500 to $2,500 fine.	Thirty (30) to sixty (60) day suspension; AND $2,500 to $5,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND $5,000 fine; AND If same horse as first and second offenses, horse shall be placed on the judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.

(4)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Overage of permitted NSAIDs as follows:

a. Phenylbutazone in a concentration greater than two (2) micrograms per milliter[~~2 mcg/ml~~] through five (5) micrograms per milliliter[~~5 mcg/ml~~];

b. Flunixin in a concentration greater than twenty (20) nanograms per milliliter[~~20 ng/ml~~] through 100 nanograms per milliliter[~~ng/ml~~]; and

c. Ketoprofen in a concentration greater than two (2) nanograms per milliliter[~~10 ng/ml~~] through fifty (50) nanograms per milliliter***;***[~~50 ng/ml~~]***[.]***

2. Overage of furosemide in a concentration greater than 100 nanograms per milliliter;

3. Furosemide not identified when notice made that the horse would run on furosemide; and

4. Cobalt in a concentration greater than twenty-five (25) parts per billion through fifty (50) parts per billion.

(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction

Written warning to a $500 fine.	Written warning to a $750 fine.	$500 to $1,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges; AND For a cobalt violation, the horse shall be placed on the judges' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.

(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenylbutazone, flunixin, and ketoprofen.

(a) TRAINER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Zero to sixty (60) day suspension; AND $500 to $1,000 fine.	Zero to fifteen (15) day suspension; AND $250 to $750 fine.	Zero to five (5) day suspension; AND $250 to $500 fine.
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	Fifteen (15) to thirty (30) day suspension; AND $750 to $1,500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension; AND $2,500 to $5,000 fine.	Thirty (30) to sixty (60) day suspension; AND $1,500 to $3,000 fine.	Ten (10) to fifteen (15) day suspension; AND $1,000 to $2,500 fine.

(b) OWNER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.
Second offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.

(6) Class D drugs[~~drug~~].

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) TRAINER

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension; AND $250 to $500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.

Section 5.[~~6.~~] TCO2 penalties. In any instance of a positive pre-race TCO2 result, the horse shall be scratched. In addition, penalties for violations of 811 KAR 1:090, Section 20(6), (7), or (8) shall be as follows:

(1) TRAINER

First offense involving a pre-race test result	First offense involving a post-race test result	Second offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result	Third offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result	Subsequent offenses within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result
Zero to five (5) day suspension;	Zero to ninety (90) day suspension;	Ninety (90) to 180 day suspension;	180 to 365 day suspension;	One (1) year suspension to lifetime

AND $250 to $500 fine.	AND $1,000 to $1,500 fine.	AND $1,500 to $3,000 fine.	AND $3,000 to $5,000 fine.	ban.

(2) OWNER

First offense involving a pre-race test result	First offense involving a post-race test result	Second offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result	Third offense within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result	Subsequent offenses within a 365-day period in any racing jurisdiction involving a pre-race or a post-race test result
No Penalty.	No Penalty.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be ineligible from fifteen (15) to sixty (60) days.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be ineligible from sixty (60) to 180 days.	Disqualification and loss of purse; AND If same horse as first, second, and third offenses, horse shall be ineligible from 180 to 365 days.

Section 6.[~~7.~~] Shock Wave Machine and Blood Gas Machine Penalties. Penalties for violations of 811 KAR 1:090, Section 20(5), (9), or (10) shall be as follows:

(1) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $1,000 to $5,000 fine.	Sixty (60) to 180 day suspension; AND $5,000 to $10,000 fine.	180 to 365 day suspension; AND $10,000 to $20,000 fine.

(2) OWNER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the judges' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the judges.

Section 7.[~~8.~~] Out-of-Competition Testing. The penalties established in 811 KAR 1:240, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.

Section 8.[~~9.~~] Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinary work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training or veterinary services provided to a horse formerly under the care, training or veterinary services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9.[~~10.~~] Other Disciplinary Measures. (1) A person who violates 811 KAR 1:090, Section 6, regarding furosemide on race day shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 811 KAR 1:090, Section ***8(3)[8(6)]***, for administering a non-steroidal anti-inflammatory drug other than phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(3) A person who violates 811 KAR 1:090, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(4) A person who violates 811 KAR 1:090, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

(5) An association in violation of Section 2(20), (21), (22), or

(23) of this administrative regulation shall, together with its officers, be subject to a suspension or revocation of licensing privileges for up to thirty (30) days and payment of a fine up to $5,000 in keeping with the seriousness of the violation and the facts of the case.

Section 10.[~~11.~~] Disciplinary Measures by Judges. Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the judges may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded or ejected from association grounds or from a portion of association grounds; and

(4) Payment of a fine in an amount not to exceed $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 11.[~~12.~~] Disciplinary Measures by the Commission. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or a licensed person in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation;

(c) Cause a person found to have interfered with or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of horse racing, to be excluded or ejected from association grounds or a portion of association grounds; ***or[~~and~~]***

(d) Payment of a fine of up to $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

(2) Upon appeal of a matter determined by the judges the commission may:

(a) Order a hearing de novo of a matter determined by the judges; and

(b) Reverse or revise the judges' ruling in whole or in part, except as to findings of fact by the judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the judges for a foul in a race.

ROBERT M. BECK, Jr., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: September 14, 2015

FILED WITH LRC: September 14, 2015 at 4 p.m.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

PUBLIC PROTECTION CABINET
Horse Racing Commission
(As Amended at ARRS, November 10, 2015)

811 KAR 2:096. Medication; testing procedures; prohibited practices.

RELATES TO: KRS[~~230.210,~~] 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.225, 230.240, 230.260, ***230.320,*** 230.370[~~230.320~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize[~~authorizes~~] the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to[~~the horse~~] participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).

(5) "Permitted NSAIDs" means the following permitted non-steroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 811 KAR 2:093, or 811 KAR 2:150, was present in the sample.

(a) For the drugs, medications, or substances listed in[~~Sections 2(3), 6, or 8 of~~] this administrative regulation or 811 KAR 2:093 for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided[~~in this administrative regulation~~] for the finding to be considered a positive finding.

(b) Positive finding[~~findings~~] also includes[~~include~~]:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; ***except for[~~provided, however that~~]*** gamma amino butyric acid and cobalt***, which have[~~shall not be present in~~]*** concentrations***[~~greater than as~~]*** provided in Section 2(4) of this administrative regulation; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(8) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(9) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

(10) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining specimens for pre-race and post-race testing.

(11) "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications shall not be present in excess of established threshold concentrations set forth in this administrative regulation or in 811 KAR 2:093.[~~The threshold for furosemide is set forth in Section 6 of this administrative regulation.~~] The thresholds for permitted NSAIDs are set forth in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a) and (b) of this subsection, a substance shall not be present in a horse in excess of a concentration at which the substance could occur naturally[if it affects the performance of a horse]. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma.***[~~; and~~]***

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule, as provided in 811 KAR 2:093, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 811 KAR 2:100.

Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance[~~injectables~~] allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as set forth in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to have a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Antiulcer Medications. The following antiulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 milligrams per kilogram[~~mg/kg~~];

(2) Omeprazole (Gastrogard®): two and two-tenths (2.2) grams;

(3) Ranitidine (Zantac®): eight (8) milligrams per kilogram[~~mg/kg~~]; and

(4) Sucralfate[~~Sulcrafate~~]: 2-4 grams.

Section 6. Furosemide Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race.

(2)(a) The commission veterinarian shall administer furosemide prior to a race.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, the commission shall approve a licensed veterinarian to perform the administration. The approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day.

(c) If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Furosemide may be used under the***[~~following~~]*** circumstances ***established in this subsection.[~~:~~]***

(a) Furosemide shall be administered at a location under the jurisdiction of the commission, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b) The furosemide dosage administered shall not exceed 500 milligrams[~~mg~~], nor be less than 150 milligrams[~~mg~~].

(c) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in[~~blood~~] serum or plasma shall be performed. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the[~~blood~~] serum or plasma specimen. Concentrations above 100 nanograms of furosemide per milliliter in[~~of blood~~] serum or plasma shall constitute a violation of this section.

(4) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies.

The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide. Notice that a horse[~~eligible to receive furosemide~~] will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine,[~~blood~~] serum, or plasma does not show a detectable concentration of furosemide in the post-race urine,[~~blood~~] serum, or plasma.

(c) Horses eligible for furosemide and entered to start may be monitored by a commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs). (1) One (1) of the following NSAIDs may be used by a single intravenous injection not less than twenty-four (24) hours prior to post time for the race in which the horse is entered if the concentration in the horse's specimen does not exceed the following levels when tested post-race[~~post race~~]:

(a) Phenylbutazone - not to exceed two (2) micrograms per milliliter of[~~blood~~] serum or plasma;

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of[~~blood~~] serum or plasma; and

(c) Ketoprofen - not to exceed two (2)[~~ten (10)~~] nanograms per milliliter of[~~blood~~] serum or plasma.

(2) NSAIDs, including the permitted NSAIDs, shall not be administered within twenty-four (24) hours prior to post time for the race in which the horse is entered. However, as provided in 811 KAR 2:093, the recommended withdrawal guideline for flunixin is thirty-two (32) hours prior to post time for the race in which the horse is entered.

(3)(a) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of three tenths (0.3)[~~one-half (.5)~~] microgram per milliliter of[~~blood~~] serum or plasma shall not constitute a violation of this section.

(c) A finding of flunixin below a concentration of three (3) nanograms per milliliter of [~~blood~~] serum or plasma shall not constitute a violation of this section.

(d) A finding of ketoprofen below a concentration of one (1) nanogram per milliliter of serum or plasma shall not constitute a violation of this section.

(4) A horse that has been administered an NSAID shall be subject to collection of a biologic specimen under the supervision of the commission veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse.

Section 9. Anabolic Steroids. (1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race or a pre-race sample after the horse has been entered shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone[(~~free and conjugated)~~]:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter[~~- 15 ng/ml~~] in urine or free boldenone 200 picograms per milliliter[~~pg/ml~~] in[~~blood~~] serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine[~~shall not be permitted~~].

(b) Nandrolone[(~~free and conjugated)~~]:

1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter[~~- 1 ng/ml~~] in urine or free nandrolone fifty (50) picograms per milliliter[~~50 pg/ml~~] in[~~blood~~] serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter[~~- 1 ng/ml~~] in urine or free nandrolone fifty (50) picograms per milliliter[~~50 pg/ml~~] in[~~blood~~] serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter[~~- 45 ng/ml~~] of metabolite, 5α-estrane-3β, 17α-diol in urine or a ratio in urine of 5α-estrane-3β, 17α-diol to 5α-estrene-3β, 17α-diol of >1:1.

(c) Testosterone[(~~free and conjugated)~~]:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter[~~- 20 ng/ml~~] in urine or free testosterone twenty-five (25) picograms per milliliter[~~25 pg/ml~~] in[~~blood~~] serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter[~~- 55 ng/ml~~] in urine or free testosterone twenty-five (25) picograms per milliliter[~~25 pg/ml~~] in[~~blood~~] serum or plasma.

(3) In accordance with this subsection, a horse may receive one (1) therapeutic AAS.

(a) The therapeutic AAS shall be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. An owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration.

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant specimen is taken from the horse;

3. The sample is tested for AAS by the commission[~~a~~] laboratory[~~from the approved list established by the commission~~] at the expense of the owner of the horse; and

4. The commission has received a report from the commission laboratory of a negative finding regarding the sample.

(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample.

(d) The horse shall not be entered into a race until at least sixty (60) days after the administration of the therapeutic AAS to the horse.

(e) Procedures for administration of therapeutic AAS.

1. A therapeutic AAS shall be administered by a licensed veterinarian.

2. Other treatment methods shall be investigated prior to considering the use of therapeutic AAS.

3. Medical records for the horse shall document:

a. Consideration of alternative treatment methods; and

b. The necessity for administering the therapeutic AAS.

4. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the therapeutic AAS is administered; and

d. The diagnosis and justification for administration of the therapeutic AAS to the horse.

5. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

6. The Therapeutic AAS Administration Form shall be delivered electronically to the commission equine medical director within seventy-two (72) hours after administration. If the Therapeutic AAS Administration Form cannot be delivered electronically, the veterinarian shall file the form with the equine medical director in person or through the mail. The submitting veterinarian shall confirm receipt by the equine medical director.

(4) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous AAS or for an amount of an endogenous AAS in excess of a concentration referred to in subsection (2) of this section shall be subject to the penalties referred to in 811 KAR 2:100.

(5)(a) The detection of a therapeutic AAS or metabolic derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.

(b) Each separate therapeutic AAS detected in excess of a threshold level shall constitute a separate violation.

(6) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(7)(a) A claimed horse may be tested for the presence of an AAS if the claimant requests the test when the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, expenses incurred after the date of the claim, and the costs of testing.

(c)[~~If the test is negative, the claimant shall reimburse the entity paying for the testing or the prior owner for the cost of the testing.~~

~~(d)~~] While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(8) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

(9) Only a licensed veterinarian may possess or administer a therapeutic AAS.

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens for pre-race and post-race testing.

(3) The test barn shall be under the supervision and control of the commission veterinarian.

Section 11. Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 811 KAR 2:170, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission and in the presence of the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to effectively resolve the issue.

Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the***[~~following~~]*** procedures ***established in this subsection.[~~:~~]***

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as addressed in Section 11 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission***.[~~;~~]***

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection***.[~~;~~]***

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples***.[~~;~~]***

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened***.[~~;~~]***

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log***.[~~; and~~]***

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select[~~from~~] a laboratory solicited and[~~list of laboratories~~] approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

[~~(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.~~]

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 14. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum-allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring that this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation and 810 KAR 1:012, Section 14, governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses in his or her care;

(j) Promptly notifying the stewards and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 1:024, Section 4(1)(d) and (l) and 4(2);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at least twenty (20) minutes prior to post time, or at a time otherwise prescribed, before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the stewards pursuant to 811 KAR 2:045, Section 3(4); and

(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards.

(2) A veterinarian shall report to the stewards or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 2:100.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 18. Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission[~~veterinarian~~] shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365-day period - thirty (30) days;

(c) Third incident within a 365-day period - 180 days; and

(d) Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) For all races, purse money shall be paid pursuant to the process provided in 811 KAR 2:035, Section 29(2).

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding, the executive director of the commission or the stewards may[~~shall immediately~~] authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the executive director and chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices. (1) A drug, medication, or substance shall not be possessed or used by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin®;

(d) Hemopure®; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a rider.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the***[following]*** conditions ***established in this subsection*** are met***.[:]***

(a) A treated horse shall not race for a minimum of ten (10) days following treatment***.[;]***

(b) A veterinarian licensed to practice by the commission shall administer the treatment***.[;]***

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds***.[; and]***

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the[~~Kentucky Horse Racing Commission~~] Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy form within twenty-four (24) hours of treatment.

(6) Other than furosemide, an alkalizing substance that could alter the[~~blood~~] serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance

within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A[~~blood~~] serum or plasma total carbon dioxide (TCO_2) level shall not exceed thirty-seven (37.0)[~~37.0~~] millimoles per liter in a horse; except ***a[~~no~~]*** violation shall ***not*** exist if the TCO_2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.[~~; and~~]

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO_2 Testing and Procedures. (1)(a) The stewards or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the[~~blood~~] serum or plasma of the horse. The winning horse and other horses, as selected by the stewards, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race testing shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO_2 concentration in the[~~blood~~] serum or plasma of the horse. If the commission laboratory determines that the TCO_2 level exceeds thirty-seven (37.0)[~~(37)~~] millimoles per liter, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO_2 may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO_2 testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO_2 is determined to exceed thirty-seven (37.0)[~~(37)~~] millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse's level of TCO_2, as registered in the original test, is physiologically normal for that horse, the stewards:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO_2 level is physiologically normal.

Section 22. Postmortem Examination. (1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 1:012, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KRC-2, 8/97;

(b) "Split Sample Chain of Custody Form", KHRC 18-01, 4/12;

(c) "[~~Kentucky Horse Racing Commission~~]Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy ***or Radial Pulse Wave Therapy***", KHRC 18-02, 8/15[~~4/12~~]; and

(d) "Therapeutic AAS Administration Form", KHRC 18-03, 4/12.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works[~~Ironworks~~] Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at http://khrc.ky.gov.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: September 14, 2015

FILED WITH LRC: September 14, 2015 at 4 p.m.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

PUBLIC PROTECTION CABINET
Horse Racing Commission
(As Amended at ARRS, November 10, 2015)

811 KAR 2:100. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.225, 230.260, 230.265, 230.290, 230.300, 230.310, 230.320, 230.361

STATUTORY AUTHORITY: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(8) authorizes the commission to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards and the commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule. (3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or

more days pursuant to 811 KAR Chapter 2 or KRS Chapter 230.

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 811 KAR 2:096, Section 8(1)(a), (b), and (c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 811 KAR 2:093.

(11) "Secondary threshold" means the thresholds for phenylbutazone and flunixin provided in 811 KAR 2:096, Section 8(3)(b) and (c), respectively.

(12) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred***; Standardbred;[~~,~~]*** Quarter Horse, Appaloosa, and ***Arabian[~~Arabians~~]*** as provided in 811 KAR 2:093.

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to quarter horse, appaloosa, and arabian racing or 811 KAR Chapter 2 shall be adjudicated in accordance with 811 KAR 2:105, KRS Chapter 230, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors.

(3) The stewards and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction, shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5) A suspension or revocation shall be calculated in Kentucky racing days, unless otherwise specified by the stewards or the commission in a ruling or order.

(6) A person assessed any penalty, including a written warning, pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission and the Association of Racing Commissioners International, or its successor. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 811 KAR 2:096 may be required to pass a commission-approved examination as determined by the stewards pursuant to 811 KAR 2:065, Section 10, or be placed on the veterinarian's list pursuant to 811 KAR 2:096, Section 18.

(8)(a) A claimed horse may be tested for the presence of prohibited substances if the claimant completes the Request for Post-Race Testing of Claimed Horse form and includes the form in the claim blank envelope, which is deposited in the association's claim box. The request shall not be valid if the form is not filled out completely and included in the claim envelope. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) A person who claims a horse may void the claim if the post-race or TCO2 test indicates a Class A, B, or C drug violation, or a total carbon dioxide (TC02) level exceeding thirty-seven (37.0)[~~37.0~~] millimoles per liter. If the claim is voided, the person claiming the horse shall then be entitled to reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race or TCO2 testing, including the costs of transportation, board, training, veterinary or other medical services, testing, and any other customary or associated costs or fees.

(c) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(9) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(10) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 811 KAR 2:096 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(11) A veterinarian who administers, is a party to, facilitates, or is found to be responsible for any violation of KRS Chapter 230 or 811 KAR Chapter 2 shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(12) In accordance with KRS 230.320(6), an administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission.

(14) If a penalty for a medication violation requires a horse to be placed on the stewards' list for a period of time, the stewards may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive test result.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards and by the commission in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations. (1) Class A drugs[~~drug~~].

(a) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three (3) year suspension; AND $10,000 to $25,000 fine.	Three (3) to five (5) year suspension; AND $25,000 to $50,000 fine.	Five (5) year suspension to a lifetime ban; AND $50,000 to $100,000 fine.

(b) OWNER

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner

Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Ninety (90) day suspension; AND $50,000 fine; AND Horse shall be placed on the stewards' list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(2)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Class B drugs;

2. Gamma amino butyric acid in a concentration greater than 110 nanograms per milliliter; and

3. Cobalt in a concentration greater than fifty (50) parts per billion[~~drug~~].

(b)[(a)] TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $500 to $1,000 fine.	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	180 to 365 day suspension; AND $2,500 to $5,000 fine.

(c)[~~(b)~~] OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner	Third offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; [~~AND~~] Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards;	Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.
AND For a cobalt violation, the horse shall be placed on the stewards' list until the horse tests below twenty-five parts per billion. The owner shall be responsible for the cost of testing.		

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

1. Phenylbutazone in a concentration greater than five (5.0) micrograms per milliliter[~~5.0 mcg/ml~~];

2. Flunixin in a concentration greater than 100 nanograms per milliliter[~~ng/ml~~]; and

3. Ketoprofen in a concentration greater than fifty (50) nanograms per milliliter[~~50 ng/ml~~].

(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension; AND $500 to $1,500 fine.	Ten (10) to thirty (30) day suspension; AND $1,500 to $2,500 fine.	Thirty (30) to sixty (60) day suspension; AND $2,500 to $5,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND $5,000 fine; AND If same horse as first and second offenses, horse shall be placed on the stewards' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(4)(a)The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Overage of permitted NSAIDs as follows:

a. Phenylbutazone in a concentration greater than two (2) micrograms per milliliter[~~2 mcg/ml~~] through five (5) micrograms per milliliter[~~5 mcg/ml~~];

b. Flunixin in a concentration greater than twenty (20) nanograms per milliliter[~~20 ng/ml~~] through 100 nanograms per milliliter[~~ng/ml~~]; and

c. Ketoprofen in a concentration greater than two (2) nanograms per milliliter[~~10 ng/ml~~] through fifty (50) nanograms per milliliter[~~50 ng/ml~~];

2. Overage of furosemide in a concentration greater than 100 nanograms per milliliter[~~ng/ml~~];[~~and~~]

3. Furosemide not identified when notice made that the horse would run on furosemide; and

4. Cobalt in a concentration greater than twenty-five (25) parts per billion through fifty (50) parts per billion.

(b) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Written warning to a $500 fine.	Written warning to a $750 fine.	$500 to $1,000 fine.

(c) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards; AND For a cobalt violation, the horse shall be placed on the stewards' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. Overage of two (2) permitted NSAIDs phenylbutazone, flunixin, and ketoprofen.

(a) TRAINER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Zero to sixty (60) day suspension; AND $500 to $1,000 fine.	Zero to fifteen (15) day suspension; AND $250 to $750 fine.	Zero to five (5) day suspension; AND $250 to $500 fine.
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension; AND $1,000 to $2,500 fine.	Fifteen (15) to thirty (30) day suspension; AND $750 to $1,500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension; AND $2,500 to $5,000 fine.	Thirty (30) to sixty (60) day suspension; AND $1,500 to $3,000 fine.	Ten (10) to fifteen (15) day suspension; AND $1,000 to $2,500 fine.

(b) OWNER

	Concentrations of both permitted NSAIDs above the primary threshold.	Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.	Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.
First offense	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.
Second offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	Disqualification and loss of purse.	No Penalty.

(6) Class D drugs[~~Drug~~].

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) TRAINER

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension; AND $250 to $500 fine.	Five (5) to ten (10) day suspension; AND $500 to $1,000 fine.

Section 5. TCO2 Penalties. Penalties for violations of 811 KAR 2:096, Section 20(6), (7), or (8) shall be as follows:

(1) TRAINER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Zero to ninety (90) day suspension; AND $1,000 to $1,500 fine.	Ninety (90) to 180 day suspension; AND $1,500 to $3,000 fine.	180 to 365 day suspension; AND $3,000 to $5,000 fine.	One (1) year suspension to lifetime ban.

(2) OWNER

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first, second, and third offenses, horse shall be placed on the stewards' list from 180 to 365 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. Penalties for violations of 811 KAR 2:096, Section 20(5), (9), or (10), shall be as follows:

(1) TRAINER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension; AND $1,000 to $5,000 fine.	Sixty (60) to 180 day suspension; AND $5,000 to $10,000 fine.	180 to 365 day suspension; AND $10,000 to $20,000 fine.

(2) OWNER

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 7. Out-of-Competition Testing. The penalties established in 811 KAR 2:150, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of

the inactive person or the expiration of the suspension of the inactive person's license.

Section 9. Other Disciplinary Measures. (1) A person who violates 811 KAR 2:096, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(2) A person who violates 811 KAR 2:096, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

Section 10. Disciplinary Measures by Stewards. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to quarter horse, appaloosa, and arabian racing or 811 KAR Chapter 2, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 11. Disciplinary measures by the commission. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to quarter horse, appaloosa, and Arabian racing or 811 KAR Chapter 2, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission in keeping with the seriousness of the violation;

(3) Eject or exclude persons from association grounds for a length of time the commission deems necessary; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Request for Post-Race Testing of Claimed Horse", August 2014; and

(b) "Claim Blank envelope", 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: September 14, 2015

FILE WITH LRC: September 14, 2015 at 4 p.m.

CONTACT PERSON: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email susan.speckert@ky.gov.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(As Amended at ARRS, November 10, 2015)

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***(13), (15), (16)***[~~(9), (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***(13)***[~~(9)~~] requires applicants for licensure to complete a required application form and KRS 238.535***(16)***[~~(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; or

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 ***if required*** 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.

Section 5. Incorporation by Reference. (1) Form CG-1, "Charitable Organization 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.

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.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(As Amended at ARRS, November 10, 2015)

820 KAR 1:036. Pulltab rules of play.

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)1. 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.

(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[~~office~~]; 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 carryover or progressive prizes, that is available for view on the electronic pulltab device by players at all ***times[~~time~~]*** 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[~~Office~~] 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[~~office~~] 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 with information directing the method of claiming a prize at its office location. 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[~~shall~~] consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs as required in subsection (15)[(~~14~~)] of this section.

(d) A licensed charitable organization shall not complete play of a deal, game set, or a seal card it did not initiate.

(8) 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 form, for a period of twelve (12) months, to allow auditing by the staff of the department[~~office~~]:

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, or 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~~] pulltab, 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 ***(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 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.

(3)(a) The seal for the deal or game set shall be broken,[~~or~~] 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 stops 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 serial numbers for each deal or game set contributing to a carryover or progressive jackpot prize 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[~~office~~] for instructions on how to proceed.

(9)[~~(10)~~](a) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times either:

1. The jackpot card being played and each seal card contributing to the jackpot prize pool; or

2. A legible poster identifying by name, serial number, and form number each deal or game set of pulltabs contributing an amount to the jackpot prize pool.

(b) The poster or seal cards shall remain displayed 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. For progressive pulltab games played on an electronic pulltab device, a poster shall be displayed to fulfill this requirement.

(c) If a progressive jackpot prize is not awarded, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities it conducts for at least fifteen (15) calendar days after the date the organization considers the game closed and retains the prize as its property.

(d) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times, the current value of the jackpot.

(10)[~~(11)~~] An organization shall not award the jackpot prize in a progressive pulltab game unless the serial number and form number on the winning ticket match the serial number and form number on a seal card from a deal or game set of tickets which contributed to the jackpot prize.

(11)[~~(12)~~] For jackpot prizes of $250 or over, the organization shall attach a copy of the valid state identification card which contains the name, address, date of birth, and state identification number of the winner to the jackpot prize card.

(12)[~~(13)~~] The jackpot prize in a progressive game may accrue in excess of $2,400 dollars. An individual jackpot prize shall not be paid in excess of $2,400. The amount of the current jackpot, the amount contributed, the payouts made, and the jackpot carried forward to the next session at each gaming occasion shall be recorded in the gaming occasion record.

(13)[~~(14)~~] Any advertisement regarding the progressive jackpot may state the total amount in the jackpot prize pool as long as it also includes the statement that the individual payout shall not exceed $2,400.

(14)[~~(15)~~] A licensed charitable organization shall report to the department[~~office~~] concerning its play of seal card games with a progressive prize on the financial report.

(15)[~~(16)~~] The jackpot prize 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 occasion records.

(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[~~Office~~] 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.

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.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(As Amended at ARRS, November 10, 2015)

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[~~office~~] to establish and enforce standards for accounting, recordkeeping, and reporting to the department[~~office~~] 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 date of the gaming occasion;

(b) The name and license number of the organization conducting the gaming occasion;

(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[~~gamin~~] 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-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.

(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***, as incorporated by reference in 820 KAR 1:025***. 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 number 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 manager 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.

Section 4. Card-minding Device Records. Card-minding device 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;

(8) The cash short or cash over from the rental of card-minding devices for that gaming occasion;

(9) The total sales activity report ***completed on Form CG-CMD, as incorporated by reference in 820 KAR 1:044***;

(10) 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

(11) Form CG-Vol.

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

(s) 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, ***Form*** CG-EPD***, as incorporated by reference in 820 KAR 1:033***;

(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 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;

(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) 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 all 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 8.[~~7.~~] Charity Fundraising Event Records. (1) Charity fundraising event records[~~for a festival or carnival~~] shall contain the following information:

(a) The name of each game of chance played;

(b) The price to play each game of chance;

(c) The adjusted gross receipts from the sale of each game of chance;

(d) The grand total of adjusted gross receipts received from the play of all games of chance;

(e) The total amount of all checks issued for each game of chance prize and door prize;

(f) The total cost of all merchandise awarded for each type of game of chance prize and door prize;

(g) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;

(h) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records;

(i) If pulltabs are sold, accurate pulltab records;

(j) If a raffle is conducted, accurate raffle records; and

(k) If the charity fundraising event continues for more than one (1) day, a summary of the required information for each day.

(2) Special limited game records for a charity fundraising event shall contain:

(a) The name of each game to be played;

(b) The adjusted gross receipts for each game for each day of the charity fundraising event; and

(c) A list of all merchandise prizes awarded and the cost.

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

(2) 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 add ons;

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.

Section 10.[~~9.~~] Incorporation by Reference. (1) Form CG-Vol, "Charitable Gaming Volunteer Sign Up Sheet", 4/07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[~~Office~~] of Charitable Gaming, Public[~~Environmental and~~] 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.

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.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(As Amended at ARRS, November 10, 2015)

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)(a) to (i) lists the categories of expenses authorized by statute.*** 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,[~~or~~] card-minding devices, or electronic pulltab 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.

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.

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(As Amended at ARRS, November 10, 2015)

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.

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, November 10, 2015)

900 KAR 6:055. Certificate of need forms.

RELATES TO: KRS 216B.015[~~216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990~~]

STATUTORY AUTHORITY: KRS[~~194A.030, 194A.050,~~] 216B.040(2)(a)1[~~, 216B.330~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the forms necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" is defined by KRS 216B.015(6)[(~~5~~)].

Section 2. Forms. (1) OHP - Form 1, Letter of Intent, shall be filed by an applicant[~~all applicants~~] for a certificate of need pursuant to the requirements established in 900 KAR 6:065.

(2) OHP - Form 2A, Certificate of Need Application, shall be filed by an applicant[~~applicants~~] for a certificate of need unless the application is for[~~other than~~] ground ambulance services,[~~providers or~~] change of location, replacement,***[~~or~~]*** cost escalation***, or acquisition***.

(3) OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service, shall be filed by an applicant[~~applicants~~] for a certificate of need for a ground ambulance service[~~providers~~].

(4) OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition, shall be filed by an applicant[~~applicants~~] for a certificate of need for change of location, replacement, cost escalation, or acquisition.

(5) OHP - Form 3, Notice of Appearance, shall be filed by a person who wishes[~~persons that wish~~] to appear at a hearing.

(6) OHP - Form 4, Witness List, shall be filed by a person who elects [~~persons that elect~~] to call a witness[~~witnesses~~] at a hearing.

(7) OHP - Form 5, Exhibit List, shall be filed by a person who elects[~~persons that elect~~] to introduce evidence at a hearing.

(8) OHP - Form 6, Cost Escalation Form, shall be filed by a facility[~~facilities~~] that elects[~~elect~~] to request an administrative escalation.

(9) OHP - Form 7, Request for Advisory Opinion, shall be filed by anyone electing to request an advisory opinion.

(10) OHP - Form 8, Certificate of Need Six Month Progress Report, shall be filed by a holder of a certificate of need whose project is not fully implemented.

(11) OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, shall be submitted by a person proposing to acquire an existing licensed health facility or service.

(12) OHP - Form 10A, Notice of Addition or Establishment of a Health Service or Equipment, shall be filed by any health facility ***that[~~which~~]*** adds equipment or makes an addition to a health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required.

(13) OHP – Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity, shall be filed by a health facility ***that[~~which~~]*** reduces or terminates a health service[~~,~~] or reduces bed capacity.

(14) OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC), shall be filed by a facility to obtain a certificate of compliance as a continuing care retirement community.

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

(a) "OHP - Form 1, Letter of Intent", 05/2009;

(b) "OHP - Form 2A, Certificate of Need Application", 07/2015[~~05/2009~~];

(c) "OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service[~~Providers~~]", 05/2009;

(d) "OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition ", 05/2009;

(e) "OHP - Form 3, Notice of Appearance", **10/2015[~~05/2009~~]**;

(f) "OHP - Form 4, Witness List", **10/2015[~~05/2009~~]**;

(g) "OHP - Form 5, Exhibit List", **10/2015[~~05/2009~~]**;

(h) "OHP - Form 6, Cost Escalation Form", 05/2009;

(i) "OHP - Form 7, Request for Advisory Opinion", 05/2009;

(j) "OHP - Form 8, Certificate of Need Six Month Progress Report", 07/2015[~~05/2009~~];

(k) "OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service", 07/2015[~~05/2009~~];

(l) "OHP - Form 10A, Notice of Addition or Establishment of a Health Service or Equipment", 05/2009;

(m) "OHP - Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity", 07/2015[~~05/2009~~]; and

(n) "OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", 05/2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC FRIEDLANDER, Acting Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 8, 2015

FILED WITH LRC: October 14, 2015 at 1 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, November 10, 2015)

900 KAR 6:075. Certificate of need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.090[~~216B.095~~], 216B.455, 216B.990

STATUTORY AUTHORITY: KRS[~~194A.030, 194A.050,~~] 216B.040(2)(a)1, 216B.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need ***that[~~which~~]*** is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and ***that[~~which~~]*** is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7)[~~"Public information channels" means the Office of Communication and Administrative Review in the Cabinet for~~

~~Health and Family Services.~~

~~(8)~~] "Public notice" means notice given through[~~:~~

~~(a) Public information channels; or~~

~~(b)~~] the cabinet's Certificate of Need Newsletter.[~~(9) "Therapeutic cardiac catheterization outcomes" means in hospital mortality rates, door to balloon time, door to balloon time less than or equal to ninety (90) minutes, Percutaneous Coronary Intervention (PCI) related cardiac arrests, and emergency open heart surgeries performed as a result of the PCI.~~]

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment
facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS ***216B.095(3)(f)***[~~***216B.095(f)***~~], the Office of Health Policy shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b)[~~The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;~~

~~(c)~~] The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III or Level IV beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the licensed beds are relocated delicenses those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level II,[~~or~~] Level III, or Level IV neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(c)[~~(d)~~] The proposal involves an application by an existing licensed acute care hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds,[~~or neonatal~~] Level III beds, or Level IV beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;

(d)[~~(e)~~] The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds,[~~or neonatal~~] Level III beds, or Level IV beds;

2. Convert and implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

(e)[~~(f) The proposal involves an application by a psychiatric hospital to convert licensed geriatric, adult, adolescent, or child psychiatric beds to psychiatric beds and the requirements established in this paragraph are met.~~

~~1. The psychiatric hospital is located within twenty (20) miles of a United States military base;~~

~~2. The psychiatric hospital provides inpatient behavioral health services to active duty military personnel, families of active duty military personnel, and veterans;~~

~~3. The psychiatric hospital shall convert and implement the beds on-site at the existing licensed hospital; and~~

~~4. The psychiatric hospital shall delicense the same number of converted beds.~~

~~(g) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds between certificate of need approved nursing facilities or from a certificate of need approved nursing facility to a proposed nursing facility and the requirements established in this paragraph are met.~~

~~1. The selling or transferring facility has a certificate of need nursing facility bed inventory of at least 250 beds;~~

~~2. The transfer or relocation takes place within the same Area Development District;~~

~~3. The application includes:~~

~~a. A properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055; and~~

~~b. Evidence of the selling or transferring entity's binding commitment to sell or transfer upon approval of the application; and~~

~~4. A certificate of need approved nursing facility shall not sell or transfer more than fifty (50) percent of its certificate of need approved nursing facility beds;~~

~~(h) The proposal involves an application to establish a therapeutic cardiac catheterization program and the requirements established in this paragraph are met.~~

~~1. The applicant is an acute care hospital which was previously granted a certificate of need to participate in a primary angioplasty pilot project and was evaluated after the first two (2) years of operation by an independent consultant who determined the hospital successfully demonstrated good therapeutic cardiac catheterization outcomes.~~

~~2. The applicant shall document that the nursing and technical catheterization laboratory staff are experienced and participate in a continuous call schedule.~~

~~3. The applicant shall document that the catheterization laboratory shall be equipped with optimal imaging systems, resuscitative equipment, and intra-aortic balloon pump support.~~

~~4. The applicant shall document that the cardiac care unit nurses shall be proficient in hemodynamic monitoring and intra-aortic balloon pump management.~~

~~5. The applicant shall document formalized written protocols in place for immediate and efficient transfer of patients to an existing licensed cardiac surgical facility.~~

~~6. The applicant shall utilize a Digital Imaging and Communications in Medicine (DICOM) standard image transfer system between the hospital and the backup surgical facility.~~

~~7. The applicant shall employ an interventional program director who has performed more than 500 primary PCI procedures and who is board certified by the American Board of Internal Medicine in interventional cardiology.~~

~~8. The applicant shall document that each cardiologist performing the therapeutic catheterizations shall perform at least seventy-five (75) PCIs per year.~~

~~9. The applicant shall document the ability to perform at least 200 interventions per year, with an ideal minimum of 400 interventions per year by the end of the second year of operation.~~

~~10. The applicant shall participate in the American College of Cardiology National Cardiovascular Data Registry quality measurement program.~~

~~11. The applicant shall report therapeutic cardiac catheterization data annually to the Cabinet for Health and Family Services.~~

~~12. The application shall document the applicant's ability to produce therapeutic cardiac catheterization outcomes which are within two (2) standard deviations of the national means for the first~~

~~two (2) consecutive years;~~

~~(i) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds from one (1) long-term care facility to another long-term care facility and the requirements established in this paragraph are met.~~

~~1. The selling or transferring facility fails to meet regulations promulgated by the Centers for Medicare and Medicaid Services at 42 C.F.R. 483.70(a)(8) requiring nursing facilities to install sprinkler systems throughout their buildings;~~

~~2. The selling or transferring facility may sell or transfer portions of its total bed component to one (1) or more existing nursing facility;~~

~~3. The facility acquiring the beds shall be located in a county contiguous to that of the selling or transferring facility;~~

~~4. The selling or transferring facility shall be licensed only for nursing facility beds at the time of transfer or application to transfer and shall not sell or transfer more than thirty (30) of its licensed nursing facility beds to an individual facility; and~~

~~5. The application shall include a properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055;~~

~~(j)~~] The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital[~~with fifty (50) or fewer licensed beds~~] and[~~which~~] was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service which the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; or

(f)[~~(k)~~]1. The proposal involves an application to establish an ambulatory surgical center ***that[which]*** does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation.

(4)[~~(3)~~] A certificate of need approved for an application submitted under subsection (3)(f)[~~(2)(k)~~] of this section shall state the limitations specified under subsection (3)(f)[~~(2)(k)~~]1. and 2. of this section.

(5)[~~(4)~~] If an application is denied nonsubstantive review status by the Office of Health Policy, the application shall automatically be placed in the formal review process.

(6)[~~(5)~~] If an application is granted nonsubstantive review status by the Office of Health Policy, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)[~~(6)~~](a) If an application is granted nonsubstantive review status by the Office of Health Policy, any affected person who believes that the application[~~applicant~~] is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2 of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications[~~but~~] may be consolidated for hearing purposes.

(8)[~~(7)~~] If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan[~~and an application granted nonsubstantive review status by the Office of Health Policy shall not be reviewed for consistency with the State Health Plan~~].

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10)[~~(8)~~] Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Health Policy shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply[~~: (a) The application does not propose a capital expenditure; or~~

~~(b) The application does propose a capital expenditure, and the Office of Health Policy finds the facility or service with respect to which the capital expenditure proposed is needed, unless the cabinet finds that the presumption of need provided for in subsection (7) of this section has been rebutted by clear and convincing evidence by an affected party~~].

(11)[~~(9)~~] The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application[~~Applicant~~] is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8)[~~(7)~~] of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14)[~~(10)~~] A decision to approve or disapprove an application which has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted.

(15)[~~(11)~~] If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and
900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

EMILY WHELAN PARENTO, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015
FILED WITH LRC: July 8, 2015 at 4 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, November 10, 2015)

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

RELATES TO: KRS 45A.340[~~216B.010~~], 216B.015, 216B.020(2)(a), 216B.040, 216B.062(1)[~~216B.085, 216B.086, 216B.090~~], 216B.095(1), 216B.990

STATUTORY AUTHORITY: KRS[~~194A.030, 194A.050,~~] 216B.040(2)(a)1 and (b), 216B.085, 216B.086, 216B.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 and (b) require[~~requires~~] the Cabinet for Health and Family Services to administer Kentucky's certificate of need program,[~~and~~] to promulgate administrative regulations as necessary for the program, and to conduct public hearings in respect to certificate of need applications and revocations of certificates of need. KRS 216B.085, 216B.086, and 216B.090 establish requirements for certificate of need, revocation, and reconsideration hearings. This administrative regulation establishes the requirements for filing, hearing, and show cause hearings necessary for the orderly administration of the certificate of need program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)[(~~5~~)].

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of an application[~~applications~~] for certificate of need ***that[which]*** is[~~are~~] reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and ***that[which]*** is[~~are~~] reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18)[(~~17~~)].

(6) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(7) "Office or clinic" means the physical location at which health care services are provided.

(8) "Owner" means a person as defined in KRS 216B.015(22)[(~~21~~)] who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(9) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(10) "Proposed findings" means the submission of a proposed final order by the applicant or an affected party for review and consideration by the hearing officer.

(11) "Proposed service area" means the geographic area the applicant proposes to serve.

(12)[~~"Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.~~

~~(13)~~] "Public notice" means notice given through[~~:~~

~~(a) Public information channels; or~~

~~(b)~~] the cabinet's Certificate of Need Newsletter.

(13)[~~(14)~~] "Secretary" is defined by KRS 216B.015(26)[(~~25~~)].

(14)[~~(15)~~] "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Filing. (1) The filing of[~~all~~] documents required by this administrative regulation shall be made with the Office of Health Policy, CHR Building, 4 WE, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. Eastern time on the due date.

(2) Filing of a document[~~Filings of documents~~], other than a certificate of need application[~~applications~~] ***or[~~and~~]*** a proposed hearing report[~~reports~~], may be made by facsimile transmission or email if:

(a) The document is[~~documents are~~] received by the cabinet by facsimile transmission or email on or before 4:30 p.m. Eastern time on the date due; and

(b) The[~~An~~] original document is filed with the cabinet on or before 4:30 p.m. Eastern time on the next business day after the due date.

(3) The Office of Health Policy shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision, or order shall not be included.

(5) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or legal state holiday, in which event the period shall run until 4:30 p.m. Eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 3. Hearing. (1)(a) A hearing[~~Hearings~~] on a certificate of need application or revocation of a certificate of need[~~matters~~] shall be held by a hearing officer[~~officers~~] from the Cabinet for Health and Family Services, Division of[~~Health Services~~] Administrative Hearings[~~Branch~~].

(b) A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340.

(c) A[~~Any~~] party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner that shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to the applicant and each person who requested the hearing[~~all known affected persons providing the same or similar service in the proposed service area~~] not less than ten (10) days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable[~~; and~~

~~(c) Provided to members of the general public through public information channels~~].

(4) A public hearing shall be canceled if each person who requested the hearing withdraws the request by giving written notification to the Office of Health Policy that the hearing is no longer required. The consent of each affected person[~~persons~~] who has[~~have~~] not requested a hearing shall not be required in order for a hearing to be canceled.

(5) A[~~Any~~] dispositive motion made by a party to the proceedings shall be filed with the hearing officer at least three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1.***[Tape]*** Record the conference; or

2. If requested by a party to the proceedings, allow a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to

be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who will participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of ***a[any]*** nonsubstantive review ***hearing[hearings]*** and at least seven (7) days prior to the scheduled date of ***any[all]*** other certificate of need ***hearing[hearings]***, all persons wishing to participate as a party to the ***proceeding[proceedings]*** shall file with the cabinet an original and one (1) copy of the following for each affected application and serve copies on all other known parties to the ***proceeding[proceedings]***:

(a) OHP - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) OHP - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) OHP - Form 5, Exhibit List, incorporated by reference in 900 KAR 6:055 and attached exhibits.

(8)(a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new OHP - Form 3, Notice of Appearance; and

2. Either:

a. Incorporate previously-filed witness lists (OHP - Form 4) and exhibit lists (OHP - Form 5); or

b. File an amended OHP - Form 4 and OHP - Form 5.

(b) A new party to the hearings shall file an original OHP - Form 3, OHP - Form 4, and OHP – Form 5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

(9) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Each party[All parties] appearing at the hearing shall enter an appearance by stating the party's name and address[their names and addresses].

(10) Each party shall have the opportunity to:

(a) Present its case;

(b) Make an opening statement[statements];

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make a closing statement[statements]; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

(11) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(12) The hearing officer may:

(a) Allow testimony or other evidence on an issue[issues] not previously identified in the preliminary order ***that[which]*** may arise during the course of the hearing, including an[any] additional petition[petitions] for intervention ***that[which]*** may be filed;

(b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and

(c) Question any party or witness.

(13) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

(14) The hearing officer shall have discretion to designate the order of presentation
of evidence and the burden of proof as to persuasion.

(15) A witness[Witnesses] shall be examined under oath or affirmation.

(16) A witness[Witnesses] may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(17) The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (OHP - Form 5)[and filed with the hearing officer and other parties at least:

1. Seven (7) days before the hearing for formal review applications; or

2. Five (5) days before the hearing for nonsubstantive review applications].

(18) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Each[Any] referenced document shall be precisely identified.

(19) The hearing officer may take official notice of facts ***that[which]*** are not in dispute or of generally-recognized technical or scientific facts within the agency's special knowledge.

(20) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

(21) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(22) If all parties agree to waive the established decision date, the hearing officer shall render a decision within sixty (60) days of the filing of proposed findings.

(23) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6 or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing if a complaint investigation or licensure inspection by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services reveals a possible violation of KRS Chapter 216B[based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a Certificate of Need approval and

~~license~~].

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions ***that[~~which~~]*** are a part of a certificate of need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions ***that[~~which~~]*** are a part of that certificate of need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9) If it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her proposed findings of fact, conclusions of law, and proposed decision on whether the clinic or office meets the physician exemption criteria set forth in 900 KAR 6:130, Certificate of Need criteria for physician exemption.

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against the person;

(b) Any facts determined to exist ***that[~~which~~]*** support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(13) At least seven (7) days prior to a show cause hearing[~~all hearings~~] required or requested pursuant to KRS Chapter 216B,[~~with the exception of hearings involving applications for or revocation of a Certificate of Need,~~] all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance;

(b) OHP - Form 4, Witness List; and

(c) OHP - Form 5, Exhibit List and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(17) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the***[~~following~~]*** action ***required by this subsection.[~~:~~]***

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's certificate of need approval and license, the person shall be given a period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions ***that[~~which~~]*** were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(19) The deadlines established with respect to hearings shall be modified if agreed to by all parties and the hearing officer.

EMILY WHELAN PARENTO, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 8, 2015 at 4 p.m.

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 Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, November 10, 2015)

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

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Ambulatory" means the ability to walk without assistance.

(3) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(4)[~~(3)~~] "Assisted-living community" is defined by KRS 194A.700(4).

(5)[~~(4)~~] "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.

(6)[~~(5)~~] "Client", "resident", or "tenant" is defined by KRS 194A.700(5).

(7)[~~(6)~~] "Client's designated representative" means a person identified in a document signed and dated by the client, client's guardian, or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

(8)[~~(7)~~] "Danger" is defined by KRS 194A.700(6).

(9)**~~["Decision-making capacity" means the client's ability to communicate and understand the information the resident~~**

is given and make informed decisions based on that information.

(10)[~~(8)~~] "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).

(10)[(11)][~~(9)~~] "Instrumental activities of daily living" is defined by 194A.700(9).

(11)[(12)][~~(10)~~] "Licensed healthcare professional" is defined by KRS 216.300(1).

(12)[(13)][~~(11)~~] "Living unit" is defined by KRS 194A.700(10).

(13)[(14)] "Mobile non-ambulatory" is defined by KRS 194A.700(11).

(14)[(15)][~~(12)~~] "Plan of correction" is defined by KRS 194A.700(12).

(15)[(16)][~~(13)~~] "Statement of danger" is defined by KRS 194A.700(13).

(16)[(17)][~~(14)~~] "Statement of noncompliance" is defined by KRS 194A.700(14).

(17)[(18)][~~(15)~~] "Temporary condition" means a condition that affects a client as follows:

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager, or employee of the assisted-living community; and the assisted-living community has a written plan in place to ensure that the client is not a danger; or

(b)1. The client loses mobility after entering a lease agreement;

2. The client is not expected to regain mobility;

3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and

4. The assisted-living community has a written plan in place to ensure that the client is not a danger.

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11);

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(8);

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) The applicant shall notify the department upon occupancy of five (5) residents in the assisted-living community[~~If an initial certification becomes effective on a date other than July 1, the certification fee shall be prorated by:~~

~~(a) Calculating the fee for a year by computing twenty (20) dollars per living unit~~

~~or the $300 minimum set forth in KRS 194A.707(8), whichever is greater, but no more~~

~~than the $1,600 maximum set forth in KRS 194A.707(8);~~

~~(b) Dividing the yearly fee by twelve (12) to obtain a monthly fee; and~~

~~(c) Multiplying the monthly fee by the number of months remaining until the annual renewal on July 1~~].

Section 3. Application for Annual Certification Review.[~~(1)~~] The department shall renew a certification if an assisted-living community:

(1)[~~(a)~~] Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and

(2)[~~(b)~~] Submits to the department annually by July 1:

(a)[~~1.~~] A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b)[~~2.~~] The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

(c)[~~3.~~] The nonrefundable certification fee required by Section 2(1)(e) of this administrative regulation.[~~(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a),(b),and (c) of this administrative regulation.~~]

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:

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

(b) Not less than sixty (60) days prior to the increase.

(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be twenty (20) dollars per each additional unit[~~prorated in accordance with Section 2(2) of this administrative regulation~~].

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by a local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an announced on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3***[(1)]*** of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c).

Section 7. On-Site Review of an Assisted-Living Community. (1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

(b) Review of employment records ***in accordance with subsection (3) of this section;***

(c)[including:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal records check that shall be:

a. Requested in accordance with KRS 216.789(3);][and]

[b. Applied for no sooner than forty-five (45) days prior to but no later than][within]***[seven (7) days following an employee's first day of work]***[from the date of an employee's hire]***[;***

c. Checked every other year][**annually**]***[through the Kentucky Justice Cabinet or Administrative Office of the Courts;***

d. A][**national**]***[criminal record check upon hire from any state in which]***[**if**]***[the employee lived outside of Kentucky in the last three (3) years; and***

e. A][**national**]***[criminal record check at least every other year from the state in which the employee resides]***[**annually**]***[if the employee maintains residency outside of Kentucky;***

3. Employees, upon their initial date of hire and at least annually thereafter, shall be checked and not be found on the:

a. Central Registry;

b. Adult Protective Services Caregiver Misconduct Registry; and

c. Nurse Aide abuse registry.

4. An assisted living community may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of this subsection.

5.][3.] Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4)***(d)***;***[and***

6.][4.] Documentation of:

a. Completion of employee orientation:

(i) Pursuant to KRS 194A.719(1); and

(ii) Within ninety (90) days of the date of hire; and

b. Annual in-service education pursuant to KRS 194.719(2);

(e)[(c)] Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);

(f)[(d)] Review of client records ***in accordance with subsection (4) of this section;***

(g)[including:

1. A completed client functional needs assessment that shall:

a. Be completed:

(i) Upon move in;

(ii) Once every twelve (12) months thereafter; and

(iii) As needed due to a change in function or condition;

b. Be administered by a person with at least:

(i) A bachelor's degree in health or human service or a related field;

(ii) An associate's degree in health or human services or a related field and at least one (1) year of experience working with the elderly or conducting assessments; or

(iii) A high school diploma or its equivalency and two (2) years of experience working with the elderly or conducting assessments;

c. Assess][**the decision making capacity of the client**]***[to ensure the client]***[**he**]***[meets]***[that the client met]***[the eligibility requirements for assisted-living pursuant to KRS 194A.711 and KRS 194A.700(2);]***[194A.705(5); and]

[d. Reflect the client's ability to perform activities of daily living and instrumental activities of daily living pursuant to KRS 194A.705(5); and

e. Be][b. In which a copy was]***[provided to the client]***[upon move in]***[pursuant to KRS 194A.705(5)(a);***

2.][An initial and at least annual functional needs assessment:

a. That reflects a client's ability pursuant to KRS 194A.705(5) to perform activities of daily living and instrumental activities of daily living; and

b. In which a copy was provided to the client after move in pursuant to KRS 194A.705(5)(b);

3. Current]***[Personal preferences and social factors updated at least every two (2) years;***

3.][4.]***[A signed lease with all attachments;***

4.][5.]***[Documentation of a client's designated representative, if applicable; and***

5.][6.]***[Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d);***

(e)] Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(h)[(f)] Review of an assisted-living community's written service provision and practices ***in accordance with subsection (5) of this section; and***

(i)[related to:

1. Provisions of KRS 194A.705(1)(d) which, in the case of medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but shall not exceed the following staff actions if the client requests assistance:

a. Providing the client with a medication reminder;

b. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and

c. Opening the medication container or dosage package, but not handling or removing the medication;

2. Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

3. Documentation in a client's file:

a. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service to the client:

(i) Requested of the client by the assisted-living community; and

(ii) That states the client has a temporary condition pursuant to KRS 194A.711(1); and

b. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided; and

4. Compliance with KRS 194A.713(11), 194A.719(1)(j), and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community provided the assisted-living community:

a. Ensures a client's functional needs assessment that:

(i) Reflects the client's abilities as specified in paragraph (d)2 of this subsection; and

(ii) Shall be updated at least annually; and

b. Complies with the requirements of KRS 216.595; and

5. Compliance with a department approved waiver request in accordance with Section 8 of this administrative regulation; and

(g)] Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(10).

(3) ***Review of Employment Records. (a) During the on-site review, the following employment records shall be reviewed, except as provided in paragraph (b) of this subsection:***

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal record check that shall:

a. Be requested in accordance with KRS 216.789(3);

b. Be applied for no sooner than forty-five (45) days prior to but no later than seven (7) days following an employee's first day of work;

c. Be checked every other year through the Kentucky Justice and Public Safety Cabinet or Administrative Office of the Courts;

d. Include a criminal record check upon hire from any state in which the employee lived outside of Kentucky in the last three (3) years; and

e. Include a criminal record check at least every other year

from the state in which the employee resides if the employee maintains residency outside of Kentucky; and

3. A check of the Central Registry, the Adult Protective Services Caregiver Misconduct Registry, and Nurse Aide Abuse Registry that shall:

a. Be performed on an employee upon the initial date of hire and at least annually thereafter; and

b. Show that the employee was not found on the registries.

(b) An assisted living community may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of this subsection.

(4) Review of Client Records. During the on-site review, the following client records shall be reviewed:

(a) A completed client functional needs assessment that shall:

1. Be completed:

a. Upon move in;

b. Once every twelve (12) months thereafter; and

c. As needed due to a change in function or condition;

2. Be administered by a person with at least:

a. A bachelor's degree in health or human service or a related field;

b. An associate's degree in health or human services or a related field and at least one (1) year of experience working with the elderly or conducting assessments; or

c. A high school diploma or its equivalency and two (2) years of experience working with the elderly or conducting assessments;

3. Assess to ensure the client meets the eligibility requirements for assisted-living pursuant to KRS 194A.711 and 194A.700(2);

4. Reflect the client's ability to perform activities of daily living and instrumental activities of daily living pursuant to KRS 194A.705(5); and

5. Be provided to the client pursuant to KRS 194A.705(5)(a);

(b) Personal preferences and social factors that shall be updated at least every two (2) years;

(c) A signed lease with all attachments;

(d) Documentation of a client's designated representative, if applicable; and

(e) Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d).

(5) Review of Written Service Provision and Practices. The on-site review shall review an assisted-living community's written service provision and practices related to:

(a) Assistance with self-administration of medication in accordance with KRS 194A.705(1)(d), which, for medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but shall not exceed the following staff actions if the client requests assistance:

1. Providing the client with a medication reminder;

2. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and

3. Opening the medication container or dosage package, but not handling or removing the medication;

(b) Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

(c) Documentation in a client's file:

1. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service to the client:

a. Requested of the client by the assisted-living community; and

b. That states the client has a temporary condition pursuant to KRS 194A.711(1); and

2. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided;

(d) Compliance with KRS 194A.713(11), 194A.719(1)(j), and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community if the assisted-living community:

1. Ensures a client's functional needs assessment that:

a. Reflects the client's abilities as specified in subsection (4)(a)4 of this section; and

b. Shall be updated at least annually; and

2. Complies with the requirements of KRS 216.595; and

(e) Compliance with a department approved waiver request in accordance with Section 8 of this administrative regulation.

(6) The department may, pursuant to KRS 194A.707(10), request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(7)[(4)] Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Waiver of Building Requirements. (1) Pursuant to KRS 216.595(3), an assisted-living community may request a waiver from the department regarding building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.

(2) The department shall:

(a) Review the waiver request for approval; and

(b) Not waive the building and life safety codes established in KRS 194A.703(3).

(3) An assisted-living community shall not alter the building requirements established in KRS 194A.703(1) and (2) without department approval.

Section 9. Assisted-living On-Site Review Findings. (1) The department shall:

(a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, ***Assisted-Living Community*** Statement of Noncompliance and Plan of Correction; and

2. Unless the finding is due to a client being a danger pursuant to subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, ***Assisted-Living Community*** Statement of Noncompliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.

(b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.

(3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:

(a) Whether the plan of correction is approved or not approved; and

(b) The reasons for the department's decision.

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.

(b) The assisted-living community shall post the certificate in a public area.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and with the:

(a) Opportunity for an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address a dispute, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 12 of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

(a) Immediately notify the assisted-living community as established in Section 7***(7)[(4)]*** of this administrative regulation; and

(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 10(2)(e)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707(10).

Section 10. Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:

(a)1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or

2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 9(2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:

(a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;

(d) Fails to implement its most recent approved plan of correction:

1. Under current ownership; and

2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;

(e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 9(9)[~~(9)(9)~~] of this administrative regulation:

1. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:

a. Email;

b. Facsimile transmission;

c. Delivery to the department by hand;

d. United States mail; or

e. Courier service; or

2. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and

b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:

(i) Email;

(ii) Facsimile transmission;

(iii) Delivery to the department by hand;

(iv) United States mail; or

(v) Courier service; or

(f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:

1. Notifies the assisted-living community in writing that the client remains a danger; and

2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 12 of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with the informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a)1. A danger is unsubstantiated; or

2. The danger has been eliminated; or

(b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(5)(a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 12 of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723.

(b) The fine shall be paid as specified in Section 11(1) of this administrative regulation.

Section 11. Collection of Fees and Fines. (1) An entity or business found to be in violation of KRS 194A.723 and pursuant to KRS 194A.724 assessed a penalty shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings

and lease agreement, pursuant to KRS 194A.729, shall be $250.

Section 12. Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection (5)(b) of this section, not to exceed an additional fifteen (15) days.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", 06/2015[~~edition 7/10~~];

(b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", **10/2015[~~06/2015~~]**[~~edition 7/12~~];

(c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction",[~~edition~~] 2/09; and

(d) "DAIL-ALC-4, Statement of Danger", 06/2015[~~edition 2/09~~].

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

DEBORAH S. ANDERSON, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 8, 2015

FILED WITH LRC: October 14, 2015 at 1 p.m.

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Amended After Comments)

201 KAR 35:070. Supervision[~~and work~~] experience.

RELATES TO: KRS 309.083(4), 309.0831, 309.0832, 309.0833

STATUTORY AUTHORITY: KRS 309.0813(1),[~~and~~] (3), (5), 309.083, 309.0831, 309.0832, 309.0833

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed[~~certified~~]. KRS 309.083, 309.0831, 309.0832, and 309.0833 require[~~(4) requires~~] all applicants for registration as an alcohol and drug peer support specialist, certification as an alcohol and drug counselor, licensure as a clinical alcohol and drug counselor associate, or licensure as a clinical alcohol and drug counselor to have completed under[~~300 hours of board-approved experience working with alcohol or drug dependent persons under the~~] direct supervision from[~~of~~] a certified alcohol and drug counselor who has at least two (2) years of postcertification experience or licensure as a clinical alcohol and drug counselor.[~~This administrative regulation establishes the standards for the accumulation of the required supervised work experience.~~]

Section 1. (1) Peer Support Specialist Supervision. Peer support specialist supervision shall continue throughout the period of registration.

(2)[~~Definitions. (1) "Clinical supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing services related to the twelve (12) core functions of the alcohol and drug counselor.~~

~~(2) "Clinical supervisor" means a certified alcohol and drug counselor who has at least two (2) years of postcertificate experience and who provides supervision to not more than twelve (12) applicants in an individual or group setting at any one (1) time, and whose certificate is currently in good standing with the board.~~

~~(3) "Work experience" is defined as the hours spent performing the services, tasks, and reports necessary for providing counseling or intervention to a chemically dependent person or person's significant others.~~

~~Section 2.~~] Clinical Supervision.[~~(1)~~] Clinical supervision shall consist of at least 300 hours and shall include a minimum of ten (10) hours in each of the following twelve (12) core functions:

(a) Screening;
(b) Intake;
(c) Client orientation;
(d) Assessment;
(e) Treatment planning;
(f) Counseling;
(g) Case management;
(h) Crisis intervention;
(i) Client education;
(j) Referral;
(k) Reports and recordkeeping; and
(l) Consultation.

(3)[~~(2)~~](a) Clinical supervision may occur in individual or in group settings.

(b) The methods of clinical supervision include:

1. Face-to-face;
2. Video conferencing; or
3. Teleconferencing.

(4)[~~(3)~~] A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.

(5)[~~(4)~~] Clinical supervisors shall complete and submit the Supervisor's form in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as a Clinical Alcohol and Drug Counselor Associate, or Application for Licensure as a Clinical Alcohol and Drug Counselor[~~incorporated by reference in 201 KAR 35:020, Section 10,~~] that documents the 300 hours of supervision that has occurred during the work experience.

(5) If the applicant qualifies for licensure, supervision obtained prior to the effective date of this administrative regulation shall be calculated toward the 300 hour supervision requirement under KRS 309.0832(10).

Section 2. Except as provided, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission the thirty (30) day requirement[~~3. Accumulation of Work Experience. (1) 6,000 hours of work experience shall be accumulated in a setting where chemical dependency services are routinely provided.~~

~~(2) Supervised work experience shall be in the twelve (12) core functions referenced in Section 2 of this administrative regulation to enhance the candidate's understanding and application of the twelve (12) core functions to the practice of alcohol and drug counseling.~~

~~(3) The work experience may be either paid or unpaid~~].

Section 3.[~~4.~~] (1) All supervision requirements shall:

(a) Be met with face-to-face individual or group weekly contact between supevisor and supervisee except as provided in subsection (2) of this section and Sections 12 and 15 of this administrative regulation;

(b) Consist of not less than two (2) hours two (2) times a month of the practice of alcohol and drug counseling; and

(c) Include additional supervision sessions as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board.

(3) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional hours of supervision than was previously aproved by the board.

(4) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination[~~Substitution of Work Experience. (1) An applicant may substitute, for part of the work experience, a degree in a related field such as:~~

~~(a) Addictions;~~
~~(b) Counseling;~~
~~(c) Psychology;~~
~~(d) Psychiatric nursing; or~~
~~(e) Social work.~~

~~(2) Requests for substitution shall be submitted to the board along with transcripts from an accredited College or University.~~

~~(3) Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and other drug counseling.~~

~~(a)(1) A master's degree or higher in a related field, with a specialization in addictions or drug and alcohol counseling may be substituted for 4,000 hours of work experience.~~

~~(b) A master's degree or higher in a related field, may be substituted for 3,000 hours of work experience.~~

~~(c) A bachelor's degree in a related field, may be substituted for 2,000 hours of work experience.~~

~~(d) A bachelor's degree in an unrelated field shall not qualify for a substitution of hours, and the applicant shall provide proof of 6,000 hours of work experience as established in Section 3 of this administrative regulation.~~

~~(4) The hours of work experience shall be documented on the candidate's application for certification and shall contain verification by the supervisor~~].

Section 4. (1) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle. The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for more than twelve (12) supervisees.

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 309.086 on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of alcohol and drug counseling in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice as appropriate to insure that the supevisee's practice of alcohol and drug counseling is competent.

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.

(6) For each person supervised, the supervisor shall maintain a Supervisor Log of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a Supervision Annual Report or as directed otherwise by the board.

(2) The report shall include:

(a) A description of the frequency, format, and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supevisee 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 require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, or an applicant for a certificate as a certified alcohol and drug counselor, the supervisor of record shall:

(1) Review all alcohol and drug assessments and treatment plans;

(2) Review progress notes and correspondence on a regular basis to assess the competency of the supervisee to render alcohol and drug services;

(3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thrity (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(4) Have direct observation of the supervisee's work at least semi-annually. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. If the supervisee is a peer support specialist, the supervisor of record shall:

(1) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thrity (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(2) Review and countersign all peer recovery service plans;

(3) Review peer recovery notes and correspondence on an as-needed basis to assess the competency of the supervisee to render peer recovery services;

(4) Have direct observation of the supervisee's work at least once every two (2) months. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or direct observation;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the methods and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek consultation from the supervisor as needed in addition to a regularly-scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) 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 6(1) of this administrative regulation; and

(c) Report to the board an apparent violation on the part of the supervisor.

Section 11. Identification of Provider and Supervisor of Record. The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer's credential and

name of supervisor of record. A billing for a rendered service shall identify which service was performed by the registered alcohol and drug peer support specialist, applicant as a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or other provider who is supervised by the board approved supervisor of record.

Section 12. Supervision of a Disciplined Credential Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board and a member of the board to serve as a liaison between the board and the appointed supervisor.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential 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 approved by the board; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential 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 credential holder's practice is in compliance with KRS 309.080 to 309.089, and 201 KAR Chapter 35;

(f) Report to the board any apparent violation on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of peer recovery support or substance use disorders counseling in a competent manner;

(h) Review and countersign assessments as needed or appropriate;

(i) Review and countersign service or treatment plans as needed or appropriate;

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic methods, modalities, or techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being when it has a direct bearing on the disciplined credential holder's competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder's practice as appropriate to ensure that the disciplined credential holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. 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 13. Graduate Students in Programs Emphasizing Substance Use Disorders Counseling. Graduate-level students in programs that emphasize alcohol and drug counseling who are providing services in health care settings that provide alcohol and drug counseling including independent practice settings shall:

(1) Be supervised by a licensed clinical alcohol and drug counselor or certified alcohol and drug counselor;

(2) Be registered for practicum credit on the transcript in his or her course of study;

(3) Clearly identify their status as unlicensed trainees in the field of alcohol and drug counseling to all clients and payors;

(4) Give to all clients and payors the name of the supervising licensed clinical alcohol and drug counselor or certified alcohol and drug counselor responsible for the student's work; and

(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a certificate or license from the board.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KBADC Form 3, Supervisory Agreement", June 2015;

(b) "KBADC Form 4, Request to Provide Supervision", June 2015;

(c) "KBADC Form 6, Peer Support Specialist Supervisory Agreement", June 2015;

(d) "KBADC Form 7, Supervision Evaluation", June 2015;

(e) "KBADC Form 8, Peer Support Specialist Verification of Supervision", June 2015;

(f) "KBADC Form 9, Supervision Evaluation for Peer Support Specialist", June 2015;

(g) "KBADC Form 13, Verification of Clinical Supervision", June 2015; and

(h) "KBADC Form 14, Supervision Annual Report", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, Monday through Friday, 8:30 a.m. to 5 p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: November 13, 2015

FILED WITH LRC: November 13, 2015 at noon

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedure to obtain supervision for registration, certification, and licensure.

(b) The necessity of this administrative regulation: The necessity of this 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 for registration, certification, and licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

(2) If 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 expand the credential holders who are to be supervised; cap the number of supervisees that a supervisor may supervise; establish reporting requirements; and provides for the supervision of disciplined credential holders and graduate students.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to expand since new

credentials have been established in the last legislative session and provide the board with more oversight of the supervision process of an applicant or licensee..

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

(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 859 Certified Alcohol and Drug Counselors.

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

(a) List 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 only be affected if the holder is a supervisor. The credential holder would have to go through continuing education annually to be allowed to supervise.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only costs associated with this regulation are indirect ones imposed on the supervisor who must satisfy his continuing education requirement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders and applicants will be able to document the supervision received and provide the board with more oversight during the supervision process.

(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 Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (3), (5). 309.083, 309.0831, 309.0832, and 309.0833.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(Amended After Comments)

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 licensee. This administrative regulation delineates the requirements for continuing education and prescribes 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 exempted 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.

(d) An individual asserting an exemption of the suicide assessment, treatment, and management shall maintain sufficient documentation to establish the exemption. Documentation listed in Section 6(3) of this administrative regulation is sufficient to establish the exemption.

(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

4.[~~6. The American Psychological Association, or any of its affiliated state chapters or divisions;~~

~~7. The divisions of the Department of Mental Health and Mental Retardation of the Kentucky Cabinet for Health Services; or~~

~~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); **and[~~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.

(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)1. 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 **continuing education course provider or** 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.

Section 11. Incorporation by Reference. (1) "Continuing Education Program Application, KBLPC 007", June 2015 edition, is incorporated by reference.

(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER A. GRIFFITH, Chairperson

APPROVED BY AGENCY: November 13, 2015

FILED WITH LRC: November 13, 2015 at noon

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.

(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 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:

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Water
(Amended After Comments)

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, 224.70-100, 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 224.10-100 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, 10:029, 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 order to maintain and protect them 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 10:029, Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) Settle 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[~~,~~] are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish, and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species; or

(f)[~~1.~~] 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[~~,~~] 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. [~~Those uses are listed in 401 KAR 10:026.~~]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 $7Q_{10}$;

(b) Water-based recreation protection shall be $7Q_{10}$;

(c) Domestic water supply protection shall be determined at points of withdrawal as:

1. The harmonic mean for cancer-linked substances; and

2. $7Q_{10}$ 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 $7Q_{10}$.

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 $CaCO_3$ shall not be reduced by more than twenty-five (25) percent.

1. If natural alkalinity is below twenty (20) mg/L $CaCO_3$, 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 nine and zero-tenths (9.0) and shall not fluctuate 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.

Month/Date	Period Average		Instantaneous Maximum	
	(°F)	(°C)	(°F)	(°C)
January 1-31	45	7	50	10
February 1-29	45	7	50	10
March 1-15	51	11	56	13
March 16-31	54	12	59	15
April 1-15	58	14	64	18
April 16-30	64	18	69	21
May 1-15	68	20	73	23
May 16-31	75	24	80	27
June 1-15	80	27	85	29
June 16-30	83	28	87	31
July 1-31	84	29	89	32
August 1-31	84	29	89	32
September 1-15	84	29	87	31
September 16-30	82	28	86	30
October 1-15	77	25	82	28
October 16-31	72	22	77	25
November 1-30	67	19	72	22
December 1-31	52	11	57	14

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;

b. The instantaneous minimum 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 communities shall be prohibited;

(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:

$Y = 1.2\ (\text{Total ammonia-N})/(1 + 10^{pKa-pH})$

$pk_a = 0.0902 + (2730/(273.2 + T_c))$

Where:

T_c = 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 (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or LC_{25}.

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 (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the IC_{25}.

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_1 or one-third (1/3) LC_{50} 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[~~they~~] 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 nineteen (19) 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 in-stream 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 1

Pollutant	CAS[1] Number	Water Quality Criteria μg/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Acenaphthene	83329	670	990	-	-
Acrolein	107028	190	6	3	3
Acrylonitrile	107131	0.051	0.25	-	-
Aldrin	309002	0.000049	0.000050	3.0	-
alpha-BHC	319846	0.0026	0.0049	-	-
alpha-Endosulfan	959988	62	89	0.22	0.056
Anthracene	120127	8,300	40,000	-	-
Antimony	7440360	5.6	640	-	-
Arsenic	7440382	10.0	-	340	150
Asbestos	1332214	7 million fibers/L	-	-	-
Barium	7440393	1,000	-	-	-
Benzene	71432	2.2	51	-	-
Benzidine	92875	0.000086	0.00020	-	-
Benzo(a)anthracene	56553	0.0038	0.018	-	-
Benzo(a)pyrene	50328	0.0038	0.018	-	-
Benzo(b)fluoranthene	205992	0.0038	0.018	-	-
Benzo(k)fluoranthene	207089	0.0038	0.018	-	-
Beryllium	7440417	4	-	-	-
Beta-BHC	319857	0.0091	0.017	-	-
Beta-Endosulfan	33213659	62	89	0.22	0.056
bis(chloromethyl)ether	542881	0.00010	0.00029	-	-
bis(2-chloroethyl)ether	111444	0.030	0.53	-	-
bis(2-chloroisopropyl)ether	108601	1,400	65,000	-	-
bis(2-ethylhexyl)phthalate	117817	1.2	2.2	-	-
Bromoform	75252	4.3	140	-	-
Butylbenzyl phthalate	85687	1,500	1,900	-	-
Cadmium	7440439	5	-	e(1.0166 (ln Hard*)-3.924)	e(0.7409 (ln Hard*)-4.719)
Carbon tetrachloride	56235	0.23	1.6	-	-
Chlordane	57749	0.00080	0.00081	2.4	0.0043
Chloride	16887006	250,000	-	1,200,000	600,000
Chlorobenzene	108907	130	1600	-	-
Chlorodibromomethane	124481	0.40	13	-	-
Chloroform	67663	5.7	470	-	-
Chloropyrifos	2921882	-	-	0.083	0.041
Chromium	N/A	100	-	-	-
Chromium (III)	16065831	-	-	e(0.8190 (ln Hard*)+ 3.7256)	e(0.8190 (ln Hard*)+ 0.6848)
Chromium (VI)	18540299	-	-	16	11

Chrysene	218019	0.0038	0.018	-	-
Color	N/A	75 Platinum Cobalt Units	-	-	-
Copper	7440508	1,300	-	e(0.9422 (ln Hard*)-1.700)	e(0.8545 (ln Hard*)-1.702)
Cyanide, Free	57125	140	140	22	5.2
Demeton	8065483	-	-	-	0.1
Diazinon	333415			0.17	0.17
Dibenzo(a,h)anthracene	53703	0.0038	0.018	-	-
Dichlorobromomethane	75274	0.55	17	-	-
Dieldrin	60571	0.000052	0.000054	0.24	0.056
Diethyl phthalate	84662	17,000	44,000	-	-
Dimethyl phthalate	131113	270,000	1,100,000	-	-
Di-n-butyl phthalate	84742	2,000	4,500	-	-
Dinitrophenols	25550587	69	5300	-	-
Endosulfan sulfate	1031078	62	89	-	-
Endrin	72208	0.059	0.060	0.086	0.036
Endrin aldehyde	7421934	0.29	0.30	-	-
Ethylbenzene	100414	530	2100	-	-
Fluoranthene	206440	130	140	-	-
Fluorene	86737	1,100	5,300	-	-
Fluoride	N/A	4,000	-	-	-
Guthion	86500	-	-	-	0.01
Heptachlor	76448	0.000079	0.000079	0.52	0.0038
Heptachlor epoxide	1024573	0.000039	0.000039	0.52	0.0038
Hexachlorobenzene	118741	0.00028	0.00029	-	-
Hexachlorobutadiene	87683	0.44	18	-	-
Hexachlorocyclo-hexane-Technical	319868	0.0123	0.0414	-	-
Hexachlorocyclopentadiene	77474	40	1100	-	-
Hexachloroethane	67721	1.4	3.3	-	-
Ideno(1,2,3-cd)pyrene	193395	0.0038	0.018	-	-
Iron[8]	7439896	300	-	4,000	1,000
Isophorone	78591	35.0	960	-	-
Lead	7439921	15	-	e(1.273 (ln Hard*)-1.460)	e(1.273 (ln Hard*)-4.705)
Lindane (gamma-BHC)	58899	0.98	1.8	0.95	
Malathion	121755	-	-	-	0.1
Mercury	7439976	2.0	0.051	1.4	0.77
Methylmercury	22967926		0.3 mg/Kg		
Methoxychlor	72435	100	-	-	0.03
Methylbromide	74839	47	1,500	-	-
Methylene Chloride	75092	4.6	590	-	-
Mirex	2385855	-	-	-	0.001
Nickel	7440020	610	4,600	e(0.8460 (ln Hard*)+2.255)	e(0.8460 (ln Hard*)+0.0584)
Nitrate (as N)	14797558	10,000	-	-	-
Nitrobenzene	98953	17	690	-	-
Nitrosamines, Other	N/A	0.0008	1.24	-	-
N-Nitrosodibutylamine	924163	0.0063	0.22	-	-
N-Nitrosodiethylamine	55185	0.0008	1.24	-	-
N-Nitrosodimethylamine	62759	0.00069	3.0	-	-
N-Nitrosodi-n-Propylamine	621647	0.0050	0.51	-	-
N-Nitrosodiphenylamine	86306	3.3	6.0	-	-
N-Nitrosopyrrolidine	930552	0.016	34	-	-
Nonylphenol	1044051			28	6.6
Parathion	56382	-	-	0.065	0.013
Pentachlorobenzene	608935	1.4	1.5	-	-
Pentachlorophenol	87865	0.27	3.0	**e(1.005(pH)-4.869)** **[~~19-~~]**[~~e(1.005(pH)-4.869)~~]	**e(1.005(pH)-5.134)** **[~~15-~~]**[~~e(1.005(pH)-5.134)~~]
Phenol	108952	21,000	860,000	-	-
Polychlorinated Biphenyls (PCBs)	N/A	0.000064	0.000064	-	0.014
Pyrene	129000	830	4,000	-	-

Selenium	7782492	170	4,200	[~~258~~[9]]	5.0[9] 8.6[10, 11] 19.3 [~~[10]~~11, 12[~~[12]~~]
Silver	7440224	-	-	e(1.72 (ln Hard*)-6 .59)	-
Sulfate	N/A	250,000	-	-	-
Hydrogen Sulfide, Undissociated	7783064	-	-	-	2.0
Tetrachloroethylene	127184	0.69	3.3	-	-
Thallium	7440280	0.24	0.47	-	-
Toluene	108883	1300	15,000	-	-
Total Dissolved Solids	N/A	250,000	-	-	-
Toxaphene	8001352	0.00028	0.00028	0.73	0.0002
Tributyltin (TBT)				0.46	0.072
Trichloroethylene	79016	2.5	30	-	-
Vinyl Chloride	75014	0.025	2.4	-	-
Zinc	7440666	7,400	26,000	e(0.8473 (ln Hard*)+ 0.884)	e(0.8473 (ln Hard*)+ 0.884)
1,1-dichloroethylene	75354	330	7100	-	-
1,1,1-trichloroethane	71556	200	-	-	-
1,1,2-trichloroethane	79005	0.59	16	-	-
1,1,2,2-tetrachloroethane	79345	0.17	4.0	-	-
1,2-dichlorobenzene	95501	420	1300	-	-
1,2-dichloroethane	107062	0.38	37	-	-
1,2-dichloropropane	78875	0.50	15	-	-
1,2-diphenylhydrazine	122667	0.036	0.20	-	-
1,2-trans-dichloroethylene	156605	140	10,000	-	-
1,2,4-trichlorobenzene	120821	35	70	-	-
1,2,4,5-tetrachlorobenzene	95943	0.97	1.1	-	-
1,3-dichlorobenzene	541731	320	960	-	-
1,3-dichloropropene	542756	0.34	21	-	-
1,4-dichlorobenzene	106467	63	190	-	-
2-chloronaphthalene	91587	1,000	1,600	-	-
2-chlorophenol	95578	81	150	-	-
2-methyl-4,6-dinitrophenol	534521	13	280	-	-
2,3,7,8-TCDD (Dioxin)	1746016	5.0 E - 9	5.1 E - 9	-	-
2,4-D	94757	100	-	-	-
2,4-dichlorophenol	120832	77	290	-	-
2,4-dimethylphenol	105679	380	850	-	-
2,4-dinitrophenol	51285	69	5,300	-	-
2,4-dinitrotoluene	121142	0.11	3.4	-	-
2,4,5-TP (Silvex)	93721	10	-	-	-
2,4,5-trichlorophenol	95954	1,800	3,600	-	-
2,4,6-trichlorophenol	88062	1.4	2.4	-	-
3,3'-dichlorobenzidine	91941	0.021	0.028	-	-
4,4'-DDD	72548	0.00031	0.00031	-	-
4,4'-DDE	72559	0.00022	0.00022	-	-
4,4'-DDT	50293	0.00022	0.00022	1.1	0.001

[1]CAS = Chemical Abstracts Service.

[2]Water quality criteria in μg/L unless reported in different units.

[3]Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

[4]DWS = Domestic Water Supply Source.

[5]Fish = protecting human health regarding fish consumption.

[6]Acute criteria = protective of aquatic life based on one (1) hour exposure that does not exceed the criterion for a given pollutant.

[7]Chronic = protective of aquatic life based on ninety-six (96) hour exposure that does not exceed the criterion of a given pollutant more than once every three (3) years on the average.

[8]The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/L (thirty-five hundred μg/L) if aquatic life has not been shown to be adversely affected.

[9] If fish tissue data are available, fish tissue data shall take precedence over water column data[~~the concentration of sulfate is less than forty-four (44) mg/L, the alternate acute water quality standard for selenium may be obtained by calculating the Criterion Maximum Concentration (CMC) using the concentrations of selenite and selenate as follows:~~

~~CMC = 1/, where CMC1 is 258 μg/L for selenite and CMC2 is $e^{(0.5812 + 3.357)}$ μ g/L for selenate, and f1 is the fraction of total selenium that is selenite and f2 is the fraction of total selenium that is selenate~~].

[10]This value is the concentration in μg/g (dry weight) of whole fish tissue.]

[11] A concentration of five and zero tenths (5.0) μg/L or greater selenium in the water column shall trigger further sampling and analysis of

whole-body fish tissue or alternately of fish egg/ovary tissue.

[12]This value is the concentration in μg/g (dry weight) of fish egg/ovary tissue. [~~[12]This value is the concentration in μg/g (dry weight) of fish egg/ovary tissue.~~]

*Hard = Hardness as mg/L $CaCO_3$.

(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[~~or~~]

(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;

3. Waters that support federally recognized endangered or threatened species pursuant to the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544.

(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 the effort the discharger made 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:

(a) "Water Quality Standards Handbook-Chapter 3", EPA August 1994, Publication EPA-823-B-94-005a, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; and

(b) "Interim Economic Guidance for Water Quality Standards Workbook", EPA March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(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: November 10, 2015

FILED WITH LRC: November 12, 2015 at 10 a.m.

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 consist 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 specific criteria and water quality standards 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: The amendments after comments reinsert the appropriate Pentachlorophenol values in the Warm Water Aquatic Habitat Acute and Chronic columns, and reinsert Selenium footnote 12 to distinguish the μg/g (dry weight) of fish egg/ovary tissue.

(b) The necessity of the amendment to this administrative regulation: The amendments after comments are necessary corrections to reflect accurate measurements of pentachlorophenol and selenium for protection of human health and aquatic habitat.

(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 quality standards 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 substantive requirements of the administrative regulation remain unchanged by the amendments after comments. 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 amendments after comments will not have further impact on costs. 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 assessment of whether an 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. Water quality standards and associated criteria vary based on the designated use of the surface water.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, and 1341.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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: 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.

3. Minimum or uniform standards contained in the federal mandate: 40 C.F.R. Part 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, and 1341.

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)

902 KAR 20:260. Special health clinics.

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.

(3)[~~(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.

(4)[~~(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[~~their~~] maximum level of physical function.

(5)[~~(7) "Qualified registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041.~~

~~(8)~~] "Licensure agency" means the[~~Division for 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 **services** or **a low, limited level of** 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**.**

(2) A special health clinic does not include the following:

(a) Any entity exempt from licensure pursuant to KRS 216B.020(2);

(b) A home-based hospice program that provides treatment for pain using controlled substances or a residential hospice facility licensed pursuant to 902 KAR 20:140;

(c)[~~, and shall not include~~] The provision of surgical services **like those** allowed to be performed by ambulatory surgical centers licensed pursuant to 902 KAR 20:106**; or**

(d) The provision of procedures that are invasive or result in continued, prolonged follow-up care or treatment.

(3)[~~(2)~~] Services licensed as a special health clinic **may[~~, 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;

(i)[~~(j)~~] Dental clinics; or

(j)[~~(k) Pediatric, internal medicine, oncology, neurology, cardiology, family practice, and~~] Other medical specialty clinics.

(4)[~~(3)~~] An entity excluded from the definition of pain management facility pursuant to KRS 218A.175(1)(b) shall obtain **separate licensure as** a special health clinic**[~~license~~]** for **any outpatient[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) 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) A[~~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. A[~~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;[~~and~~]

(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 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 if[~~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. A[~~The~~] clinic shall have a medical director who:

1. Shall be[~~is~~] a:

a.[~~Licensed~~] Physician having a full and active license 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 made 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

4. Records of performance evaluation.

(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, or 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.

(f)[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 continuity of care if [where] the patient moves to another source of care;[,] and

2.[the clinic shall,] Upon proper release, transfer medical records or an abstract if[thereof when] requested.

(g)[(d)] Retention of records. After the patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for:

1. Six (6)[five (5)] years; or

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

(h) The clinic shall:

1. Make provisions[(e) Provision shall be made] for the written designation of a specific location for the storage of medical records if[in the event] the special health clinic ceases to operate because of disaster[,] or for any other reason; and

2.[. The licensee shall] Safeguard the record and its content against loss, defacement, and tampering.

(7) Kentucky Health Information Exchange (KHIE).

(a) A clinic shall participate in the KHIE pursuant to the requirements of 900 KAR 9:010.

(b) If a clinic has not implemented a certified electronic health record, the clinic may meet the requirement of paragraph (a) of this subsection by participating in the direct secure messaging service provided by KHIE.

(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.

(9) The evaluation required by subsection (8) of this section shall include:

(a) 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[(f) 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 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, 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[,] 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 patient, 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)[1. 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)[.3. Personnel performing physical examinations shall] Be limited by the relevant scope of practice of state licensure.

(6)[4.] A wellness center shall[must] 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) Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more

~~physicians and one (1) or more registered nurses. At least one (1) member shall not be a member of the clinic staff. The policies shall include:~~

~~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 and/or patient referral, and the maintenance of health records; and~~

~~3. Procedures for review and evaluation of the services provided by the clinic at least annually.~~

~~(b)~~] Personnel. A [~~The~~] clinic shall have a staff that includes at least:

(a) One (1) physician, or one (1) dentist if the clinic provides only dental services;

(b)[~~and at least~~] One (1) licensed nurse, or one (1) dental hygienist if the clinic provides only dental services; and

(c)[~~. The clinic shall employ such~~] Other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

(8)[~~1. The physician shall:~~

~~a. Be responsible for all medical aspects of the clinic and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;~~

~~b. In conjunction with the licensed nurse(s) participate in the development, execution and periodic review of the clinic's written policies and services;~~

~~c. Periodically review the clinic's patient records, provide medical orders, and provide medical care services to patient of the clinic; and~~

~~d. Be present for consultation weekly, and be available within one (1) hour through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.~~

~~2.~~] The licensed nurse, or dental hygienist if applicable, shall:

(a)[~~a.~~] Participate in the development, execution and periodic review of the written policies governing and the services the clinic provides;

(b)[~~b.~~] Participate with the medical director[~~physician~~] in periodic review of patient health records;

(c)[~~c.~~] Provide services in accordance with clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), or KRS Chapter 313 if the individual is a dental hygienist, and with administrative regulations promulgated thereunder;

(d)[~~(i)~~] Arrange for, or refer patients to, needed services that cannot be provided at the clinic; and

(e)[~~(ii)~~] Assure that adequate patient health records are maintained and transferred if a patient is[~~when patients are~~] referred.

[~~(c) The clinic shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:~~

~~1. The utilization of clinic services including at least the number of patients served and the volume of services;~~

~~2. A representative sample of both active and closed clinical records; and~~

~~3. The clinic's health care policies.~~

~~(d) The clinic shall develop and maintain written protocols (i.e., standing orders, rules of practice, and medical directives) which apply to services provided by the center and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected, and include rational for each decision made. The protocols shall be signed by the staff physician.~~

~~(e) A pulmonary care clinic shall have linkage agreements or arrangements with each of the following:~~

~~1. Inpatient hospital care;~~

~~2. Physician services in a hospital, patient's home, or long term care facility;~~

~~3. Additional and specialized diagnostic and laboratory services that are not available at the clinic;~~

~~4. Home health agency;~~

~~5. Emergency medical services; and~~

~~6. Pharmacy services.~~]

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 clinic shall be approved by 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 sources.

(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

1. The clinic shall ensure[~~insure~~] that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly; and

4. A pest control program shall be in operation in the 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 cause, 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 wastes, including any infectious, pathological, or contaminated wastes, which shall include the requirements established in this subsection.

(a)[~~; 5.~~] Sharp wastes, including[~~such as~~] broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and placed in puncture-resistant[~~aggregated in rigid disposable~~] containers immediately after use.

(b) A needle or other contaminated sharp waste shall not be

recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

(d) Any nondisposable sharp waste shall be placed in a hard walled container for transport to a processing area for decontamination.

(9)(a) Disposable waste shall be:

1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

2. Handled, stored, and disposed of in a way that minimizes direct exposure of personnel or patients to waste materials.

(b) The clinic shall establish specific written policies regarding handling and disposal of waste material.

(10) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.

Section 6. Standards for prescribing and dispensing controlled substances in a special health clinic. (1) All licensed prescribers of a special health clinic authorized to prescribe or dispense controlled substances shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by their professional licensing boards, including 201 KAR 9:260 and 201 KAR 20:057.

(2) A representative from the Office of Inspector General shall review the special health clinic's records, including the clinic's patient records, to verify facility compliance with administrative regulations promulgated by professional licensing boards pursuant to KRS 218A.205 which establish standards for licensees authorized to prescribe or dispense controlled substances.

(3) A special health clinic described by Section 2(3) of this administrative regulation in which the majority of the patients of the practitioners at the clinic are provided treatment for pain that includes the use of controlled substances shall comply with the requirements established in this subsection.

(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 the individual designated as medical director, including 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 8(1)(e), 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(5).

(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 that:

(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 the 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.

(7) Notice of a hearing on an urgent suspension shall be served on the clinic by certified mail, return receipt requested, or by personal service.

(8)(a) 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; or

(c) Referral to a professional licensing board and law enforcement agency in accordance with subsection (6)(c) of this section results in an administrative sanction or criminal conviction relating to controlled substances against a physician or prescribing practitioner employed by, or under contract with, the clinic.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders[~~Needles and syringes 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 clinic generates them. Any incinerator used 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 "INFECTIOUS WASTE" and identifies the clinic 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: November 12, 2015

FILED WITH LRC: November 13, 2015 at noon

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for 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: The 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 6 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. In addition, this amended after comments regulation makes changes to Section 2(1) through (3) to clarify what constitutes a special health clinic and what types of entities qualify for licensure as a special health clinic, and adds clarifying language to the requirement for participation in KHIE.

(b) The necessity of the amendment to this administrative regulation: The amendment and amended after comments regulation 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 amended after comments regulation 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 amended after comments regulation 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 amended after comments regulation impacts the 146 currently licensed special health clinics and any entity that seeks licensure to operate a special health clinic.

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

(a) List 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 licensed special health clinic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As explained in the Statement of Consideration, KHIE will provide Direct Secure Messaging to providers at no cost and will work with providers for inclusion in the statewide Transitions of Care Community to support referrals and care coordination.

(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 amended after comments regulation.
(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amended after comments regulation.

(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 and any entity that seeks licensure to operate a special health clinic.

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 effective.

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

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

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)[~~(2)~~] "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(4)[~~(3)~~] "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant[~~Michelle P. waiver recipient~~] who does not require twenty-four (24) hour care in an institutional setting.

(5)[~~(4)~~] "Advanced practice registered nurse" or "APRN" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(6)[~~(5)~~] "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)[~~(6)~~] "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)[~~(7)~~] "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 6 of this administrative regulation and participant[~~consumer~~]-directed[~~option~~] services identified in Section 7 of this administrative regulation provided pursuant to a participant's[~~recipient's~~] approved person-centered service plan[~~of care~~].

(9)[~~(8)~~] "Budget allowance" is defined by KRS 205.5605(1).

(10)[~~(9)~~] "Certified psychologist" means an individual who is a certified psychologist in accordance with KRS 319.056.[~~(10) "Consumer" is defined by KRS 205.5605(2).~~]

(11) [~~"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.~~

~~(12)~~] "Covered services and supports" is defined by KRS 205.5605(3).

(12)[~~(13)~~] "DCBS" means the Department for Community Based Services.

(13)[~~(14)~~] "Department" means the Department for Medicaid Services or its designee.

(14)[~~(15)~~] "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

6. Capacity for independent living.

(15)[~~(16)~~] "Direct care staff" means an individual hired by a Michelle P. waiver provider to provide services to the participant[~~recipient~~] and who:

(a)1.a. Is eighteen (18) years of age or older; and

b. Has a high school diploma or GED; or

2.a. Is twenty-one (21) years of age or older; and

b. Is able to communicate with a participant[~~recipient~~] in a manner that the participant[~~recipient~~] or participant's[~~recipient'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.

(16)[~~(17)~~] "Electronic signature" is defined by KRS 369.102(8).

(17)[~~(18)~~] "Federal financial participation" is defined in 42 C.F.R. 400.203.

(18)[~~(19)~~] "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081; and

(b) Medicare and Medicaid certified.

(19)[~~(20)~~] "ICF-IID" means an intermediate care facility for individuals with an intellectual disability.

(20)[~~(21)~~] "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.

(21) "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; or

3. Holds a bachelor's degree from an accredited institution in a human services field.

(22) "Level of care determination" means a determination that an individual meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation.

(23) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(24) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(25)[~~(24)~~] "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.

(26)[~~(25)~~] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(27)[~~(26)~~] "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(28)[~~(27)~~] "Licensed psychological practitioner" means an individual who:

(a) Meets the requirements established in KRS 319.053; or

(b) Is a certified psychologist with autonomous functioning.

(29)[~~(28)~~] "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(30) "MWMA[~~**portal**~~]" means the Kentucky Medicaid Waiver Management Application internet portal located at http://chfs.ky.gov/dms/mwma.htm.

(31)[~~(29) "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.~~

~~(30)~~] "Normal babysitting" means general care provided to a child which includes custody, control, and supervision.

(32)[~~(31)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(33)[~~(32)~~] "Occupational therapy assistant" is defined by KRS 319A.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 **participants[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)[(33)] "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)[(34)] "Physical therapist" is defined by KRS 327.010(2).

(39)[(35)] "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)[(36)] "Physician assistant" or "PA" is defined by KRS 311.840(3).

(41)[(37) Plan of care" or "POC" means a written individualized 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.

(38)] "Plan of treatment" means a care plan used by an ADHC center.

(42)[(39)] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(43)[(40)] "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

(44)[(41)] "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.

(45)[(42)] "Representative" is defined by KRS 205.5605(6).

(46)[(43) "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907 KAR 12:010, Section 7.

(44)] "Sex crime" is defined by KRS 17.165(1).

(47)[(45)] "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(48)[(46)] "Speech-language pathologist" is defined by KRS 334A.020(3).

(49)[(47)] "State plan" is defined by 42 C.F.R. 400.203.

(50)[(48)] "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct care staff and who:

(a)1.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 participants[recipients], 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.

(51)[(49)] "Support broker" means an individual chosen by a participant[consumer] from an agency designated by the department to:

(a) Provide training, technical assistance, and support to the participant[a consumer]; and

(b) Assist the **participant**[a]**[consumer]** in any other aspects of PDS[CDO].

(52)[(50)] "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;

(g) Budget allowance; and

(h) **Twelve (12)[Six (6)]** month budget.

(53)[(51)] "Violent crime" is defined by KRS 17.165(3).

(54) "Voluntary moratorium" means a provider's voluntary agreement to not serve any new (to the provider) 1915(c) home and community based waiver services participants.

Section 2. Non-PDS[Non-CDO] Provider Participation Requirements. (1) In order to provide Michelle P. waiver services, excluding participant-[consumer] directed[option] services, 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 20:091 if a community mental health center; or

(b) Certified by the department **in accordance with 907 KAR 12:010**[in accordance with 907 KAR 12:010, Section 3,] if the provider's type is not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver provider shall:

(a) [Provide services to Michelle P. waiver recipients:

1. Directly; or

2. Indirectly through a subcontractor;

(b)] Comply with[the following administrative regulations and program requirements]:

1. 907 KAR 1:671;

2. 907 KAR 1:672;[and]

3. 907 KAR 1:673;

4. This administrative regulation;

5. The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164;**[and]**

6. 42 U.S.C. 1320d to 1320d-8; **and**

7. The provider participation requirements for SCL providers established in 907 KAR 12:010, Section 3;

(b)[(c)] Not enroll a **participant[Michelle P. waiver recipient]** for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(c)[(d)] Be permitted to accept or not accept a **participant[Michelle P. waiver recipient]**.

(3) In order to provide a Michelle P. waiver service in accordance with Section 4 of this administrative regulation, a Michelle P. waiver service provider:

(a) Shall, for a potential employee or volunteer, obtain the results of a Caregiver Misconduct Registry check as described in 922 KAR 5:120 or an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism; and

(b) May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

(a) A clinical record in the MWMA**[portal]** for each participant[Michelle P. waiver recipient] that shall contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on form MAP 351, Medicaid Waiver Assessment and signed by the:

a. Assessment team; and

b. Department;

3. A person-centered service plan completed in accordance 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[~~recipient~~] or his or her legal representative at the time of application or reapplication and each recertification 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[~~Michelle P. waiver recipient~~];

9. Documentation that the participant[~~Michelle P. waiver recipient~~] receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;

10. Documentation that the participant[~~recipient~~] 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 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[~~Michelle P. waiver recipient's~~] home;

d. Itemization of each service delivered;

e. The participant's[~~Michelle P. waiver recipient's~~] arrival and departure time, excluding travel time, if the service was provided outside the participant's[~~recipient's~~] home;

f. Progress notes which shall include documentation of changes, responses, and treatments utilized to meet the participant's[~~Michelle P. waiver recipient'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[~~recipient~~] 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;

(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[~~Michelle P. Waiver Recipient~~] Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible participant[~~Michelle P. waiver recipient~~] 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[~~Michelle P. waiver recipient~~] at least once every twelve (12) months or more often if necessary.

(4)[~~(3)~~] 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 services program.

(5)[~~(4)~~] A Michelle P. waiver provider shall inform a participant[~~Michelle P. waiver recipient~~] or the participant's[~~his~~] legal representative of the choice to receive:

(a) Michelle P. waiver services; or

(b) Institutional services.

(6)[~~(5)~~] An eligible participant[~~Michelle P. waiver recipient~~] or the participant's[~~recipient's~~] legal representative shall select a participating Michelle P. waiver provider from which the participant[~~recipient~~] wishes to receive Michelle P. waiver services.

(7)[~~(6)~~] A Michelle P. waiver provider shall [~~use a MAP-24 to~~] notify the department in writing electronically or in print of a participant's[~~Michelle P. waiver recipient's~~]:

(a) Termination from the Michelle P. waiver program; [~~or~~]

(b)[~~1.~~] Admission to an ICF-IID or nursing facility for less than sixty (60) consecutive days;[~~or~~]

(c)[~~2.~~] Return to the Michelle P. waiver program from an ICF-IID or nursing facility within sixty (60) consecutive days;

(d)[~~(c)~~] Admission to a hospital; or

(e)[~~(d)~~] Transfer to another waiver program within the department.

(8)[~~(7)~~] Involuntary termination of a service to a participant[~~Michelle P. waiver recipient~~] by a Michelle P. waiver provider shall require:

(a) Simultaneous notice in writing electronically or in print to the participant[~~recipient~~] 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[~~recipient'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[~~recipient~~] with the name, address, and telephone number of each current provider in the state;

2. Provide assistance to the participant[~~recipient~~] 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[~~recipient~~] or legal representative;

5. Ensure the health, safety, and welfare of the participant[~~recipient~~] 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 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(3).

(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.

(3) The department shall not determine that an individual fails to 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[~~of care~~] or, for a PDS[~~CDO service~~], pursuant to a person-centered service plan[~~of care~~] and support spending plan;

(c) Except for a PDS[~~CDO service~~], 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. Assure that service delivery is in accordance with a participant'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;~~

~~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;~~

~~5.~~] Include documentation with a detailed monthly summary note **in the MWMA**, 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;

5.[~~6.~~] 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

6.[~~7.~~] 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 homemaking activities; and

3. Include documentation with a detailed note **in the MWMA**, 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~~

~~c.~~] The signature, date of signature, and title of the individual preparing the note;

(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[~~recipient's~~] health and welfare and not for the participant's[~~recipient's~~] family; and

c. Who needs assistance with age-appropriate activities of daily living; and

5. Include documentation with a detailed note **in the MWMA** 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

c.[~~d.~~] The beginning and ending time of service;

(f) 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

4. Include documentation with a detailed note **in the MWMA**, 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

c.[~~d.~~] 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. Be 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 every six (6) months; and

4.[~~Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10a through c, if provided to a child under age twenty-one (21) in an ADHC center; and5.~~] Include documentation with a detailed note **in the MWMA**, 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[~~Michelle P. waiver recipient'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 **in the MWMA**, 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's[~~Michelle P. waiver recipient's~~] 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. Exclusive 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 **in the MWMA**, 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[~~of care~~]; 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 **in the MWMA**, 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[~~of care~~]; 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 and 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 **in the MWMA**, 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[~~of care~~]; 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;

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 **participant[~~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 **participants[~~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 **participant[~~recipient~~]** or **participants[~~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; or

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 **in the MWMA** 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~~]; and

(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;

(m) A supported employment service, which shall:

1. Be intensive, ongoing support for a participant[~~Michelle P. waiver recipient~~] to maintain paid employment in an environment in which an individual without a disability is employed;

2. Include attending to a participant's[~~recipient's~~] personal care needs;

3. Be provided in a variety of settings;

4. Be provided on a one-to-one basis;

5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant's[~~Michelle P. waiver recipient's~~] file;

6. Exclude work performed directly for the supported employment provider;

7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

8. Be documented **in the MWMA** by:

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~~]; and

(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;

(n) A behavioral support service which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the participant[~~Michelle P. waiver recipient~~] to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the participant's[~~Michelle P. waiver recipient's~~] behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the behavior support specialist;

b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;

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;

5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;

6. Include the monitoring of a participant's[~~Michelle P. waiver recipient's~~] progress which shall be accomplished by:

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;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist; and

9. Be documented **in the MWMA** by a detailed staff note, which shall include:

a. The date of service;

b. The beginning and ending time; and

c. The signature, date of signature, and title of the behavior support specialist;

(o) An ADHC service, which shall:

1. Be provided to a participant[~~Michelle P. waiver recipient~~] who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to participants[~~Michelle 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[~~Michelle 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[~~Michelle 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[~~Michelle 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 psychological practitioner; and

6. Be provided pursuant to a plan of treatment that[~~. The plan of treatment~~] shall:

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 **in the MWMA** 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;

(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 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 qualified 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 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[~~Michelle P. waiver recipient participating in CDO~~] 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[~~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 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 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;

(c) A 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's[~~consumer'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's[~~consumer's~~] funds identified in the participant's[~~consumer's~~] approved PDS[~~CDO~~] budget;

2. Include payroll processing associated with the individuals hired by a participant[~~consumer~~] or participant's[~~consumer's~~] representative;

3. Include withholding local, state, and federal taxes and making 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's[~~consumer's~~] representative; and

b. The department.

(2) To be covered, a PDS[~~CDO service~~] shall be specified in a person-centered service 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~~] Michelle P. waiver setting[~~,~~] 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[~~of care~~]; 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's[~~consumer's~~] choice shall be reflected or documented in the person-centered service plan[~~of care~~].

(5)(a) A participant[~~consumer~~] may designate a representative to act on the participant's[~~consumer'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, Initiation/Termination of Participant-Directed Services[~~form~~].

(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 PDS[~~CDO services~~] if:

(a) Imminent danger to the participant's[~~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 [~~of care~~] indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the participant's[~~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[~~of care~~].

(9) Except for a termination required by subsection (7) of this section, prior to a participant's[~~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[~~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[~~consumer's CDO~~] participation; and

(b) Inform the participant[~~consumer~~] of the right to appeal the department's decision in accordance with Section **19[~~16~~]**[~~14~~] of this administrative regulation.

(11) A PDS[~~CDO~~] provider shall:

(a) Be selected by the participant[~~consumer~~];

(b) Submit a completed Kentucky Participant[~~Consumer~~] Directed Service[~~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's[~~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 **from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to being a PDS provider**;

(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 **maintained** in accordance

with 922 KAR 5:120 and not be found on the registry; **and**

3. Central Registry maintained in accordance with 922 KAR 1:470 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[~~consumer~~];

(l) 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[~~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 children who receive waiver services.

(13)(a) The department shall establish a twelve (12) month budget for a participant[~~consumer~~] based on the participant's person-centered service[~~consumer's~~] plan[~~of care~~].

(b) A participant's[~~consumer's~~] twelve (12) month budget shall not exceed $40,000 unless:

1. The participant's[~~consumer'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[~~consumer's~~] health, safety, and welfare; and

4. If a significant change has occurred in the participant's[~~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 participant's[~~recipient's~~] relocation.

(d) A participant's[~~consumer'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[~~consumer's~~] plan[~~of care~~] and approved by the department.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a PDS[~~CDO 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[~~CDO~~]) waiver services.

(15) A support broker shall:

(a) Provide needed assistance to a participant[~~consumer~~] with any aspect of PDS[~~CDO~~] or blended services;

(b) Be available to a participant[~~consumer~~] twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continually monitor a participant's[~~consumer's~~] health, safety, and welfare; and

(e) Complete or revise a person-centered service plan in accordance with Section 8 of this administrative regulation[~~of care using the Person Centered Planning: Guiding Principles~~].

(16)(a) A support broker or case manager may conduct an assessment or reassessment for a PDS[~~CDO~~] participant.

(b) A PDS [~~CDO~~] assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

(17) Services provided by a support broker shall meet the conflict free requirements established for case management in Section 9(4)(f) and Section 9(5) of 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 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;

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 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) 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 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 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)1. 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 community based waiver service program; or

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]**; or

(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.

(b)1. 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 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, 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 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 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; or

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 CDO~~], 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. 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 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[~~(2) There shall be three (3) classes of incidents including:~~

~~(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 at the provider and case management or support brokerage agency;~~

~~(b) 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 by 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.a. Be grave in nature;~~

~~b. Involve suspected abuse, neglect, or 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 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.[~~10.~~] 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)[~~(a)~~] 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.~~

~~(b)1. 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 department notifies the individual or the individual's legal representative of potential funding approved to enroll the individual in the Michelle P. Waiver Program and the individual or individual's legal representative:

1. Declines the potential funding for enrollment in the program; and

2. Does not request to remain on the Michelle P. Waiver Program waiting list.

(7) If, after being notified by the department of potential funding approved to enroll the individual in the Michelle P. Waiver Program, the individual or individual's legal representative declines the potential funding but requests to remain on the Michelle P. Waiver Program waiting list, the individual shall:

(a) Lose his or her current position on the waiting list; and

(b) Be moved to the bottom of the waiting list.

(8) If the department removes an individual from the Michelle P. Waiver Program waiting list pursuant to this section, the department shall send written notice of the removal to:

(a) The individual or the individual's legal representative; and

(b) The individual's Michelle P. Waiver Program coordination provider if the individual has a Michelle P. Waiver Program coordination provider.

(9) 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.

(10)(a) An individual who is placed on the Michelle P. Waiver Program waiting list shall be informed about and told how to apply for Medicaid state plan services for which the individual might qualify.

(b) An individual who is under twenty-one (21) years of age and who is placed on the Michelle P. Waiver Program waiting list shall also be informed about Early and Periodic Screening, Diagnostic, and Treatment services.

Section 13.[~~11.~~] Use of Electronic Signatures. [~~(1)~~] The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.[~~(2) A provider that chooses to use electronic signatures shall:~~

~~(a) Develop and implement a written security policy that shall:~~

~~1. Be adhered to by each of the provider's employees, officers, agents, 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, 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 in the following table shall apply:

Service	Fixed Upper Payment Rate Limit	Unit of Service
Case Management	$50.00	15 minutes
Respite	$4,000 per calendar year	15 minutes
Homemaker	$6.50	15 minutes
Personal Care	$7.50	15 minutes
Attendant Care	$2.90	15 minutes
Supported Employment	$5.54	15 minutes
Adult Day Health Care	$2.75	15 minutes
Adult Day Training	$2.75	15 minutes
Community Living Supports	$5.54	15 minutes
Physical Therapy	$22.17	15 minutes
Occupational Therapy	$22.17	15 minutes
Speech Therapy	$22.17	15 minutes
Behavior Supports	$33.25	15 minutes
Environmental and Minor Home Adaptation	$500 per calendar year	
Financial Management	$12.50 (not to exceed eight (8) units or $100.00 per month)	15 minutes
Support Broker	$265.00	One (1) month

Section 15. **Corrective Action Plans. (1)(a) If a provider**

receives a findings report from the department indicating that an issue of non-compliance has been cited, the provider shall have ten (10) business days from the date on the letter that accompanied the findings report to submit a corrective action plan to the department in accordance with the instructions in the letter.

(b) If a provider is notified by the department that the corrective action plan was not approved, the provider shall submit a revised corrective action plan to the department within ten (10) business days of the date on the letter informing that the initial corrective action plan was not approved and in accordance with the instructions in the letter.

(c)1. If a provider is notified by the department that the second corrective action plan was not approved, the provider shall submit a revised corrective action plan to the department within five (5) business days from the date on the letter notifying that the second corrective action plan was not approved.

2. If the third corrective action plan submitted to the department is not approved, the department shall:

a. Not certify the provider if the provider is new;

b. Not recertify the provider if the provider is an existing provider; or

c. Terminate the provider's certification.

3. A provider shall have the right to appeal a termination in accordance with 907 KAR 1:671.

4. A citation of an issue of non-compliance shall not be appealable.

(2) The department shall have up to thirty (30) business days to review a corrective action plan.

Section 16. Provider Certification. The following shall apply regarding Michelle P. waiver provider certification periods:

Provider Status at Recertification Date	New Certification Period Based on Status at Recertification Date
Zero citations during the most recent recertification review and have successfully implemented any approved corrective action plan for any citation issued during the recertification period if any citation was issued	One (1) year
Received citations during the most recent recertification review or has existing (open) citations without either an accepted corrective action plan or a successfully implemented corrective action plan	Six (6) Months (1) Upon approval of corrective action plan, the department shall monitor for successful implementation within thirty (30) days. (2) Upon successful implementation of corrective action plan, the department shall extend recertification to balance of one (1) year. (3) If provider fails to implement an approved corrective action plan, the department shall extend the timeframe for implementation or consider non-renewal or termination. (4) If provider has not submitted an approved corrective action plan after the three (3) allowed attempts (see above), the department shall consider non-renewal or termination.

Section 17. Voluntary Moratorium. (1)(a) Upon the department becoming aware of a potential health, safety, or welfare violation, the department shall contact the provider's executive director to:

1. Officially notify the provider of the option for a voluntary moratorium; and

2. Discuss the health, safety, or welfare concern.

(b) The department's notice to the provider shall initially be made via phone followed up by notice via electronic means.

(c) Upon receipt of the electronic notice, the provider shall formally accept or not accept the voluntary moratorium option by:

1. Signing the document provided; and

2. Returning it to the department within two (2) business days of receipt by electronic means as directed in the electronic notice.

(2) If the provider:

(a) Agrees to a voluntary moratorium, the department shall proceed as established in 907 KAR 7:005 regarding a voluntary moratorium pending an investigation; or

(b) Does not agree to a voluntary moratorium, the department shall:

1. Terminate the provider in accordance with 907 KAR 7:005; and

2. Notify in writing the provider's executive director at the agency's primary business address of the:

a. Reason for termination; and

b. Provider's right to appeal the termination within:

(i) Two (2) business days of receipt of the written non-acceptance of the voluntary moratorium; or

(ii) Five (5) business days of the initial notice sent to the provider if the provider did not respond to the notice of the voluntary moratorium option.

(3) A notice of termination to the provider shall be sent via a delivery method that records the sending and receipt of the notice.

(4)(a) If a provider is terminated, the department shall:

1. Monitor the provider's efforts to ensure the health, safety, and welfare of participants in need of being transitioned to a new provider; and

2. Provide technical assistance to the provider during the transition.

(b) A provider shall:

1. Fully cooperate with the department's transition assistance team and any other state government agency involved;

2. Provide full access to its records and information pertaining to the participants being transitioned; and

3. Be responsible for facilitating the effective transition of participants to another provider or providers of the participant's choice prior to the termination date.

(c) A provider's termination date shall be stated in the termination notice.

(d) A participant's case manager shall help ensure that the participant's transition to a new provider or providers is completed prior to the termination date.

Section 18.[~~13.~~] 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 **19.**[~~**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 consumer~~] shall be in accordance with 907 KAR 1:563.

Section **20.[~~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", **October[~~May~~]** 2015;

(d)[~~"Person Centered Planning: Guiding Principles", March 2005;~~

~~(b) "MAP-24, Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services Memorandum", August 2008;~~

~~(c)~~] "MAP 95 Request for Equipment Form", June 2007;

[~~(d) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", July 2008;~~]

(e) "MAP - 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015[~~July 2008~~];

(f) "MAP 351,[~~Department for Medicaid Services,~~] Medicaid Waiver Assessment", July 2015[~~2008~~];

(g) "MAP-2000, Initiation/Termination of Participant-Directed Services[~~Consumer Directed Option (CDO)~~]", June 2015[~~July 2008~~];

(h) "MAP 10, Waiver Services Physician's Recommendation", June 2015[~~August 2014~~]; and

(i) "Kentucky Participant-Directed Services[~~Consumer Directed Option~~] Employee/Provider Contract", June 2015[~~August 2010;~~

~~(j) "Michelle P. Waiver Incident Report Form", May 2013; and~~

~~(k) "MAP-621 Application for MPW Waiver Waiting List", February 2014~~].

(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.; or

(b) Online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2015

FILED WITH LRC: November 13, 2015 at noon

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage 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 IID) to reside in 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 (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; 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 MWMA; revising the application process by requiring it to be done via the new MWMA; incorporating new forms by reference (a MAP -115 Application Intake - Participant Authorization used by individual to designate an individual to apply for 1915(c) home and community based waiver services via the MWMA on behalf of the individual; a MAP – 116 Service Plan – Participant Authorization used by an individual to authorize someone to represent them in person-centered service plan development and entry in the MWMA; and a MAP-531 Conflict Free Case Management Exemption form used to request an exempt 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).

The amendment after comments clarifies that documentation of various services must be entered into the MWMA; clarifies that a criminal background check must be one performed by the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the potential PDS provider lived outside of Kentucky during the twelve (12) months prior to being a provider; adds a check of the Central Registry pursuant to 922 KAR 1:470 to the screening checks; clarifies that services by a support broker must also be conflict free; establishes corrective action plan provisions; establishes provisions regarding provider recertification (certification periods are tied to provider compliance/failure to comply); establishes requirements regarding voluntary moratoriums (during which a provider cannot provide services to new participants); and revises the MAP 531, Conflict Free Case Management Exemption by inserting a statement requiring documentation of denials of qualified providers within thirty (30) miles from the participant's residence.

(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) and/or perform related activities.

Clarifying that documentation regarding services must be entered into the MWMA is necessary for clarity. The criminal background check and Central Registry check provisions are necessary to

protect the health, safety, and welfare of Michelle P. waiver program participants. Clarifying that support broker services must be conflict free is necessary to comply with a federal mandate. DMS is establishing corrective action plan provisions, certification period provisions, and also voluntary moratorium provisions in the amendment after comments in response to correspondence from an attorney (subsequent to the filing of this administrative regulation) on behalf of a provider claiming that DMS lacks the authority to enforce such provisions without them being stated in administrative regulation. Revising the MAP 531, Conflict Free Case Management Exemption is necessary to document that no qualified provider is available.

(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 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) 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 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
(Amended After Comments)

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)

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[~~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.

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)[~~(2)~~] "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

[~~(3) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.~~]

(4) "Acquired Brain Injury Branch" or "ABIB" means the Acquired Brain Injury Branch of the Department for Medicaid Services, Division of Community Alternatives.

(5) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service provided to a Medicaid eligible individual who has acquired a brain injury.

(6) "Advanced practice registered nurse" is defined by KRS 314.l011(7).

(7) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that[~~is~~]:

(a) Serves as the basis[~~Completed on a MAP-351;~~

~~(b) Submitted to the department:~~

~~1.~~] for a level of care determination;

(b) Is completed on a MAP 351, Medicaid Waiver Assessment that is uploaded into the MWMA[**~~portal~~**]; and

(c) Occurs at least once[~~2. No less than~~] 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[~~CDO~~] services identified in Section 10[~~8~~] 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 "CDO" 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).

(14)[~~(16)~~] "Crisis prevention and response plan" means a plan developed by the person centered team[~~an interdisciplinary team~~] to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

(15)[~~(17)~~] "DCBS" means the Department for Community Based Services.

(16)[~~(18)~~] "Department" means the Department for Medicaid Services or its designee.

(17)[~~(19)~~] "Good cause" means a circumstance beyond the control of an individual that 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 or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(18)[~~(20)~~] "Human rights committee" or "HRC" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(19)[~~(21) "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.~~

~~(22)~~] "Level of care certification" means verification, by the department, of ABI program eligibility for:

(a) An individual; and

(b) A specific period of time.

(20)[~~(23)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(21) "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.

(22)[~~(24)~~] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(23)[~~(25)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(24) "MWMA[**~~portal~~**]" means the Kentucky Medicaid Waiver Management Application internet portal located at http://chfs.ky.gov/dms/mwma.htm.

(25)[~~(26)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(26)[~~(27)~~] "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 service 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" 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)[~~(29)~~] "Personal services agency" is defined by KRS 216.710(8).

(32)[~~(30)~~] "Psychologist" is defined by KRS 319.010(9).

(33)[~~(31)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(34)[~~(32)~~] "Qualified mental health professional" is defined by KRS 202A.011(12).

(35)[~~(33)~~] "Representative" is defined by KRS 205.5605(6).

(36)[~~(34)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(37)[~~(35)~~] "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~~].

(38)[~~(36)~~] "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.

(39)[~~(37)~~] "Transition plan" means a plan that is developed by the person centered[~~an 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.

(2) An ABI provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672;

(c)[~~(b)~~] 907 KAR 1:673;

(d) 907 KAR 7:005;

(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) 42 U.S.C. 1320d to 1320d-8[~~and~~

~~(c) 902 KAR 20:078~~].

(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 an ABI recipient served by the agency.

(4) An ABI provider shall:

(a) Unless providing PDS[~~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 that complies 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, 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's[~~an ABI recipient's~~] 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.

(6)[~~(7)~~] An ABI provider shall have a written statement of its mission and values.

(7)[~~(8)~~] An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of a participant,[~~an ABI recipient's~~] 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;

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 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. Bedrooms shall be accessible to the appropriate persons.

4.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;

(vi) Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated;

(vii) Informed 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.

(10)[~~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) 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.~~

~~(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided and all the records and reports shall be made available to the:~~

~~(a) Department;~~

~~(b) ABI recipient's selected case manager;~~

~~(c) Cabinet for Health and Family Services, Office of Inspector General or its designee;~~

~~(d) General Accounting Office or its designee;~~

~~(e) Office of the Auditor of Public Accounts or its designee;~~

~~(f) Office of the Attorney General or its designee; or~~

~~(g) Centers for Medicare and Medicaid Services.~~

~~(11)~~] An ABI provider shall cooperate with monitoring visits from monitoring agents.

(11)[~~(12)~~] 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

(d) Contain no blank lines between each entry.

(12)[~~(13)~~] A record of 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 resources 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; and

(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.

(13)[~~(14)~~] An ABI provider[~~shall~~]:

(a) Shall:

1. 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 direct care or a supervisory function, the volunteer's annual TB risk assessment or negative tuberculosis test required by subparagraph 1 of this paragraph;

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;

(b)1. Shall for each potential employee or volunteer expected to perform direct care or a supervisory function, obtain:

a. Prior to the date of hire or date of service as a volunteer, the results of:

(i)[~~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~~]

(ii)[~~b.~~] A Nurse Aide Abuse Registry check as described in 906 KAR 1:100; and

(iii) A Caregiver Misconduct Registry check as described in 922 KAR 5:120; and

b.[~~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[~~and~~

~~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[~~and~~

~~(c)~~] 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[~~(d)~~] 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[~~(e)~~] 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 trafficking, manufacturing, or possession of an illegal drug during the past five (5) years;

(g) Shall[~~(f)~~] 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;

(h) Shall[~~(g)~~] 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;

(i) Shall[~~(h)~~] 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. Caregiver Misconduct Registry pursuant to 922 KAR 5:120;

(j) Shall[~~(i)~~] evaluate and document the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter; and

(k) Shall[~~(j)~~] 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~~].

(14)[~~(15)~~] 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;

2. Has a high school diploma or GED; and

3.a. Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

(15)[~~(16)~~] An ABI provider shall establish written guidelines that address the health, safety and welfare of a participant[~~an ABI recipient~~], which shall include:

(a) Ensuring the health, safety and welfare of the participant[~~ABI recipient~~];

(b) Maintenance of sanitary conditions;

(c) Ensuring 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 have a rating of 1A10BC;

(d) For a supervised residential care or adult day training provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the participant[~~ABI recipient~~] not exceeding 120 degrees Fahrenheit;

(e) Ensuring 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) Ensuring that staff who supervise medication administration:

1. Unless the employee is a licensed or registered nurse, have specific training provided by a licensed medical professional[~~(a nurse, pharmacist, or medical doctor)~~] and documented competency on cause and effect and proper administration and storage of medication; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, time of administration, and the recipient's name if administered to the participant[~~ABI recipient~~] or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(g) Establish policies and procedures for on-going monitoring of medication administration 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 overnight when a participant[~~an ABI recipient~~] is typically asleep;

(c) Mandate that:

1. The result of an evacuation drill be evaluated and modified as needed; and

2. Results of the prior year's evacuation drill be maintained on site.

(17)[~~(18)~~] 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,[~~an ABI recipient~~] which shall include:

1. Required orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes at least six (6) hours 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.

(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.

(19)[~~(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;~~

~~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 9[~~7~~] 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 ABI 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 case manager or support broker, on behalf of an applicant, shall enter into the MWMA**[~~portal~~]**[~~submit~~] a certification packet[~~to 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, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program~~];

(d)[~~(c)~~] An individual shall receive notification of potential funding allocated for ABI services for the individual;

(e)[~~(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;

(f)[~~(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

(g)[~~(f)~~] An individual shall receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of time.

(3) 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, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program, if the ABI recipient is:

(a) Admitted to the ABI waiver program;

(b) Discharged from the ABI waiver program;

(c) Temporarily discharged from the ABI waiver program;

(d) Readmitted from a temporary discharge;

(e) Admitted to a nursing facility;

(f) Changing the primary provider; or

(g) Changing the case management agency.

(8)] 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 or[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[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; and

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[of care] 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's[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 recipient'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;
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.
(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 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)1. 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)1. 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;
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 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;

e. The signature and title of the case manager completing the note; and

f. 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;

2. At least annually thereafter; and

3. 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;

(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

(c) 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)1. 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 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, 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 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 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.

(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 ABI waiver services.

(5) Case management shall:

(a) Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process;

(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 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 the change occurs with the participant;

(e) 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;

(f) Assist a participant in obtaining a needed service outside those available by the ABI waiver;

(g) Be provided by a case manager who:

1.a. Is a registered nurse;

b. Is a licensed practical nurse;

c. 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;

d. Is an independent case manager; or

e. Is employed by a free-standing case management agency;

2. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;

3. 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 the 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:

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 **in the MWMA** 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:

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.

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[~~of care~~].

(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, sociology, 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;~~

~~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 within 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:~~

~~(i) Individual-specific; and~~

~~(ii) 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.(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~~

~~8. Be documented by a detailed staff note which shall include:~~

~~a. The ABI recipient's health, safety and welfare;~~

~~b. Progress toward outcomes identified in the approved plan of care;~~

~~c. The date of the service;~~

~~d. Beginning and ending time;~~

~~e. The signature and title of the individual providing the service; and~~

~~f. A quarterly summary which shall include:~~

~~(i) Documentation of monthly contact with each chosen ABI provider; and~~

~~(ii) Evidence of monitoring of the delivery of services approved in the recipient's plan of care and of the effectiveness of the plan of care~~];

(b) Behavior programming services, which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the participant's[~~ABI recipient's~~] behavior which shall include:

a. An evaluation of the impact of an ABI on cognition and behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

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[~~an ABI recipient'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 **in the MWMA** 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[~~an ABI waiver service recipient~~];

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[~~an ABI recipient~~] while utilizing transportation services;

6. Include documentation **in the MWMA** 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[~~an ABI recipient~~] who receives supervised residential care; and

8. Be provided by:

a. A home health agency licensed and operating in accordance with 902 KAR 20:081;

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[~~an ABI recipient~~] unless the participant[~~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) participants[~~ABI recipients~~] 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[~~recipient~~] if the provider develops an individualized plan for the participant[~~recipient~~] to promote increased independence. The plan shall:

a. Contain provisions necessary to ensure the participant's[~~recipient's~~] health, safety, and welfare;

b. Be approved by the participant's[~~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's[~~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-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[individual's] plan[of care];

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[recipient's] plan[of care];

10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

11. Shall be documented **in the MWMA** 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.] 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 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 twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:

a. Be based on the participant's[recipient's] needs;

b. Be approved by the participant's[recipient's] treatment team; and

c. Be documented in the participant's person-centered service[recipient's] plan.[of care] which shall also contain periodic reviews and updates based on changes, if any, in the participant's[recipient's] status; and

3.[5. 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;

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 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. 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~~

~~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.~~] 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 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~~] 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;

3.[~~4. Shall~~] Not be provided to more than two (2) participants [~~ABI recipients~~] simultaneously in one (1) apartment or home;

4.[~~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 residence based on an individualized plan developed by the provider to promote increased independence which shall:

a. Contain provisions necessary to ensure the recipient's health, safety, and welfare;

b. Be approved by the participant's[~~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's[~~recipient'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~~

~~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 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;~~

~~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:

1. Shall be designed to help a participant[~~an ABI waiver service recipient~~] resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an[~~ABI waiver service 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 a group therapy service if the service is:

a. Provided to a minimum of two (2) and a maximum of eight (8) participants[~~ABI recipients~~]; and

b. Included in the participant's[~~recipient's~~] approved person-centered service plan[~~of care~~] 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's[~~ABI 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 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;[~~or~~]

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 **in the MWMA** 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) 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 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 **in the MWMA** 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 times[~~time~~]; and

d. The signature and title of the individual providing the service;

(i) 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 **in the MWMA** 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

(j) 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:

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 **in the MWMA** 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) Speech-[~~, hearing and~~] 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. 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. Exclusive of maintenance or the prevention of regression;

4. Provided by a speech language pathologist; and

5. Documented **in the MWMA** 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;

(l) Adult day training services, which shall:

1. 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. Prevocational; 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[~~an ABI waiver service recipient's~~] plan[~~of care~~];

10. Provide a participant[~~an ABI waiver service recipient~~] 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 **in the MWMA** 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;

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[~~an ABI 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 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[~~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[~~an ABI recipient~~] receiving waiver services including supervision and training;

7. Exclusive of work performed directly for the supported employment provider; and

8. Documented **in the MWMA** by a time and attendance record, which shall include:

a. Progress towards 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;

(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[~~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, 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~~]**[~~Submitted on a Request for Equipment form, MAP-95,~~] by the participant's[a] case manager or support broker;

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.[~~f.~~] Without the modification, the participant[~~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 recipient's~~] needs; and

b. Services that a participant's[~~an ABI recipient's~~] family cannot manage or arrange for the participant[~~recipient~~];

2. Evaluate a participant's[~~an ABI waiver 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[~~ABI waiver recipient's~~] home between the assessor, the participant[~~ABI waiver recipient~~], and, if appropriate, the participant's[~~recipient's~~] family; and

6. Not be reimbursable if the individual no longer meets ABI program eligibility requirements; or

(q) 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.[~~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 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, 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.

(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; 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.

(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.

(2) 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 at 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 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.a. Be grave in nature;

b. Involve suspected abuse, neglect or exploitation;

c. Involve a medication error which requires a medical intervention or hospitalization;

d. Be an admission to an acute or psychiatric hospital;

e. Involve the use of a chemical or physical restraint; or

f. 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;

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.

(3) The following documentation with a complete written report shall be submitted for a death:

(a) The plan of care in effect at the time of death;

(b) The list of prescribed medications, including PRN medications, in effect at the time of death;

(c) The crisis plan in effect at the time of death;

(d) Medication administration review (MAR) 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;

(g) A coroner's report; and

(h) If performed, an autopsy report].

Section 9.[7.] ABI Waiting List. (1) An individual of age eighteen (18) years or older applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual or 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 to the MWMA**[portal]**[submit to the department 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 that has been signed by a physician.

(3) The order of placement on the ABI 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 completed MAP-10, Waiver Services – Physician's Recommendation,] and

(b)[by] Category of need.

(4) The ABI waiting list categories of need shall be emergency or nonemergency.

(5) To be placed in the emergency category of need, an individual shall be determined by the emergency review committee to meet the emergency category criteria established in subsection (8) of this section.

(6) The emergency review committee shall:

(a) Be comprised of three (3) individuals from the department:

1. Who shall each have professional or personal experience with brain injury or cognitive disabilities; and

2. None of whom shall be supervised by the branch manager of the department's acquired brain injury branch; and

(b) Meet during the fourth (4th) week of each month to review and consider applications for the acquired brain injury waiver program to determine if applicants meet the emergency category of need criteria established in subsection (8) of this subsection.

(7) An individual's application via the MWMA**[portal]** shall be completed[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.

(8) An applicant shall meet the emergency category of need criteria if the applicant is currently demonstrating behavior related to his or her acquired brain injury:

(a) That places the individual, caregiver, or others at risk of significant harm; or

(b) Which has resulted in the applicant being arrested.

(9) 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.

(10) In determining chronological status of an applicant, 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, and the MAP-10, Waiver Services – Physician's Recommendation,] shall:

(a) Be maintained; and

(b) Not change if the[an] individual is moved from one (1) category of need to another.

(11) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(12) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(13)[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.

(14)] A written notification of placement on the waiting list shall be mailed to the individual or his or her legal representative and case management provider if identified.

(14)[(15)] 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 an 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)[~~(14)~~] of this section.

(15)[~~(16)~~] Reassignment of an applicant's category of need shall be completed based on the updated information and validation process.

(16)[~~(17)~~] 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.

(17)[~~(18)~~] 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[~~, complete the Acquired Brain Injury Waiver Services Program Application form, MAP-26,~~] 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.

(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-[~~8. 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[~~consumer'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

(f)1. 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[~~consumer's~~] specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant[~~consumer~~] 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[~~consumer'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 person-centered service[~~consumer's~~] plan[~~of care~~].

(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 person-centered service plan[~~of care~~].

(8)(a) A participant[~~consumer~~] may designate a representative to act on the participant's[~~consumer'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 PD[~~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[~~consumer's~~] health, safety, or welfare exists;

(b) The recipient's person-centered service plan[~~of care~~] 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[~~consumer's CDO~~] provider has not adhered to the person-centered service plan[~~of care~~].

(12) Prior to a participant's[~~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[~~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 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[~~consumer~~] 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[~~consumer's 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, consumer~~] 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[~~CDO 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. Caregiver Misconduct 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)[~~(16)~~](a)1. 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's[~~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[~~of 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's[~~consumer's~~] budget based on the participant's[~~consumer's~~] needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A participant's[~~consumer's~~] budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The participant's[~~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 services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the participant's[~~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's[~~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)[~~(17)~~] Unless approved by the department pursuant to subsection (16)(b) through (e) of this section, if a PDS[~~CDO 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[~~CDO~~]) waiver service provider.

(19)**(a)**[~~(18)~~] A support broker shall:

1.[~~(a)~~] Provide needed assistance to a participant[~~consumer~~] with any aspect of PDS[~~CDO~~] or blended services;

2.[~~(b)~~] Be available to a participant[~~consumer~~] by phone or in person:

a.[~~1.~~] Twenty-four (24) hours per day, seven (7) days per week; and

b.[~~2.~~] To assist the participant[~~consumer~~] in obtaining community resources as needed;

3.[~~(c)~~] Comply with applicable federal and state laws and requirements;

4.[~~(d)~~] Continually monitor a participant's[~~consumer's~~]health, safety, and welfare; and

5.[~~(e)~~] Complete or revise a person-centered service plan in accordance with Section 4 of this administrative regulation[~~of care using the Person Centered Planning: Guiding Principles~~].

(b)[~~(20)~~][~~(19)~~] For a PDS[~~CDO~~] participant, a support broker may conduct an assessment or reassessment.

(c) Services provided by a supporter broker shall meet the conflict free requirements established for case management in Section 5(4) of this administrative regulation.

(20)[~~(21)~~][~~(20)~~] Financial management shall:

(a) Include managing, directing, or dispersing a participant's[~~consumer's~~] funds identified in the participant's[~~consumer's~~] approved PDS[~~CDO~~] budget;

(b) Include payroll processing associated with the individual hired by a participant[~~consumer~~] or the participant's[~~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's[~~consumer's~~] representative; and

2. The department.

Section 11.[~~9.~~] Electronic Signature Usage.[~~(1)~~] The creation, transmission, storage, or other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.[~~(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, 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 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, 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, Admittance, 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;~~

~~(e)~~] "MAP-10, Waiver Services – Physician's Recommendation", June 2015[~~August 2010 edition~~];

(b) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(c) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(d) "MAP – 531 Conflict-Free Case Management Exemption", **October[~~May~~]** 2015;

(e)[~~(f) "Incident Report", July 2008 edition;~~

~~(g)~~] "MAP-2000, Initiation/Termination of Participant-[~~Consumer~~] Directed Services[~~Option~~] (CDO)", June 2015[~~July 2008 edition~~];

(f)[~~(h)~~] "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015[~~July 2008 edition~~];

(g)[~~(i)~~] "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006[~~edition~~];

(h)[~~(j)~~] "MAP-351, Medicaid Waiver Assessment", July 2015[~~2008 edition~~];

(i)[~~(k)~~] "Mayo-Portland Adaptability Inventory-4", March 2003[~~edition~~];

(j)[~~(l) "Person Centered Planning: Guiding Principles", March 2005 edition;(m)~~] "MAP-4100a", September 2010 [~~edition~~]; and

(k)[~~(n)~~] "Kentucky Participant-[~~Consumer~~] Directed Services [~~Option~~] Employee Provider Contract", June 2015[~~May 4, 2007 edition~~].

(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.; or

(b) Online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2015

FILED WITH LRC: November 13, 2015 at noon

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-4321

(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) waiver services. The ABI 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 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) 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 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 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 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 MWMA; and revising the application process by requiring

it to be done via the new MWMA. The amendment after comments deletes an error regarding case management face-to-fact contact requirements; clarifies that documentation of various services must be entered into the MWMA; clarifies that services provided by a support broker must be conflict free; and revises the MAP 531, Conflict Free Case Management Exemption by inserting a statement requiring documentation of denials of qualified providers within thirty (30) miles from the participant's residence.

(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. Clarifying that documentation regarding services must be entered into the MWMA is necessary for clarity. Clarifying that support broker services must be conflict free is necessary to comply with a federal mandate. Revising the MAP 531, Conflict Free Case Management Exemption is necessary to document that no qualified provider is available.

(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 complying 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 179 individuals receiving services, 263 on the waiting list to receive services, and twenty-eight (28) providers enrolled in the program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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 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. 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 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? 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 (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 3:210. Acquired brain injury long-term care waiver services and reimbursement.

RELATES TO: KRS 17.165, 202A.011, 205.5605, 205.5607, 205.8451, 205.8477, 314.011, 319.010(8), 319A.010, 319.056, 327.010, 334A.020, 335.300(2), 335.500(3), 620.030, 42 C.F.R. 441 Subpart G, 455 Subpart B, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[~~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)[~~(2)~~] "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.[~~(3) "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[~~is~~]:

(a) Serves as the basis[~~Completed on a MAP 351; and~~

~~(b) Submitted to the department:~~

~~1.~~] for a level of care determination;

(b) Is completed on a MAP 351, Medicaid Waiver Assessment that is uploaded into the MWMA[~~**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's[~~recipient's~~] approved person-centered service plan[~~of care~~].

(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 care~~].

(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 programs;~~

~~(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).

(14)[~~(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.

(15)[~~(17)~~] "DCBS" means the Department for Community Based Services.

(16)[~~(18)~~] "Department" means the Department for Medicaid Services or its designee.

(17)[~~(19)~~] "Family training" means providing to the family or other 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 care~~]; or

(d) Advising the family how to assist the participant.

(18)[~~(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.

(19)[~~(21)~~]"Human rights committee" means a group of individuals established to protect the rights and welfare of a participant[~~an ABI recipient~~].

(20)[~~(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.

(21)[~~(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).

(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)[~~(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)[~~(26)~~] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(25)[~~(27)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(26) "MWMA[**~~portal~~**]" means the Kentucky Medicaid Waiver Management Application internet portal located at http://chfs.ky.gov/dms/mwma.htm.

(27)[~~(28)~~] "Nursing supports" means training and monitoring of services by a registered nurse or a licensed practical nurse.

(28)[~~(29)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(29)[~~(30)~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(30) "Participant" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(31) "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.

(32) "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.

(33) "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.

(34)[~~(31)~~] "Physical therapist" is defined by KRS 327.010(2).

(35)[~~(32)~~] "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

(36)[~~(33)~~] "Pro re nata" or "PRN" means as needed.

(37)[~~(34)~~] "Psychologist" is defined by KRS 319.010(8).

(38)[~~(35)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(39)[~~(36)~~] "Qualified mental health professional" is defined by KRS 202A.011(12).

(40)[~~(37)~~] "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.

(41)[~~(38)~~] "Representative" is defined by KRS 205.5605(6).

(42)[~~(39)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(43)[~~(40)~~] "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[~~CDO~~].

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[~~consumer~~]-directed[~~option~~] service, an ABI provider shall[~~be~~]:

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671;

(b) Be located within an office in the Commonwealth of Kentucky; and

(c)1. Be a licensed provider in accordance with:

a. 902 KAR 20:066, if an adult day 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[~~1:145~~], Section 3, or 907 KAR 3:090, 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)[~~and (b)~~] 907 KAR 1:673;

(d) 907 KAR 7:005;

(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) 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's[~~an ABI recipient's~~] 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.

(6)[~~(7)~~] An ABI provider shall have a written statement of its mission and values.

(7)[~~(8)~~] 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 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. Bedrooms shall be accessible to the appropriate persons.

4.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;

(vi) Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated;

(vii) Informed 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.

(10)[~~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 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 35; 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.~~

~~(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service was provided and all records and reports shall be made available to the:~~

~~(a) Department;~~

~~(b) ABI recipient's selected case manager;~~

~~(c) Cabinet for Health and Family Services, Office of Inspector General or its designee;~~

~~(d) General Accounting Office or its designee;~~

~~(e) Office of the Auditor of Public Accounts or its designee;~~

~~(f) Office of the Attorney General or its designee; and~~

~~(g) Centers for Medicare and Medicaid Services.~~

~~(11)~~] An ABI provider shall cooperate with monitoring visits from monitoring agents.

(11)[~~(12)~~] 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 for each error which is initialed and dated; and

(d) Contain no blank lines between each entry.

(12)[~~(13)~~] A record of 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;

(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[~~of care, 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 training objective for any service which provides skills training to the participant[~~ABI recipient~~];

6. 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;

7. Legally-adequate consent for the provision of services or other treatment including consent for emergency attention which shall be located at each service site;

8. The MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form[~~, MAP-350,~~] updated at recertification; and

9. 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;

(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)[~~(14)~~] An ABI provider[~~shall~~]:

(a) Shall 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) Shall 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) Shall 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;

(d) Shall if it is determined that signs and symptoms of active TB are present, ensure that the employee or volunteer has follow-up testing administered by the employee's or volunteer's physician and that the follow-up test results indicate the employee or volunteer does not have active TB disease;

(e) Shall not permit an individual to work for or volunteer for the provider if the individual has TB or symptoms of active TB;

(f) Shall maintain documentation for an employee or volunteer with a positive TB test to ensure that active disease or symptoms of active disease are not present;

(g)1. Shall:

a. Prior to the employee's date of hire or the volunteer's date of service, obtain the results of:

(i) A criminal record check from[~~: 1.~~] the Administrative Office of the Courts[~~;~~] or [~~2.~~] the equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service in Kentucky;

(ii)[~~(h) obtain the result of~~] A Nurse Aide Abuse Registry check as described in 906 KAR 1:100; and

(iii) A Caregiver Misconduct Registry check as described in 922 KAR 5:120; and

b. Within thirty (30) days of the date of hire or service as a volunteer, obtain 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;

(h) Shall[~~(i)~~] annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from:

1. The Kentucky Administrative Office of the Courts; or

2. The equivalent out-of-state agency, if the individual resided or worked outside of Kentucky during the year prior to employment;

(i) Shall[~~(j) Within thirty (30) days of the date of hire or service as a volunteer, obtain the results of a central registry check as described in 922 KAR 1:470;~~

~~(k)~~] evaluate and document the performance of each employee upon completion of the agency's designated probationary period, and at a minimum, annually thereafter;

(j)[~~(l)~~] 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~~];

(k)[~~(m)~~] 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;

(l)[~~(n)~~] Not permit an employee or volunteer to transport a participant[~~an ABI recipient~~], if the employee or volunteer has a conviction of Driving under the Influence (DUI) during the past year;

(m)[~~(o)~~] 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;

(n)[~~(p)~~] 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;

(o)[~~(q)~~] 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

(p)[~~(r)~~] 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)[~~(15)~~] 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)[~~(16)~~] 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;

(d) Ensure the availability of a supply of hot 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) Ensure that the medication shall be:

1. Kept in a locked container;

2. Kept under double lock[~~,~~] if it is a controlled substance;

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's[~~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) 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)(a) To be eligible to receive a service in the ABI long term care waiver program, an[~~and~~] individual shall:

1.[~~(a)~~] Be at least eighteen (18) years of age;

2.[~~(b)~~] Have an ABI which necessitates:

a.[~~1.~~] Supervision;

b.[~~2.~~] Rehabilitative services; and

c.[~~3.~~] Long term supports; [~~and~~]

3.[~~(c)~~] 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 1915(c) home and community based waiver services via the MWMA[**portal**]; and

2. Complete and upload into the MWMA[**portal**] a MAP - 115 Application Intake - Participant Authorization.

(2)[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 ICF/MR/DD and meets the eligibility criteria established in this section.

(3) 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 waiver waiting list in accordance with Section 9[7] of this administrative regulation.

(4)(a)[(6)] 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)] 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;

3.[(c)] 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;

4.[(d)] A MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form[, MAP-350]; and

5.[(e)] A person-centered service plan[of Care form, MAP 109; and

(f) The ABI recipient's MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program form].

(5)[(7)] 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)[(8)] 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)[(9)] 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)[(11)] 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)[(12)] 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)[(13)] 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.

(15)] The department shall exclude an individual from receiving an ABI long term care waiver service for whom the average cost of ABI waiver service is reasonably expected to exceed the cost of a nursing facility service.

(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[ABI recipient] 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)[~~(17)~~] 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

c. The participant's[~~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.

(15)[~~(18)~~] 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 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;

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 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.

(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 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)1. 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)1. 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 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;

e. The signature and title of the case manager completing the note; and

f. 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

(c) 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)1. 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 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, 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 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 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.

(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 ABI waiver services.

(5) Case management shall:

(a) Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process;

(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 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 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 occurs; and

c. Updated thirty (30) days prior to discharge; and

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 those available by the ABI waiver;

(g) Be provided by a case manager who:

1.a. Is a registered nurse;

b. Is a licensed practical nurse;

c. 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;

d. Is an independent case manager; or

e. Is employed by a free-standing case management agency;

2. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;

3. 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 the 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:

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. Shall conduct one (1) face-to-face meeting 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;

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 **in the MWMA** 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.

(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[~~of care~~].

(2) An ABI waiver provider shall provide the following services to a participant[~~an ABI recipient~~]:

(a) Case management services in accordance with Section 4 of this administrative regulation[~~, which shall:~~

~~1. Include initiation, coordination, implementation, monitoring of the assessment and 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 occurs; 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 case 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 assuring 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;

2. Include a functional analysis of the participant's[~~ABI recipient's~~] behavior including:

a. An evaluation of the impact of an ABI on:

(i) Cognition; and

(ii) Behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the:

(i) Motivation;

(ii) Purpose; and

(iii) Factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

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:

(i) Prone or supine restraint;

(ii) Corporal punishment;

(iii) Seclusion;

(iv) Verbal abuse; and

(v) 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[~~an ABI recipient's~~] progress which shall be accomplished through:

a. The analysis of data concerning the:

(i) Frequency;

(ii) Intensity; and

(iii) Duration of a behavior; and

b. Reports involved in implementing the behavioral service plan;

6. Be provided by a behavior specialist who shall:

a. Be:

(i) A psychologist;

(ii) A psychologist with autonomous functioning;

(iii) A licensed psychological associate;

(iv) A psychiatrist;

(v) A licensed clinical social worker;

(vi) A clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;

(vii) An advanced practice registered nurse[~~practitioner (ARNP)~~];

(viii) A board certified behavior analyst; or

(ix) 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 **in the MWMA** which shall include:

a. The date of the service;

b. The beginning and ending time;

c. The signature and title of the behavioral specialist; and

d. A summary of data analysis and progress of the individual related to the approved person-centered service plan[~~of care~~];

(c) Community living supports, which shall:

1. Be provided in accordance with the participant's person-centered service[~~recipient's~~] plan[~~of care~~], including:

a. A nonmedical service;

b. Supervision; or

c. Socialization;

2. Include assistance, prompting, observing, or training in activities of daily living;

3. Include activities of daily living which shall include:

a. Bathing;

b. Eating;

c. Dressing;

d. Personal hygiene;

e. Shopping; and

f. Money management;

4. Include prompting, observing, and monitoring of medications and nonmedical care not requiring a nurse or physician intervention;

5. Include socialization, relationship building, and participation in community activities according to the approved person-centered service plan[~~of care~~] which are therapeutic and not diversional in nature;

6. Accompany and assist a participant[~~an ABI recipient~~] while utilizing transportation services;

7. Include documentation in a detailed staff note **in the MWMA** which shall include the:

a. Progress toward goals and objectives identified in the approved person-centered service plan[~~of care~~];

b. Date of the service;

c. Beginning and ending time; and

d. Signature and title of the individual providing the service;

8. Not be provided to a participant[~~an ABI recipient~~] who receives community residential services; and

9. Be provided by a:

a. Home health agency licensed and operating in accordance with 902 KAR 20:081;

b. Community mental health center licensed and operating in accordance with 902 KAR 20:091;

c. Community habilitation program certified at least annually by the department; or

d. Supervised residential care setting certified at least annually by the department;

(d) Supervised residential care level I, 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 approved waiver provider certified at least annually by the department;

2. Shall not be provided to a participant[~~an ABI recipient~~] unless the participant[~~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) 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) participants[~~ABI recipients~~] simultaneously in a home rented or owned by the ABI provider;

4. Shall provide[~~nineteen (19) to~~] 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[~~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's[~~recipient's~~] health, safety, and welfare;

b. Be approved by the participant's[~~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's[~~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-medication 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[~~of care~~];

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[~~recipient's~~] plan[~~of care~~];

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 **in the MWMA** 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, which[: 1.] 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; 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) 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[recipient's] needs;

b. Be approved by the participant's[recipient's] treatment team; and

c. Be documented in the participant's person-centered service[recipient's] plan [of care] which shall also contain periodic reviews and updates based on changes, if any, in the participant's[recipient's] status; and

3.[5. 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;

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 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. 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

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[: 1.] 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; 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) 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;

3.[~~4. Shall~~] Not be provided to more than two (2) participants[~~ABI recipients~~] simultaneously in one (1) apartment or home;

4.[~~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's[~~recipient's~~] health, safety, and welfare;

b. Be approved by the participant's[~~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's[~~recipient'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~~

~~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 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;~~

~~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:

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's[~~recipient's~~] ABI;

2. Shall assist a family member in implementing a participant's[~~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's[~~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's[~~ABI 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 clinical 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;[~~or~~]

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 **in the MWMA**

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 who:

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 psychiatrist;

i. A psychologist;

j. A psychologist with autonomous functioning;

k. A licensed psychological associate;

l. A clinical nurse specialist with a master's degree in:

(i) Psychiatric nursing; or

(ii) Rehabilitative nursing;

m. An advanced practice registered nurse[~~practitioner (ARNP)~~];

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;[~~or~~]

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; and

7. Be documented by a detailed staff note **in the MWMA** 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 supports, which shall include:

1.a. A physician order to monitor medical conditions; or

b. 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 **in the MWMA** 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 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. 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 **in the MWMA** 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 22:001 and 201 KAR 22:020; and

5. Documented by a detailed staff note **in the MWMA**, 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:

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:

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 **in the MWMA**, 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 **in the MWMA**, 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[~~which~~] is certified at least annually by the department;

b. An outpatient rehabilitation facility that[~~which~~] 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[~~individual~~] to attain or maintain the participant's[~~individual's~~] maximum functional level and reintegrate the participant[~~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. Prevocational; 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 person-centered team[~~an ABI waiver service recipient's interdisciplinary team~~];

8. Be appropriate:

a. Given a participant's[~~an ABI waiver service recipient's~~]:

(i) Age;

(ii) Level of cognitive and behavioral function; and

(iii) Interest;

b. Given a participant's[~~an ABI waiver service recipient's~~] ability prior to and after the participant's[~~recipient's~~] 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 the occupational, speech, or other rehabilitation therapy included in a participant's person-centered service[~~an ABI long term care waiver recipient's~~] plan[~~of care~~];

10. Provide a participant[~~an ABI long term care waiver recipient~~] with an organized framework within which to function in the participant's[~~recipient's~~] daily activities;

11. Entail frequent assessments of a participant's[~~an ABI long term care waiver recipient's~~] progress and be appropriately revised as necessary; and

12. Be documented by a detailed staff note **in the MWMA**, 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;

(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[~~Medicaid ABI long term care waiver recipient~~] 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;

(v) Venipuncture;

(vi) Insulin injections;

(vii) Tracheotomy care; or

(viii) 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 a registered nurse;

e. Daily activities that are appropriate, given a participant's[~~an ABI long term care waiver recipient's~~]:

(i) Age;

(ii) Level of cognitive and behavioral function; and

(iii) Interest; and

f. Routine services that meet the daily personal and health care needs of a participant[~~an ABI long term care 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[~~an ABI long term care waiver recipient~~];

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the adult day health care center;

4. Focus on enabling the participant[~~individual~~] to attain or maintain the participant's[~~individual's~~] maximum functional level and reintegrate a participant[~~an individual~~] into the community by providing the following training:[~~;~~]

a. Social skills training related to problematic behaviors identified in the participant's person-centered service[~~ABI long term care waiver recipient's~~] plan[~~of care~~];

b. Sensory or motor development;

c. Reduction or elimination of a maladaptive behavior per the participant's person-centered service[~~ABI long term care waiver recipient's~~] plan[~~of care~~];

d. Prevocational services; 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 long~~

~~term care waiver recipient's~~] overall approved person-centered service plan[~~of care~~], therapeutic in nature, and not diversional;

7. Reflect the recommendations of a participant's person-centered[~~an ABI long term care waiver recipient's interdisciplinary~~] team;

8. Include ancillary services in accordance with 907 KAR 1:023 if ordered by a physician, physician assistant, or advanced practice registered nurse[~~practitioner~~] in a participant's[~~an ABI long term care waiver recipient's~~] adult day health care plan of treatment. Ancillary services shall:

a. Consist of evaluations or reevaluations for the purpose of developing a plan that[~~which~~] shall be carried out by the participant[~~ABI long term care waiver recipient~~] or adult day health care center staff;

b. Be reasonable and necessary for the participant's[~~ABI long term care waiver recipient's~~] condition;

c. Be rehabilitative in nature;

d. Include:

(i) Physical therapy provided by a physical therapist or physical therapist assistant;

(ii) Occupational therapy provided by an occupational therapist or occupational therapy assistant; or

(iii) Speech-language pathology services[~~therapy~~] provided by a speech-language pathologist; and

e. Comply with the physical, occupational, and speech-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 (ARNP)~~];

d. A registered nurse;

e. A licensed practical nurse;

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. A licensed marriage and family therapist;

q. A certified psychologist with autonomous functioning; or

r. A licensed psychological associate;

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 **in the MWMA**, 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 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[~~ABI long term care waiver recipient's~~] file;

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 sustain paid work by a participant[~~an ABI long term care waiver recipient~~] receiving waiver 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 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 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 ABIB;

c. Specified in the participant's approved person-centered service plan and entered into the MWMA**[~~portal~~]**[~~Submitted on a Request for Equipment Form, MAP 95~~], by the participant's[~~a~~] case manager or support broker;

d.[~~Specified in an ABI long term care waiver recipient's approved plan of care;e.~~] Necessary to enable the participant[~~an ABI recipient~~] to function with greater independence within the participant's[~~recipient's~~] home; and

e.[~~f.~~] 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 entailing:

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 that[~~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;

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; and

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[~~which~~] 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 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, 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.

(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; and

15. A record of any crisis 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.

~~(2) 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 the:~~

~~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 the:~~

~~a. Provider and case management agency; or~~

~~b. Support brokerage agency;~~

~~(b) A class II incident which shall:~~

~~1.a. 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~~

~~(c) A class III incident which shall:~~

~~1.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 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;~~

~~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. 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)[~~The~~] 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.

(4) In determining chronological status, 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 change[~~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 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 arrest.

(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.

(8)[(9)] 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)[(10)] Reassignment of category of need shall be completed based on the updated information and validation process.

(10)[(11)] 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)[(12)] 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;[or]

(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;

(d) 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)[(13)] 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 at a later date.

(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-[8. 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] 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.a. Be respite for the primary caregiver; or

b. Be 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's[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 a 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) A participant[consumer] may designate a representative to act on the participant's[consumer'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, Initiation/Termination of Participant-Directed Services[form].

(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's[consumer's] health, safety, or welfare exists;

(b) The participant[consumer] fails to pay patient liability;

(c) The participant'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's[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's[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 13[~~11~~] of this administrative 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~~]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[~~CDO services~~];

(i) 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.

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);

(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's[~~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's[~~individual'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's[~~consumer's~~] budget based on the participant's[~~consumer's~~] needs and in accordance with paragraphs[~~(d) and~~] (e) and (f) of this subsection.

(e)[~~(d)~~] A participant's[~~consumer's~~] budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The participant's[~~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's[~~consumer's~~] health, safety, and welfare; or

4. If a significant change has occurred in the participant's[~~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 participant's[~~recipient's~~] relocation.

(g)[~~(f)~~] A participant's[~~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)(c)[~~(b)~~] through (f)[~~(e)~~] of this section, if a PDS[~~CDO 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[~~CDO~~]) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a participant[~~consumer~~] with any aspect of PDS[~~CDO~~] 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's[~~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[~~CDO~~] participant receiving PDS, a support broker may conduct an assessment or reassessment.

(17) **Services provided by a support broker shall meet the conflict free requirements established for case management in Section 5(4) of this administrative regulation.**

(18) Financial management services shall:

(a) Include managing, directing, or dispersing a participant's[~~consumer's~~] funds identified in the participant's[~~consumer's~~] approved PDS[~~CDO~~] budget;

(b) Include payroll processing associated with an individual hired by a participant[~~consumer~~] or the participant's[~~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's[~~consumer's~~] representative; and

2. The department.

Section 11.[~~9.~~] 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.

(3)[~~Exclusions to acquired brain injury long term care waiver program.~~] Under the ABI long term care waiver program, the 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[~~recipient~~].

(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[~~rates~~] established in the following table shall apply[~~this subsection shall be the fixed upper payment limits, in effect on November 10, 2008, for ABI long term care waiver services in conjunction with the corresponding units of service~~]:

Service	Unit of Service	Upper Payment Limit
Case Management	1 month	$375.00 - limited to one (1) unit per member per month
Community Living Supports	15 minutes	$5.56 - limited to 160 units per member, per calendar week.
Respite Care	5 minutes	$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
Adult Day Health Care	15 minutes	$3.19 - limited to 160 units per member, per calendar week.
Adult Day Training	15 minutes	$4.03 - limited to 160 units per member, per calendar week alone or in combination with supported employment services.
Supported Employment	15 minutes	$7.98 - limited to 160 units per member, per calendar week alone or in combination with adult day training.
Behavior Programming	15 minutes	$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.
Counseling – Individual	15 minutes	$23.84 - limited to 52 units per member, per month.
Counseling – Group	15 minutes	$5.75 - limited to 48 units per member, per calendar month.
Occupational Therapy	15 minutes	$25.90 - limited to 52 units per member, per calendar month.
Speech Therapy	15 minutes	$28.41 - limited to 52 units per member, per calendar month
Specialized Medical Equipment and Supplies (see paragraph (b) of this subsection)	Per Item	As negotiated by the department
Environmental Modification	Per Modification	Actual cost not to exceed $2,000 per member, per calendar year.
Supervised Residential Care Level I	(1) calendar day	$200.00 - Limited to one (1) unit per member, per calendar day
Supervised Residential Care Level II	(1) calendar day	$150.00 - Limited to one (1) unit per member, per calendar day
Supervised Residential Care Level III	(1) calendar day	$75.00 - Limited to one (1) unit per member, per calendar day
Nursing Supports	15 minutes	$25.00 - Limited to 28 units per member, per calendar week
Family Training	15 minutes	$25.00 - Limited to 8 units per member, per calendar week
Physical Therapy	15 minutes	$25.00 - Limited to 52 units per member, per calendar month.
Assessment	One (1) unit equals entire process	$100.00
Assessment or Reassessment	One (1) unit equals entire process	$100.00
Participant-[~~Consumer~~] Directed Services[~~Options~~]:		
Home and Community Supports		Service limited by dollar amount prior authorized by QIO based on DMS approved participant[~~consumer~~] budget
Community Day Supports		Service limited by dollar amount prior authorized

		by QIO based on DMS approved participant[~~consumer~~] budget
Goods and Services		Service limited by dollar amount prior authorized by DMS based on DMS approved participant[~~consumer~~] budget
Support Broker	One (1) unit equal to one (1) calendar month	$375.00 - Limited to one (1) unit per member, per calendar month
Financial Management Services	Fifteen (15) minutes	$12.50 Limited to eight (8) units per member, per calendar month

(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 care due to a:

1. Death in the family;

2. Serious illness; or

3. Hospitalization.

(d) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall be made only for the supervision and training required as the result of the participant's[~~ABI recipient's~~] disabilities and shall not include payment for supervisory activities normally rendered.

(e)1. The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

2. For an individual receiving supported employment services, documentation shall be maintained in the individual's record demonstrating that the services are not currently available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(6)[~~Payment Exclusions.~~] Payment shall not include:

(a) The cost of room and board[,] unless provided as part of respite care in a Medicaid certified nursing facility. If a participant[~~an ABI recipient~~] is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual;

(b) The cost of maintenance, upkeep, an improvement, or an environmental modification to a group home or other licensed facility;

(c) The cost of a service that is not listed in the approved person-centered service plan[~~of care~~]; or

(d) A service provided by a family member unless provided as[~~under~~] an approved participant-directed service[~~through consumer directed option~~].

(7)[~~Records Maintenance.~~] A participating provider shall:

(a) Maintain fiscal and service records for a period of at least six (6) years; and

(b) Provide, as requested by the department, a copy of, and access to, each record of the ABI Waiver Program retained by the provider pursuant to paragraph (a) of this subsection or 907 KAR 1:672[~~, Sections 2, 3, and 4~~]; and

(c) Upon request, make available service and financial records to a representative or designee of the:

1. Commonwealth of Kentucky, Cabinet for Health and Family Services;

2. United States Department for Health and Human Services, Comptroller General;

3. United States Department for Health and Human Services, Centers for Medicare and Medicaid Services (CMS);

4. General Accounting Office;

5. Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

6. Commonwealth of Kentucky, Office of the Attorney General.

Section 12.[~~10.~~] Electronic Signature Usage.[~~(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) 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; 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 filed 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 – 531 Conflict-Free Case Management Exemption", **October[~~May~~]** 2015;

(e)[~~"MAP-24C, Admittance, Discharge or Transfer of an Individual in the ABI/SCL Program", July 2008 edition;(c) "MAP-26, Program Application Kentucky Medicaid Program Acquired Brain Injury (ABI) Waiver Services Program", July 2008 edition;(d) "MAP-045, Incident Report", July 2008 edition;~~

~~(e) "MAP 95, 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)[~~(h)~~] "MAP 351, Medicaid Waiver Assessment", July 2015 [~~2008 edition~~];

(g)[~~(i)~~] "MAP-2000, Initiation/Termination of Participant-[~~Consumer~~] Directed Services[~~Option~~] (CDO)", June 2015[~~July 2008 edition~~];

(h)[~~(j)~~] "Mayo-Portland Adaptability Inventory-4", March 2003

[~~edition~~];

(i)[~~(k)~~] "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006;

(j)[~~The Revised Levels - Third Edition", 1998; and(l)~~] "Kentucky Participant-[~~Consumer~~] Directed Services[~~Option~~] Employee Provider Contract", June 2015; and

(k) "MAP 4100a Acquired Brain Injury Waiver Program Provider Information and Services", September 2009[~~revised April 19, 2007~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a)[~~,~~] At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2015

FILED WITH LRC: November 13, 2015 at noon

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding 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 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 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 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 MWMA; revising the application process by requiring it to be done via the new MWMA; incorporating new forms by reference (a MAP -115 Application Intake - Participant Authorization used by individual to designate an individual to apply for 1915(c) home and community based waiver services via the MWMA on behalf of the individual; a MAP – 116 Service Plan – Participant Authorization used by an individual to authorize someone to represent them in person-centered service plan development and entry in the MWMA; a MAP-531 Conflict Free Case Management Exemption form used to request an exempt 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).

The amendment after comments deletes an error regarding case management face-to-fact contact requirements; clarifies that documentation of various services must be entered into the MWMA; clarifies that services provided by a support broker must be conflict free; and revises the MAP 531, Conflict Free Case Management Exemption by inserting a statement requiring documentation of denials of qualified providers within thirty (30) miles from the participant's residence.

(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) and/or perform related activities. Eliminating the case management face-to-face contact requirement is necessary to remove an error (in response to public comment).

Clarifying that documentation regarding services must be entered into the MWMA is necessary for clarity. Clarifying that support broker services must be conflict free is necessary to comply with a federal mandate. Revising the MAP 531, Conflict Free Case Management Exemption is necessary to document that no qualified provider is available.

(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 complying 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 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. 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 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
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 12:010. New Supports for community living waiver service and coverage policies.

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), 205.5606(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[~~and applies to SCL waiver services covered pursuant to this administrative regulation rather than SCL waiver services covered pursuant to 907 KAR 1:145~~]. The SCL waiver program is federally authorized via a 1915(c) home and community based waiver which enables individuals with an intellectual or developmental disability to reside and receive services in a community setting rather than in an intermediate care facility for individuals with[~~an~~] intellectual disabilities[~~or developmental disability~~], including a participant[~~consumer~~] 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[~~:a.~~] participant's person-centered service plan[~~of care; and b. Supports for Community Living Policy Manual~~].

(5) "Advance directive" is defined by KRS 311.621(2).

(6) "Aversive technique" means:

(a) Withholding:

1. Food or hydration as a mean 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)[~~(6)~~] "Board" means three (3) meals a day or other full nutritional regimen of a caregiver for the purpose of providing shared living services.

(9)[~~(7)~~] "Case manager" means an individual who:

(a) Works closely with a participant to ensure that the:

1. Participant's person-centered service plan[~~of care~~] 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;

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

3. Is a registered nurse who has at least one (1) year of experience as a professional nurse in the field of intellectual disability;

(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)[~~(8)~~] "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;

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

3. Is a registered nurse;

(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 supervisory 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)[~~(9)~~] "Certified nutritionist" is defined by KRS 310.005(12).

(12) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.

(13)[~~(10)~~] "Certified psychologist with autonomous functioning" means a person licensed pursuant to KRS 319.056.

(14)[~~(11)~~] "Certified school psychologist" means an individual certified by the Kentucky Education Professional Standards Board under 16 KAR 2:090.

(15)[~~(12)~~] "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) [~~(13)~~]"Community access specialist" means an individual who:

(a) Provides support and training that enables[~~to~~] a participant to develop a network of natural supports[~~that empowers the participant~~] to:

1. Participate in meaningful routines or events; and

2. Be[~~Hold~~] a member of[~~membership in~~] a club, group, association, church, business, or organization in the community; [~~and~~

~~3. Build a natural support system;~~]

(b) Has:

1. Previously qualified or been credentialed by the department to provide community access services prior to the effective date of this administrative regulation[~~A bachelor's degree in a human services field from an accredited college or university~~]; or

2.a.[~~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[~~disability~~]; and

b. Completed a department approved **training program[~~credential~~]** within one (1) year of application while providing community access services under the direct supervision of a community access specialist[~~or3.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 in the field of intellectual or developmental disabilities[~~or credentialing~~] that will substitute for the educational requirements stated in subparagraph 1. or 2. of this paragraph on a year-for-year basis;

(c) Meets the personnel and training requirements established in **Sections[~~Section~~]** 3 **and 10** of this administrative regulation;

(d) Completes a community guide training curriculum approved by DBHDID within six (6) months of being employed by the first participant supported; 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)[~~(17)~~] "Covered services and supports" is defined by KRS 205.5605(3).

(20)[~~(18)~~] "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(21)[~~(19)~~] "DCBS" means the Department for Community Based Services.

(22)[~~(20)~~] "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);

(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;

(b) Has direct contact with a participant when providing services to the participant;

(c) Is at least:

1. Eighteen (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:

1. Eighteen (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 **Sections[~~Section~~]** 3 **and 10** 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 DBHDID within six (6) months of beginning supervisory responsibilities.

(26)[~~(24)~~] "Drug paraphernalia" is defined by KRS 218A.500(1).

(27)[~~(25)~~] "Early and periodic screening, diagnostic, and treatment services" is defined by 42 U.S.C. 1396d(r).

(28)[~~(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.[~~1.~~] 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;

(e) Meet all personnel and training requirements specified in Section 3 of this administrative regulation; and

(f) If providing professional oversight or supervision of employees, meet the supervisory qualifications specified for each service.

(31)[~~(29)~~] "Exploitation" is defined by KRS 209.020(9).

(32)[~~(30)~~] "Extended family member" means a relative of an individual by blood or marriage beyond the individuals included in the definition of immediate family member.

(33)[~~(31)~~] "Family home provider" means a home:

(a) Not owned or leased by an SCL provider;

(b) In which a participant 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[~~:~~

~~a.~~] participant's person-centered service plan[~~of care; and~~

~~b. Supports for Community Living Policy Manual~~].

(34)[~~(32)~~] "Financial management agency" means an agency contracted by the department that manages individual participant-directed service **plans[~~budgets~~]**.

(35)[~~(33)~~] "Functional Assessment" means an assessment performed using evidenced based tools, direct observation, and empirical measurement to obtain and identify functional relations between behavioral and environmental factors.

(36)[~~(34)~~] "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less; or

(c) The individual or his or her guardian has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(37)[~~(35)~~] "Group home" means a residential setting:

(a) That is licensed in accordance with 902 KAR 20:078;

(b) That is managed by a provider who meets the SCL provider requirements established in Section 3 of this administrative regulation; and

(c) In which no more than eight (8) participants reside.

(38)[~~(36)~~] "Guardian" is defined by KRS 387.010(3) for a minor and in KRS 387.812(3) for an adult.

(39)[~~(37)~~] "Homicidal ideation" means thoughts about homicide which may range from vague ideas to detailed or fully formulated plans without taking action.

(40)[~~(38)~~] "Human rights committee" means a group of individuals:

(a) Comprised of representatives from home and community based waiver provider agencies in the community where a participant resides; and

(b) Who meet:

1. To ensure that the rights of participants are respected and protected through due process; and

2. In accordance with the Human Rights Committee requirements established in Section 7 of this administrative regulation[~~the Supports for Community Living Policy Manual~~].

(41)[~~(39)~~] "Human services field" means:

(a) Psychology;

(b)[~~,~~] Behavioral analysis;

(c)[~~,~~] Counseling;

(d)[~~,~~] Rehabilitation counseling;

(e)[~~,~~] Public health;

(f)[~~,~~] Special education;

(g)[~~,~~] Sociology;

(h)[~~,~~] Gerontology;

(i)[~~,~~] Recreational therapy;

(j)[~~,~~] Education;

(k)[~~,~~] Occupational therapy;

(l)[~~,~~] Physical therapy;

(m)[~~,~~] Speech-language pathology;

(n)[~~therapy,~~] social work;[~~,~~] or

(o) Family studies.

(42)[~~(40)~~] "ICF- IID" means an intermediate care facility for individuals[~~an individual~~] with[~~an~~] intellectual disabilities[~~disability~~].

(43)[~~(41)~~] "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)[~~(42)~~] "Immediate family member" is defined by KRS 205.8451(3).

(45)[~~(43)~~] "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)[~~(44)~~] "Individual family service plan" or "IFSP" is defined by KRS 200.654(9).

(47)[~~(45)~~] "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)[~~(46)~~] "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)[~~(47)~~] "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.

(50)[~~(48)~~] "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)[~~(49)~~] "Level of care determination" means a determination by the department that an individual meets patient status criteria for an intermediate care facility for individuals[~~an individual~~] with[~~an~~] intellectual disabilities[~~disability~~] as established in 907 KAR 1:022.

(52)[~~(50)~~] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established[~~is currently licensed~~] in[~~accordance with~~] KRS 335.100.

(53)[~~(51)~~] "Licensed dietitian" is defined by KRS 310.005(11).

(54)[~~(52)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(55) "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) "Licensed practical nurse" is defined by KRS 314.011(9).

(57)[~~(53)~~] ''Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(58)[~~(54)~~] "Licensed psychological associate" means an individual who:

(a)[~~is~~] 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)[~~(55)~~] "Licensed psychological practitioner" means an individual who meets the requirements established[~~is currently licensed~~] in[~~accordance with~~] KRS 319.053.

(60)[~~(56)~~] "Licensed psychologist" means an individual who:

(a)[~~is~~] 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 206[~~319.050~~].

(61)[~~(57)~~] "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)[~~(58)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(63) "Medical order for scope of treatment" is defined by KRS 311.621(12).

(64) "MWMA[~~**portal**~~]" means the Kentucky Medicaid Waiver Management Application internet portal located at http://chfs.ky.gov/dms/mwma.htm.

(65)[~~(59)~~] "National Core Indicators" means:

(a) A collaboration between the National Association of State Directors of Developmental Disability Services and the Human Services Research Institute;

(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)[~~(60)~~] "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)[~~(61)~~] "Neglect" is defined by KRS 209.020(16).

(68)[~~(62)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(69)[~~(63)~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(70)[~~(64)~~] "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)[~~(65)~~] "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for individuals[~~an individual~~] with[~~an~~] intellectual disabilities[~~or developmental 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[~~of 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)[~~(67)~~] "Person-centered coach" 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[~~of 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[~~of 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 for the purpose of:

1. Conducting routine physical examinations or tests;

2. Protecting the person from falling out of bed; or

3. Permitting the person to participate in activities without the risk of physical harm.

(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)[~~(73)~~] "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 drug[~~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's:

(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.

(88)[~~(80)~~] "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[~~disabilities~~];

(b) Meets all personnel and training requirements established in Section 3 of this administrative regulation; and

(c)1. Is a doctor of medicine or osteopathy;

2. Is a registered nurse; or

3. Holds at least a bachelor's degree from an accredited institution in a human services field.

(89)[~~(81)~~] "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(90) "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.

(91)[~~(82)~~] "Serious medication error" means a medication error that requires or has the potential to require a medical intervention or treatment.

(92)[~~(83)~~] "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[~~of care~~];

(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 **10[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[~~of care~~]; 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.

(93)[~~(84)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(94)[~~(85)~~] "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.

(95) "State plan" is defined by 42 C.F.R. 400.203.

(96)[~~(86)~~] "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.

(97)[~~(87)~~] "Suicidal ideation" means thoughts about suicide which may range from being fleeting in nature to detailed planning.

(98)[~~(88)~~] "Supported Employment Long-Term Support Plan" means a document that identifies the amount and kind of support necessary for a participant to maintain employment and achieve individualized employment goals.

(99)[~~(89)~~] "Supported employment specialist" 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)1. 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;]**[~~or~~]

[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

2.[3.]a. Has at least one (1) year of[~~Has relevant~~] experience in the field of intellectual or developmental disabilities; and

b. Has completed a department **required training program[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~~]; **and**

(c) Meets the personnel and training requirements established in **Sections[Section]** 3 **and 10** 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 as an employment]**[the]**[specialist]**[begins providing SCL supported employment services].

(100)[~~(90)~~] "Supports for Community Living" or "SCL" means home and community-based waiver services for an individual with an intellectual or developmental disability.

(101)[~~(91)~~] "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.

(102) "Voluntary moratorium" means a provider's voluntary agreement to not serve any new (to the provider) 1915(c) home and community based waiver services participants.

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 making a preliminary determination of whether the individual might qualify for SCL waiver services;~~**

~~(b)~~] Or individual's representative shall:

1. Apply for 1915(c) home and community based waiver services via the MWMA**[~~portal~~]**; and

2. Complete and upload into the MWMA**[~~portal~~]** a MAP - 115 Application Intake - Participant Authorization;

(b)[~~(c)~~] Shall receive notification of potential SCL funding in accordance with Section **12[~~10~~]**[~~7~~] of this administrative regulation;

(c)[~~(d)~~] Shall[~~(b)~~] meet ICF-IID patient status requirements established in 907 KAR 1:022;

(d)[~~(e)~~] Shall[~~(c)~~] meet Medicaid eligibility requirements established in 907 KAR 20:010[~~1:605~~]; and

(e)[~~(f)~~][~~(d)~~] upon receiving notification of potential SCL funding, shall upload the following into the MWMA**[~~portal~~]** [~~submit an application packet to the department which is included in the Supports for Community Living Policy Manual and which shall contain~~]:

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[~~is 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 **from the level of care end date**;

2. A participant shall maintain Medicaid eligibility requirements established in 907 KAR 20:010[~~1:605~~]; 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 waiver 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 be:

(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[~~POC~~] 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~~];

(f) The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164;[~~and~~]

(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 State 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;

5. A quality improvement plan that:

a. 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; **and**

(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 restraints 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 individuality;

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

(ii) 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;[~~and~~]

4. Ensuring access to participation in the local[~~an area~~] human rights committee in accordance with the Human Rights Committee requirements[~~policies~~] 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 requirements established in Section 8 of this administrative regulation;

(l) Shall maintain fiscal records, service records, investigations, medication error logs, and incident reports for a minimum of six (6) years from the date that:

1. A covered service is provided; or

2. The participant turns twenty-one (21) years of age, if the participant is under the age of twenty-one (21);

(m) Shall make available all records, internal investigations, and incident reports:

1. To the:

a. Department;

b. DBHDID;

c. Office of Inspector General or its designee;

d. General Accounting Office or its designee;

e. Office of the Auditor of Public Accounts or its designee;

f. Office of the Attorney General or its designee;

g. DCBS; [~~or~~]

h. Centers for Medicare and Medicaid Services; or

i. The Department of Aging and Independent Living; or

2. Pertaining to a participant to:

a. The participant, the participant's guardian, or the participant's case manager upon request; or

b. Protection and Advocacy upon written request;

(n) Shall cooperate with monitoring visits from monitoring agents;

(o) Shall maintain a record in the MWMA**[~~portal~~]** for each participant served that shall:

1.[~~Be recorded in a readable print format in ink or typed print;~~

~~2. Be free from correction fluid or correction tape;~~

~~3. Have a strike through each error that is initialed and dated;~~

~~4. Contain no blank lines in between each entry;~~

~~5. Document late entries;~~

~~6.~~] Contain all information necessary to support person-centered practices;

2.[~~7.~~] Be cumulative;

3.[~~8.~~] Be readily available;

4.[~~9.~~] Contain documentation that[~~which~~] meets the requirements of Section 4 of this administrative regulation;

5.[~~10.~~] Contain the following:

a. The participant summary sheet;

b. The participant's name, Social Security number, and Medicaid identification number;

c. The Supports Intensity Scale Assessment **profile[~~Form~~]**;

d. The results of a department approved[~~health risk~~] screening[~~performed using a Health Risk screening~~] tool to assess health risk, which shall:

(i) Be administered by trained personnel **using the department approved protocol** at least annually and updated as needed;

and

(ii) Assist in determining a participant's areas of vulnerability for a potential health risk;[~~and~~

~~(iii) Be provided in accordance with the health risk screening tool requirements established in the Supports for Community Living Policy Manual~~];

e. The current person-centered service plan[~~of care~~];

f. The goals and objectives identified by the participant and the participant's person-centered team which facilitates achievement of the participant's chosen outcomes as identified in the participant's person-centered service plan[~~POC~~];

g. A list containing emergency contact telephone numbers;

h. The participant's history of allergies with appropriate allergy alerts;

i. The participant's medication record, including a copy of the signed or authorized current prescription or medical orders and the medication administration record[~~(MAR)~~] if medication is administered at the service site;

j. A recognizable photograph of the participant;

k. Legally adequate consent, updated annually, and a copy of which is located at each service site for the provision of services or other treatment requiring emergency attention;

l. The participant's individual educational plan or individual family service plan, if applicable;

m. The participant's life history updated at least annually;

n. The results of an annual physical exam;

o. The results of an annual dental exam;

p. The MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form[~~, MAP-350~~] updated annually in the MWMA**[~~portal~~]**;

q. A psychological evaluation;

r. A current level of care certification;

s. The prior authorization notifications; and

t. Incident reports, if any exist;

6.[~~11.~~] Be maintained by the provider in a manner that:

a. Ensures the confidentiality of the participant's record and other personal information; and

b. Allows the participant or guardian to determine when to share the information in accordance with law; and

7.[~~12.~~] Be safe from loss, destruction, or use by an unauthorized person ensured by the provider;[~~and~~

~~13. Have a corresponding legend which the provider shall make readily accessible~~];

(p) Shall ensure that an employee or volunteer:

1. Behaves in a legal and ethical manner in providing a service;

2. Has a valid Social Security number or valid work permit if not a citizen of the United States of America; and

3. 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;

(q) Shall ensure that an employee or volunteer:

1. 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

2. Who tests positive for TB or has a history of positive TB skin tests:

a. Shall be assessed annually by a licensed medical professional for signs or symptoms of active disease; and

b. 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;

(r) Shall maintain documentation:

1. Of an annual TB risk assessment or negative TB test for each employee who performs direct support or a supervisory function; or

2. Annually for each employee with a positive TB test that ensures no active disease symptoms are present;

(s) Shall provide a written job description for each staff person that describes the required qualifications, duties, and responsibilities for the person's job;

(t) Shall maintain an employee record for each employee that includes:

1. The employee's experience;

2. The employee's training;

3. Documented competency of the employee;

4. Evidence of the employee's current licensure or registration if required by law; and

5. An annual evaluation of the employee's performance;

(u) Shall require a background check:

1. And drug testing for each employee who is paid with funds administered by the department and who:

a. Provides support to a participant who utilizes SCL services; or

b. Manages funds or services on behalf of a participant who utilizes SCL services; or

2. For a volunteer recruited and placed by an agency or provider who has the potential to interact with a participant;

(v) Shall ensure that a volunteer placed by an agency or provider does not have unsupervised interaction with a participant;

(w)1. Shall for a potential employee or volunteer obtain:

a.[1.] The results of a criminal record check from the Kentucky Administrative Office of the Courts and[or] equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months[year] prior to employment or volunteerism;

b.[2.] The results of a nurse aide abuse registry check as described in 906 KAR 1:100 and[or] an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months[year] prior to employment or volunteerism;

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 volunteerism; and

d.[3.] Within thirty (30) days of the date of hire or initial date of volunteerism, the results of a central registry check as described in 922 KAR 1:470 and[or] an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months[year] prior to employment or volunteerism; 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;

(x) Shall for each 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**, and caregiver misconduct registry checks** of at least twenty-five (25) percent of employees; **and**[and]

2. Conduct drug testing of at least five (5) percent of employees; **[and**

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 volunteerism;]

(z) Shall not provide 1915(c) home and community based waiver services if the employee[employ, 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 of 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 illness 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 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 DBHDID 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

11.[~~10.~~] Adhering to policies and procedures for ongoing monitoring of medication administration;

(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)1. 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**, licensed professional,** or positive behavior support specialist;

2. Annually provide or arrange for the provision of at least six (6) hours of **competency-based** 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 **competency-based** 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 trainer with~~] a nationally-accredited entity;

2.[~~organization to include the American Red Cross and the American Heart Association and evidenced by official documentation of completion from the nationally-accredited organization;~~

~~2. Cardiopulmonary resuscitation which shall be provided by a certified trainer with a nationally-accredited organization to include the American Red Cross and the American Heart Association and evidenced by official documentation of completion from the nationally-accredited organization;~~

~~3.~~] Department of Behavioral Health, Developmental and Intellectual Disabilities' crisis prevention and intervention training;

3.[~~4.~~] Successful completion of all Kentucky College of Direct Support Phase I training modules;

4.[~~5.~~] Individualized instruction about the person-centered service plan[~~POC~~] of the participant to whom the trainee provides supports; and

5.[~~6.~~] 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 completes 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:

(a) Obtain the rights to use[~~:~~

~~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[~~the~~]:

1.[~~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;

(k)[~~(l)~~] Personal assistance services;

(l)[~~(m) Physical therapy;~~

~~(n)~~] Positive behavior supports;

(m)[~~(o)~~] Residential support services;

(n)[~~(p)~~] Respite;

(o)[~~(q)~~] Shared living;

(p)[~~(r)~~] Specialized medical equipment and supplies;

(q)[~~(s) Speech therapy;~~

~~(t)~~] Supported employment;

(r)[~~(u)~~] Transportation services; or

(s)[~~(v)~~] Vehicle adaptation services.

(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 and 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 tool 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:~~

~~a. 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 5 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 ICF-IID;~~

~~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:~~

~~a. Provides evidence that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence; or~~

~~b. 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 family member, guardian, or 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[~~POC~~];

(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[~~POC~~];

(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[~~POC~~];

(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 a:

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[~~POC~~], 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[~~POC~~] 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[~~POC~~];

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.

(5)[~~(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[~~5~~] 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

(iv) Accessing resources that promotes implementation of the participant's person-centered service plan[~~POC~~]; and

c. Information to ensure that the participant understands the responsibilities involved with directing the participant's services;

5. Be documented **in the MWMA** 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)1. 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[~~POC~~].

(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)[~~(7)~~] 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.[~~An~~] 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;

(d) Shall be:

1. Furnished only:

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;

(e) Shall not include:

1. Monthly rental or mortgage expense;

2. Food;

3. Regular utility charges;

4.[~~Household appliances or~~] Items that are intended for purely diversional or recreational purposes; or

5. Furnishings for living arrangements that are owned or leased by an SCL provider;

(f) Shall be coordinated and documented in the MWMA[~~**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; and

4. The date the entry was made in the record; and

(g) Shall not exceed $2,000 per qualified transition.

(7)[~~(8)~~] A consultative clinical and therapeutic service shall:

(a) Be provided by a person who:

1. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2.[~~(b)~~] Is a:

a.[~~1.~~] Certified nutritionist;

b.[~~2.~~] Licensed dietitian;

c.[~~3.~~] Licensed marriage and family therapist;

d.[~~4.~~] Licensed professional clinical counselor;

e.[~~5.~~] Licensed psychological associate;

f.[~~6.~~] Licensed psychologist;

g.[~~7.~~] Licensed psychological practitioner;

h.[~~8.~~] Licensed clinical social worker; or

i.[~~9.~~]Positive behavior support specialist;

(b)[~~(c)~~] Include:

1. Professional consultation, evaluation, and assessment of the participant, the environment and the system of support and written summary of findings and recommendations for the participant and the participant's person-centered team;

2. Providing treatment that:

a. Is consistent with assessment results and diagnosis;

b. Is evidence based or current best practice; and

c. Encompasses psychological treatment or counseling as indicated by the condition of the participant;

3. Coordinating program wide support, as needed, that addresses the assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;

4. Participating in developing and revising, as needed, home treatment or support plans as components of a participant's person-centered service plan[~~POC~~];

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 a:

(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) Allow the participant to cope more effectively with circumstances; and

(iii) Be documented when they occur[~~all functional assessment~~

~~components specified in the Supports for Community Living Policy Manual~~];[~~and~~]

8. Documentation **in the MWMA** of[~~a 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**[~~and~~]

(c)[~~(d)~~] Not exceed 160 fifteen (15) minute units per year**[~~; and~~**

~~(d) 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 regarding treatment of the behavioral health condition.~~

~~1. 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 upon 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~~].

(8)[~~(9)~~] 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 follow 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; or

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 **in the MWMA** 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 service.

(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[~~direct~~] 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)~~](a) Natural supports training shall:

1. Be provided by a qualified entity as identified in the person-centered service plan[~~POC~~];

2. Be participant directed and include:

a. Training and education to individuals who provide unpaid support, training, companionship, or supervision to participants;

b. Instruction about treatment regimens and other services specified in the participant's person-centered service plan[~~POC~~];

c. Instruction on current best practices;

d. The costs of registration and training fees associated with formal instruction in areas relevant to the participant's needs identified in the participant's person-centered service plan[~~POC~~]; or

e. Training provided by a member of the participant's community regarding specific interests of the participant and how the natural support network shall support the participant's inclusion in activities and events surrounding the area of interest;

3. Be individualized, direct training of families and natural support networks for acquisition or enhancement of their ability to support the participant;

4. Relate to needs identified in a participant's person-centered service plan[~~POC~~] and be tied to a specific goal in the person-centered service plan[~~POC~~];

5. Not duplicate or occur simultaneously with any education or training provided through:

a. State plan physical therapy services;

b. State plan occupational therapy services;

c. State plan speech-[~~and~~]language pathology[~~therapy~~] services;

d. Consultative clinical and therapeutic services; or

e. Positive behavior support services;

6. Be provided in:

a. A participant's own home or a participant's family's home; or

b. Community setting specific to community-based natural supports training goals specified in the participant's person-centered service plan[~~POC~~];

7. Not include:

a. Services reimbursable by any other support;

b. Training paid caregivers;

c. Costs of travel, meals, or overnight lodging to attend a training event or conference; or

d. Services not related to the needs of the participant;

8. Be coordinated and documented in the MWMA[**portal**] by a case manager by:

a. The specific training provided;

b. The date and the beginning and ending time when the service was provided;

c. The service location;

d. The receipts or verification of service provision, including first and last name and title (if applicable) of the person providing the service and the signature of the person providing the service;

e. Verification of registration and certificate of attendance at any formal training; and

f. The progress made in moving the participant towards independence as reflected in goals and the participant's person-centered service plan[~~POC~~]; and

9. Not exceed $1,000 per one (1) year authorized person-centered service plan[~~POC~~] period.

(b) An immediate family member, guardian, or legally responsible individual of a participant shall not be eligible to be a participant-directed provider of natural supports training services for the participant.

(c) For purposes of natural supports training, an individual shall be defined as any person, family member, neighbor, friend, companion, or coworker who provides uncompensated care, training, guidance, companionship, or support to the participant who utilizes natural supports training.

(d) A case manager shall submit reimbursement documentation to the financial management agency.

(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 this 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 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;~~

~~(k) Not be available to a participant under the age of twenty-one (21);~~

~~(l) Not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 101 et seq.); and~~

~~(m) Be limited to fifty-two (52) 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 **be entered in the MWMA and 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;

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. 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 **in the MWMA** 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. As 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.~~

~~(17)~~](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. **Clarify in measurable terms the frequency, intensity, and duration of the target behaviors:**

(i) That will signify that a reduction in services is in order; and

(ii) When services are at an end;

l.[~~Include all the positive behavior support components specified in the Supports for Community Living Policy Manual;~~

~~f.~~] 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 life history;

(iv) The participant's medical assessment; and

(v) Any other appropriate assessment;

m.[~~l.~~] Be submitted to the local Human Rights Committee if rights restrictions are recommended; and

n.[~~m.~~][~~g.~~] Be implemented across service settings by the various people, both 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) plan.

(e) Positive behavior supports shall be billed in accordance with 907 KAR 12:020.

(15)(a)[~~(18)~~] Residential support services shall:

1.[~~(a)~~] Be authorized for a participant based upon information from the participant's Supports Intensity Scale assessment, a[~~Health Risk~~] screening tool that assesses health risk[~~assessment~~], and an approved person-centered service plan[~~POC~~]; and

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.[~~3.~~] Level II residential supports; and

2.[~~(c)~~] Be documented **in the MWMA** by a:

a.[~~1.~~] Daily note, which shall include:

(i)[~~a.~~] 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)[~~b.~~] The date of the service;

(iii)[~~c.~~] The location of the service;

(iv)[~~d.~~] The signature and title of the individual providing the service; and

(v)[~~e.~~] The date the entry was made in the record; and

b.[~~2.~~] Detailed monthly summary note, which shall include:

(i)[~~a.~~] The month and year for the time period covered by the note;

(ii)[~~b.~~] An analysis of progress toward a participant's outcome or outcomes;

(iii)[~~c.~~] A projected plan to achieve the next step in achievement of an outcome or outcomes;

(iv)[~~d.~~] Information regarding events that occurred that had an impact on the participant's life;

(v)[~~e.~~] The signature and title of the direct support professional [~~individual~~] writing the note;

(vi)[~~f.~~] The date the note was written; and

(vii)[~~g.~~] The signature, title, and date of documentation review by the direct support professional supervisor providing supervision to the direct support professional.

(16)[~~(19)~~](a) 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 the:

(i) Needs of the participant as determined by the participant's person-centered team; and

(ii) 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.

(c)1. 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 a:

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 **through the use of technology assisted residential services reduce the amount of in-home[~~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.

(b)1. 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[~~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 a[~~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 chronic support 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.

(18)[(~~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;

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 the:

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, 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.

(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;

(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[~~an individual providing care to a participant~~];

3. Be documented **in the MWMA** 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;

d. The signature and title of the individual providing the service; and

e. The date the entry was made in the record; 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.

(20)[~~(23)~~](a) Shared living shall be a participant- directed service designed to:

1. Be an alternative to residential support services; and

2. Be provided by a shared living caregiver who provides some of the participant's supports in exchange for the caregiver's share 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 **the participant-directed services provider requirements established[~~direct support professional qualifications~~]** in**[~~accordance with~~]** Section **10[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.

(21)[~~(24)~~](a) 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.

(22)[~~(25) Speech therapy shall:~~

~~(a) Be provided by:~~

~~1. A speech language pathologist who meets the personnel and training requirements established in Section 3 of this administrative regulation; and~~

~~2. An order of a physician;~~

~~(b) Include:~~

~~1. Evaluation or therapeutic services that are not available to a participant outside of a 1915(c) home and community based waiver program;~~

~~2. Speech and language therapy evaluation;~~

~~3. Individual treatment of voice;~~

~~4. Communication;~~

~~5. Auditory processing;~~

~~6. Therapeutic services for the use of a speech-device including:~~

~~a. Programming and modification; or~~

~~b. Participant and family education;~~

~~7. 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;~~

~~8. 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;~~

~~9. 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;~~

~~(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 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 speech language pathologist providing the service; and~~

~~9. The date the entry was made in the record; and~~

~~(h) Be limited to fifty-two (52) fifteen (15) minute units per month.~~

~~(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.[~~3.~~] 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~~

~~c. In accordance with the 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~~] 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 conceived 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 subclause (i) of this clause.

b. Information gathered at the job planning meeting shall be documented in the participant's individual plan for employment.

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.

b. A participant and the participant's employment specialist may access up to ninety (90) units of job development services.

7.a. Job acquisition with support 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 site 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.[~~1. 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 employment 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)[~~(27)~~](a) A transportation service shall:

1. Enable a participant who chooses to use participant-directed services to gain access to integrated waiver and other community services, activities, resources, and organizations typically utilized by the general population; and

2. Only be provided when transportation is not:

a. Otherwise and customarily available through natural supports including family, friends, neighbors, or community agencies; or

b. Included as an element of another SCL waiver service;

3. Include nonemergency travel;

4. Be clearly described in a participant's person-centered service plan[~~POC~~] which shall include information regarding the unavailability of other transportation services or resources;

5. Be reimbursable based upon the assessed needs of a participant as specified in the participant's person-centered service plan[~~POC~~];

6. Be provided by a driver who:

a. Is at least eighteen (18) years of age and legally licensed to operate the transporting vehicle to which the individual is assigned or owns;

b. Has proof of current liability insurance for the vehicle in which the participant will be transported; and

c. Is an individual or other public transit resource including a local cab or bus service; and

7. Not:

a. Include transporting a participant to school (through the twelfth grade);

b. Be available to a participant who:

(i) Receives transportation as an element of another covered service;

(ii) Is receiving a residential service via the SCL waiver program;

(iii) Has access to transportation under the Individuals with Disabilities Education Act; or

(iv) Customarily receives transportation from a relative.

(b) A participant shall not contract with an individual to provide

transportation if the individual has a driving under the influence conviction within the past twelve (12) months.

(c) A transportation service 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.

(d) A case manager shall:

1. Coordinate transportation services; and

2. Ensure that the following documentation is completed and submitted to the financial management agency for direct payment to the approved vendor:

a. The specific type and purpose of transportation provided;

b. The date and the beginning and ending time when the service was provided;

c. The location of origin of the transportation service, destination of the transportation service, and the mileage incurred from point to point;

d. Verification of service delivery, including the first and last name and title (if applicable) of the individual providing the service; and

e. A receipt from the driver if a bus, taxicab, or similar type of transportation service in which the participant directly purchases the service is utilized.

(24)[~~(28)~~](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;

d. A receipt for procurements which shall include the date of purchase;

e. Verification by the case manager that the work is complete, adequate, and satisfactory within ten (10) business days of completion before payment is requested and issued;

f. The signature and title of the case manager; and

g. The date the entry was made in the record.

(b) The department's SCL program shall be the payer of last resort for a vehicle adaptation.

(c) The need for a vehicle adaptation shall:

1. Be documented in a participant's person-centered service plan[~~POC~~]; and

2. Include an assessment from an occupational therapist or physical therapist specializing in vehicle modifications that result in specific recommendations for the type of modification to meet the needs of the participant.

(d) The department shall not reimburse for the repair or replacement costs of a vehicle adaptation of a vehicle owned by an SCL provider.

(e) A vehicle adaptation vendor 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.

(f) An immediate family member, guardian, or legally responsible individual of the participant shall not be eligible to be a vendor or provider of a vehicle adaptation service for the participant.

(g) A case manager shall submit reimbursement documentation to the financial management agency.

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. 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 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;

(c)1. 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 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 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 DBHDID 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 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;**[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**; and**

(p) Be supervised by a case management supervisor.

(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.

(b)1. 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.

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 DBHDID, 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, 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 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; 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 **the MWMA[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 **identifying strategies for** 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;

(g) 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;

(k) Providing a participant and the participant's team members twenty-four (24) hour telephone access to a case management staff person;

(l) 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 management 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.

(5)[~~(6)~~](a) One (1) unit of case management shall equal one (1) month.

(b) A provider shall bill for a case management service in accordance with 907 KAR 12:020.

(6)[~~(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 **at least six (6)[~~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)** 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.

(b) A Behavior Intervention Committee meeting shall have a quorum of at least five (5) members including at least one (1):

1. Self-advocate, representative, or family member;

2. Member from the community at large with experience in:

a. Human rights issues; or

b. The field of intellectual or developmental disabilities;

3. Professional in the medical field;

4. Positive behavior support specialist; and

5. Professional comprised of any combination of a:

a. Positive behavior support specialist;

b. Licensed psychologist;

c. Certified psychologist; or

d. Licensed clinical social worker.

(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**:**
1. Specifications and requirements established in Section 4 of this administrative regulation **except for the monthly summary note requirements established in Section 4 of this administrative regulation;**[, the Supports for Community Living Policy Manual,] and
2.[the] Training requirements specified in paragraph (b) of this subsection:
a.[1.] Community access services;
b.[2.] Community guide services;
c.[3.] Day training;
d.[4.] Personal assistance services;
e.[5.] Respite;
f.[6.] Shared living; or
g.[7.] Supported employment.
(b) An individual who provides a participant-directed service shall complete the**:**
1. Background and related requirements established in Section 3(3)(p), (q), (r), (u), (w), (x), (y), and (z) of this administrative regulation; and
2. Following training requirements in the timeframe established by paragraph (c) of this subsection:
a.[1.] First aid and cardiopulmonary resuscitation certification by a nationally accredited entity[the American Red Cross or the American Heart Association];
b.[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[If administering or monitoring the administration of a medication, an approved DBHDID medication administration curriculum];
c.[3.] Individualized instruction regarding the participant receiving a support;
d.[4.] The following areas of the Kentucky College of Direct Support modules:
(i)[a.] Maltreatment of vulnerable adults and children;
(ii)[b.] Individual rights and choices;
(iii)[c.] Safety at home and in the community;
(iv)[d.] Supporting healthy lives; and
(v)[e.] Person-centered planning; and
e.[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;[and]
(i)[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
(j) 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 Labor 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 **monthly**[~~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) **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 **if:**

1. The participant does not comply with the participant's person-centered service plan;

2. The participant, a family member of the participant, an employee of the participant, the participant's guardian, or a legal representative of the participant threatens, intimidates, or consistently refuses services from an SCL provider;

3. Imminent threat of harm to the participant's health, safety, or welfare exists; or

4. The participant, a family member of the participant, an employee of the participant, the participant's guardian, or a legal representative of the participant interferes with or denies the provision of case management.

(b) The participant's case manager shall[~~; and~~

~~2.~~] monitor the progress of the corrective action plan and resulting outcomes to resolve the[~~health, safety, or welfare~~] issue **described in paragraph (a) of this subsection that necessitated a corrective action plan**.

(c)[~~(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.

(d)[~~(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 outcome or outcomes in the participant's person-centered service plan[~~POC~~];

2. The date of the service;

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. 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.[~~6.~~] 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**:**

1. Individual who discovered or witnessed the incident shall **document the details of the incident and**[~~:~~

~~1.~~] report **it to agency staff for**[~~the incident by making an~~] entry into the MWMA[~~portal that includes details regarding the incident~~][~~Be documented on an Incident Report form~~]; and

2. **Incident shall** 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 MWMA**[portal by the individual who witnessed or discovered the critical incident]**; or

2. Does not require[Immediately report the critical incident to:

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

3. Document the incident on a Critical Incident Report form.

(b) If the critical incident is not one which requires] reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA**[portal]** by **a designated agency staff person[the individual who witnessed or discovered the critical incident]** within eight (8) hours of discovery [to:

1. The participant's case manager;

2. The participant's guardian; and

3. To BHDID 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].

(c)[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.

(d)] 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 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) Diagnostic impressions and medical diagnoses based on the current version of American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™[Axis I diagnosis or diagnoses];

(ii)[Axis II diagnosis or diagnoses;(iii) Axis III diagnosis or diagnoses;(iv)] A listing of recent medical concerns;

(iii)[(v)] An analysis of causal factors; and

(iv)[(vi)] Recommendations for preventing future occurrences.[(e) 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.]

(6)(a) 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 MWMA**[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[and] include:

1.[(a)] The participant's person-centered service plan[of care] at the time of death;

2.[(b)] Any current assessment forms regarding the participant;

3.[(c)] The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;

4.[(d)] Progress notes regarding the participant from all service elements for the past thirty (30) days;

5.[(e)] The results of the participant's most recent physical exam;

6.[(f)] All incident reports, if any exist[exists], regarding the participant for the past six (6) months;

7.[(g)] Any medication error report, if any exists, related to the participant for the past six (6) months;

8.[(h)] The most recent psychological evaluation of the participant;

9.[(i)] A full life history of the participant including any update from the last version of the life history;

10.[(j)] 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.[(k)] Emergency medical services notes regarding the participant if available;

12.[(l)] The police report if available;

13.[(m)] A copy of:

a.[1.] The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable;

b.[2.] 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.[3.] The cardiopulmonary resuscitation and first aid card for any SCL provider's staff member who was present at the time of the incident which resulted in the participant's death;

14.[(n)] A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and

15.[(o)] A record of any crisis training for any staff member present at the time of the incident which resulted in the participant's death.

(7)(a) An SCL provider shall report a medication error by making an entry of it in the MWMA**[portal]** [to DBHDID by the fifteenth of the month following the error by completing the Medication Error Report Form].

(b) An SCL provider shall document all medication error details on a medication error log retained on file at the SCL provider site.

Section 12.[7.] 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 DBHDID 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 development 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].

(c)[(d)][(b)] 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.

(d)[(e)][(c)] The IQ test referenced in paragraph (d)[(b)]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) DBHDID 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.[~~by~~] Category of need of the individual as established in paragraphs (b)[~~(a)~~] through (d)[~~(c)~~] of this subsection.

(b)[~~(a)~~] An individual's category of need shall be the emergency 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[~~a~~] 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.

(c)[~~(b)~~] An individual's category of need shall be the urgent category 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.

(d)[~~(c)~~] An individual's category of need shall be classified as future planning if an SCL service is needed in more than one (1) year; and

1. The individual is currently receiving a service through another funding source that meets the individual's needs;

2. The individual is not currently receiving a service and does not currently need the service; or

3. The individual is in the custody of DCBS.

(4) A written notification of original placement on the SCL waiting list and any change due to a reconsideration shall be mailed to an individual or the individual's guardian and case management provider if identified.

(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)[~~shall~~] 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.~~

~~(7)~~] 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 individual or individual's guardian and case management provider, if Identified, shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and the individual's or individual's guardian's continued desire to pursue placement in the SCL program.

(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)[~~(8)~~] A reassignment of an individual's category of need shall be completed based on updated information and the validation process.

(8)[~~(9)~~] 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)[~~(10)~~](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 that 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)[~~(11)~~] 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)[~~The~~] Individual shall be placed in the appropriate category on the SCL waiting list; and

(b)[~~The~~] Chronological date shall remain the same.

(11)[~~(12)~~] 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)[~~(13)~~] The removal of an individual from the SCL waiting list shall not prevent the submission of a new application at a later date.

(13)[~~(14)~~] 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)[~~(15)~~]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.[8.] Use of Electronic Signatures.[(1)] 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. **Corrective Action Plans. (1)(a) If a provider receives a findings report from the department indicating that an issue of non-compliance has been cited, the provider shall have ten (10) business days from the date on the letter that accompanied the findings report to submit a corrective action plan to the department in accordance with the instructions in the letter.**

(b) If a provider is notified by the department that the corrective action plan was not approved, the provider shall submit a revised corrective action plan to the department within ten (10) business days of the date on the letter informing that the initial corrective action plan was not approved and in accordance with the instructions in the letter.

(c)1. If a provider is notified by the department that the second corrective action plan was not approved, the provider shall submit a revised corrective action plan to the department within five (5) business days from the date on the letter notifying that the second corrective action plan was not approved.

2. If the third corrective action plan submitted to the department is not approved, the department shall:

a. Not certify the provider if the provider is new;

b. Not recertify the provider if the provider is an existing provider; or

c. Terminate the provider's certification.

3. A provider shall have the right to appeal a termination in accordance with 907 KAR 1:671.

4. A citation of an issue of non-compliance shall not be appealable.

(2) The department shall have up to thirty (30) business days to review a corrective action plan.

Section 15. Provider Certification. The following shall apply regarding SCL provider certification periods:

Provider Status at Recertification Date	New Certification Period Based on Status at Recertification Date
Zero citations during the prior twenty-four (24) month period	Two (2) Years
Zero citations during the most recent recertification review and have successfully implemented any approved corrective action plan for any citation issued during the recertification period if any citation was issued	One (1) year
Received citations during the most recent recertification review or has existing (open) citations without either an accepted corrective action plan or a successfully implemented corrective action plan	Six (6) Months (1) Upon approval of corrective action plan, the department shall monitor for successful implementation within thirty (30) days. (2) Upon successful implementation of corrective action plan, the department shall extend recertification to balance of one (1) year. (3) If provider fails to implement an approved corrective action plan, the department shall extend the timeframe for implementation or consider non-renewal or termination. (4) If provider has not submitted an approved corrective action plan after the three (3) allowed attempts (see above), the department shall consider non-renewal or termination.

Section 16. Voluntary Moratorium. (1)(a) Upon the department becoming aware of a potential health, safety, or welfare violation, the department shall contact the provider's executive director to:

1. Officially notify the provider of the option for a voluntary moratorium; and

2. Discuss the health, safety, or welfare concern.

(b) The department's notice to the provider shall initially be made via phone followed up by notice via electronic means.

(c) Upon receipt of the electronic notice, the provider shall formally accept or not accept the voluntary moratorium option by:

1. Signing the document provided; and

2. Returning it to the department within two (2) business days of receipt by electronic means as directed in the electronic notice.

(2) If the provider:

(a) Agrees to a voluntary moratorium, the department shall proceed as established in 907 KAR 7:005 regarding a voluntary moratorium pending an investigation; or

(b) Does not agree to a voluntary moratorium, the department shall:

1. Terminate the provider in accordance with 907 KAR 7:005; and

2. Notify in writing the provider's executive director at the agency's primary business address of the:

a. Reason for termination; and

b. Provider's right to appeal the termination within:

(i) Two (2) business days of receipt of the written non-acceptance of the voluntary moratorium; or

(ii) Five (5) business days of the initial notice sent to the provider if the provider did not respond to the notice of the voluntary moratorium option.

(3) A notice of termination to the provider shall be sent via a delivery method that records the sending and receipt of the notice.

(4)(a) If a provider is terminated, the department shall:

1. Monitor the provider's efforts to ensure the health, safety, and welfare of participants in need of being transitioned to a new provider; and

2. Provide technical assistance to the provider during the transition.

(b) A provider shall:

1. Fully cooperate with the department's transition assistance team and any other state government agency involved;

2. Provide full access to its records and information pertaining to the participants being transitioned; and

3. Be responsible for facilitating the effective transition of participants to another provider or providers of the participant's choice prior to the termination date.

(c) A provider's termination date shall be stated in the termination notice.

(d) A participant's case manager shall help ensure that the participant's transition to a new provider or providers is completed prior to the termination date.

Section 17.[~~9.~~] 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 **18.[~~15.~~]**[~~10.~~] 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[~~7~~] of this administrative regulation.

Section **19.[~~16.~~]** Participant Rather than Provider Driven.[~~11. 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 on the 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 **20.[~~17.~~]**[~~12.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP – 115 Application Intake – Participant Authorization", May 2015[~~The "Supports for Community Living Policy Manual", December 2012 edition~~];

(b) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(c) "MAP – 350 Long Term Care Facilities and Home and Community Based Program Certification Form June 2015[~~The "Person Centered Plan of Care", November 2012 edition~~];

(d)[~~(c)~~] The "Supported Employment Long-Term Support Plan", December 2011 edition;[~~(d) The "Critical Incident Report", November 2012 edition;~~]

(e) [~~The "Incident Report", November 2012 edition;~~

~~(f) The~~] "Person Centered Employment Plan", March 2012[~~edition~~];

(f) "MAP – 531 Conflict-Free Case Management Exemption", **October[~~May~~]** 2015; and

(g) "MAP – 532 PDS Request for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider", December 2013[~~The "Person Centered Employment Plan Activity Note", July 2012 edition; and~~

~~(h) The "Medication Error Report Form", August 2012 edition~~].

(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

(b) Online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2015

FILED WITH LRC: November 13, 2015 at noon

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding supports for community living (SCL) waiver services. The SCL program 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.

(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; barring 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 material and inserting various provisions that were previously stated in the manual into this administrative regulation; for a participant that has a diagnosis of a mental illness and also of an intellectual disability requiring that a positive behavior support plan (that is evidence-based and best practice) be incorporated into the individual's person-centered service plan; revising the incident reporting process by requiring incidents to be documented online in the new MWMA; revising the application process by requiring it to be done via the new MWMA; and removing occupational therapy, physical therapy, and speech therapy from the services covered via the SCL program.

The amendment after comments replaces the community access specialist requirement of having to have an approved credential with having to have completed a department requiring training program; deletes the supported employment specialist requirement that such a specialist have a bachelor's degree and one year of experience in the field of developmental disabilities; replaces the supported employment specialist requirement of having to have an approved credential with having to have completed a department requiring training program; deletes the supported employment specialist requirement that such a specialist have completed the Kentucky Supported Employment Training Project curriculum from the Human Development Institute at the University of Kentucky; deletes the requirement that a quality improvement plan "improve the participant's competence" as that is difficult to measure/monitor; synchronizes the requirement for annual caregiver misconduct registry checks to be a sample of twenty-five (25) percent of employees - as is the requirement for criminal background checks, nurse aide abuse registry checks, and central registry checks - rather than all employees; delete the requirement that a consultative clinical and therapeutic service for an individual who has a diagnosis of mental illness or an intellectual disability incorporate a positive behavior support plan; adds a requirement that positive behavior support plans must clarify in measurable terms the frequency, intensity, and duration of target behaviors that will signify that a reduction in services is in order and when services are at an end; removes the requirement that individuals who receive technology assisted residential services must reside in a residence with twenty-four (24) hour support; replaces the requirement that a case manager utilize a DBHDID-approved monitoring tool for activities such as ensuring the participant's health, safety, and welfare and gathering date with a requirement that a case manager utilize the MWMA for these activities instead; rather than requiring a case manager to assist a participant in recruiting and management employees, clarifies that the case manager must assist the participant in "identifying strategies for" recruiting and managing employees; reduces the quorum requirement for a Human Rights Committee meeting from eight to six; establishes Behavioral Intervention Committee meeting requirements; replaces the requirement that a provider employee who witnesses a critical incident must enter details about the incident into the MWMA with a requirement that the employee must document details of the incident to agency staff (who enter it into the MWMA) and similarly requires that a designated agency staff person report a critical incident in the MWMA rather than the employee who witnessed the incident; clarifies that documentation of various services must be entered into the MWMA; establishes corrective action plan provisions; establishes provisions regarding provider recertification (certification periods are tied to provider compliance/failure to comply); establishes requirements regarding voluntary moratoriums (during which a provider cannot provide services to new participants).

(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. Un-incorporating 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 waiver services cannot duplicate services available to Medicaid recipients via the "state plan", CMS explicitly instructed DMS to remove the services from the waiver.

The following address the necessity for the amendment after comments. DMS is revising the community access specialist requirements and supported employment specialist requirements in response to provider input/recommendations. DMS is also deleting the requirement that a quality improvement plan must improve a participant's competence at the behest of stakeholders and as measuring/monitoring such would be difficult. Reducing the annual requirement for checking the Caregiver Misconduct Registry (also requested by providers) to a sample of twenty-five (25) percent of employees rather than all employees is necessary to synchronize the requirement with those regarding criminal background checks, Nurse Aide Abuse Registry checks, and Central Registry checks. Removing the requirement that a consultative clinical and therapeutic service for an individual who's been diagnosed with a mental illness or intellectual disability must incorporate a positive behavior support plan (removed in response to providers) is necessary as not all individuals with either diagnosis would need a positive behavior support plan.

DMS is adding the positive behavior support plan requirement as it was recommended by a provider and will add clarity. DMS is removing the requirement that individuals who receive technology assisted residential services must reside in a residence with twenty-four (24) hour support (in response to providers) as the requirement is unnecessary. DMS is replacing the requirement that a case manager use a DBHDID-approved monitoring tool for activities such as ensuring the participant's health, safety, and welfare with a requirement that case managers use the MWMA for these activities (in response to stakeholder input). In response to provider/stakeholder requests DMS is clarifying that a case manager must assist a participant in "identifying strategies" for recruiting/managing employees rather than assist in recruiting/managing employees and reducing the quorum requirement for a Human Rights Committee meeting from eight to six. DMS is establishing requirements for Behavior Intervention Committee meetings due to providers/stakeholders request and as no prior requirements existed. DMS is altering (in response to providers/stakeholders request) the requirement that an employee who witnessed a critical incident report it in the MWMA by requiring the witness to report the details of the incident to the provider staff designated for entering information in the MWMA (some employees might not be familiar with MWMA). Clarifying that documentation regarding services must be entered into the MWMA is necessary for clarity. DMS is establishing corrective action plan provisions, certification period provisions, and also voluntary moratorium provisions in the amendment after comments in response to correspondence from an attorney (subsequent to the filing of this administrative regulation) on behalf of a provider claiming that DMS lacks the authority to enforce such provisions without them being stated in administrative regulation.

(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): Providers may experience costs associated with background and related checks of employees and employee training. Providers who currently have manual processes for documenting services and plans of care may experience costs in transitioning to doing such activities online (via the MWMA) but in the long term the MWMA should enhance provider efficiency.

(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 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 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 provide 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 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? 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 (+/-):

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:021. Manual of policies and procedures.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.045(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

Section 1. Incorporation by Reference. (1) "Finance and Administration Cabinet of Policies and Procedures", [{]revised July 2015,[~~January 2006)"~~] is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of Policy and Audit, Policy Branch, Room 493[~~468~~], Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the Finance and Administration Cabinet's Web site, www.finance.ky.gov/services/policies/Pages/default.aspx.

Lori Flanery, Secretary
APPROVED BY AGENCY: November 12, 2015
FILED WITH LRC: November 13, 2015 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2015 at 10:00 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on Monday, January 4, 2016. 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: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, Department of Revenue, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger
(1) Provide a brief summary of:
(a) What this administrative regulation does: It incorporates by reference a policies and procedures manual required by KRS 45A.045(2).
(b) The necessity of this administrative regulation: It is required by KRS 45A.045(2).
(c) How this administrative regulation conforms to the content of the authorizing statutes: the regulation incorporates by reference the policies and procedures manual required by KRS 45A.045(2).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides guidance to vendors, prospective bidders, Finance and Administration Cabinet ("FAC") staff and other state employees in the administration of Kentucky's Model Procurement Code (KRS Chapter 45A).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Minimal changes to the regulation but significant changes to the policies in the manual.
(b) The necessity of the amendment to this administrative regulation: The manual has not been reviewed and updated since 2006. This amendment will reflect changes in statutes and policies as well as providing better clarity for vendors and staff.
(c) How the amendment conforms to the content of the authorizing statutes: The manual is required by KRS 45A.045(2).
(d) How the amendment will assist in the effective administration of the statutes: The updated manual will assist state employees and vendors in procurement matters.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current and prospective state vendors.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List 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 updated manual shouldn't impose additional duties or actions on regulated entities.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs should accrue.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Vendors will have a better understanding of the procurement system.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs.
(b) On a continuing basis: No additional costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No
(9) TIERING: Is tiering applied? The amended regulation will affect all state agencies and state vendors equally, so tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? No additional costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)

201 KAR 9:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

RELATES TO: KRS 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for physicians practicing in Kentucky who prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Minimum Qualifications for Prescribing or Dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. A licensed physician shall not prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone unless that physician possesses the minimum qualifications established in this section. (1) The physician shall obtain and maintain in good standing a waiver and license as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for the treatment of opioid dependence in the Commonwealth of Kentucky.

(2) The physician shall successfully complete the approved educational programs required by this subsection.

(a)[~~1. If~~] The prescribing physician shall be[~~was~~] a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone and[~~prior to July 1, 2015, the physician~~] shall have obtained Buprenorphine certification through completion of a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified course[~~or through personal attendance and completion of a review course approved by the American Society of Addiction Medicine ("ASAM") prior to July 1, 2015~~].

[~~2. If the prescribing physician becomes a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone on or after July 1, 2015, the physician shall obtain Buprenorphine certification through personal attendance and completion of a review course approved by the American Society of Addiction Medicine ("ASAM") before the physician prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.~~]

(b) For each three (3) year continuing education cycle, each DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall complete at least twelve (12) hours of continuing medical education certified in Category I specific to addiction medicine as part of the required continuing medical education hours set forth in 201 KAR 9:310.

(3) The physician shall enroll[~~and participate~~] in the Kentucky Health Information Exchange to the extent necessary to query and pull information from the Kentucky Health Information Exchange. The physician shall not report the prescribing or dispensing of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or as maintenance treatment for a patient diagnosed with opioid dependence into the Kentucky Health Information Exchange unless otherwise required by law.

Section 2. Professional Standards for Prescribing or Dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for Medically-Supervised Withdrawal or the Treatment of Opioid Dependency. (1)(a) Except as provided in paragraph (b) of this subsection, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall only be prescribed or dispensed for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid dependence.

(b) Transdermal delivery of Buprenorphine-Mono-Product may be used for treatment of pain.

(2) Buprenorphine-Mono-Product shall not be prescribed or dispensed, except:

(a) To a pregnant patient;

(b) To a patient with demonstrated hypersensitivity to naloxone; or

(c) As an injectable treatment in a physician's office or other healthcare facility.

(3)(a) Except as provided in paragraph (b) of this section, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be prescribed or dispensed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry.

(b) A physician may prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each licensed physician who prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or for the treatment of Opioid dependence shall fully comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the prescribing or dispensing physician shall:

1. Obtain and record a complete and appropriate evaluation of the patient which shall at a minimum include:

a. The patient's history of present illness;

b. The patient's history of substance use;

c. The patient's social and family history;

d. The patient's past medical and psychiatric histories;

e. A physical examination of the patient;

f. The patient's injection use history, which shall include screening for HIV and hepatitis serology; and

g. Appropriate laboratory tests, which shall include a CBC, a drug screen, and a CMP;

2. Obtain the patient's consent and authorizations in order to obtain the patient's prior medical records.

a. Upon receipt of the medical records, the prescribing or dispensing physician shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the prescribing or dispensing physician is unable, despite best efforts, to obtain the patient's prior medical records, the physician shall document those efforts in the patient's chart;

3. Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives and the risks and the benefits of treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the patient;

5. Obtain written informed consent from the patient in a manner that meets professional standards; and

6. If the patient is a female of child-bearing age and ability, meet the requirements of paragraph (b) of this subsection.

(b) The requirements of this paragraph shall apply to the treatment of a female of child-bearing age and ability.

1. Prior to initiating treatment, the physician shall require that the patient first submit to a pregnancy test and the physician shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine and the Kentucky Department for Public Health, and offer means to prevent pregnancy.

2.a. A physician shall not prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is pregnant or breastfeeding unless the prescribing physician first obtains and documents consultation with another physician for an opinion as to whether the potential benefit of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone use outweighs the potential risk of use.

b. The consultation shall be obtained from a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or from an obstetrician or maternal-fetal medicine specialist who is also qualified to prescribe buprenorphine.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the prescribing or dispensing physician shall comply with the requirements of this paragraph.

1. The prescribing or dispensing physician shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the prescribing or dispensing physician shall conduct the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the prescribing or dispensing physician shall appropriately record the circumstances in the patient chart and shall implement a SAMHSA-recognized or ASAM-recognized home-based induction protocol.

2. The prescribing or dispensing physician shall document the presence of opioid withdrawal before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The prescribing or dispensing physician shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists and is not improving; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse, the prescribing or dispensing physician shall:

1. Document that fact;

2. Educate the patient about the potential for precipitated withdrawal; and

3. Continue maintenance treatment of the patient on the same dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection.

(e) After initial induction of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the prescribing or dispensing physician shall meet the requirements established in this paragraph.

1. If the physician prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone medication, the physician shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that may include counseling or a twelve (12) step facilitation.

2. The physician shall prescribe or dispense to the patient an amount of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone that:

a. Is necessary to minimize craving and opiate withdrawal;

b. Does not produce opiate sedation;

c. Is to be taken no more frequently than once daily; and

d. Is able only to supply the patient until the next physician visit, which shall be scheduled as required by subparagraph 3. of this paragraph.

3.a. The prescribing or dispensing physician shall ensure that the patient is seen by the physician:

(i) No later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction; and

(ii) At intervals of no more than fourteen (14) days for the second month after induction.

b.(i) If the patient demonstrates objective signs of positive treatment progress, the prescribing or dispensing physician shall ensure that the patient is seen at least once monthly thereafter.

(ii) <u>If two (2) years after initiation of treatment, the patient is being prescribed Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for opioid dependence and the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives for at least two (2) years, then the prescribing or dispensing physician may require that the patient be seen only by the prescribing or dispensing physician at least once every three (3) months.</u>

<u>(iii)</u> The prescribing or dispensing physician shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

c. If extenuating circumstances arise that require a patient to unexpectedly reschedule a physician visit, the prescribing or dispensing physician shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

4. Every three (3) months after initiation of treatment, the prescribing or dispensing physician shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical reasoning in the patient's chart.

5. At least once every three (3) months, the prescribing or dispensing physician shall obtain KASPER reports to help guide the treatment plan.

a. If the KASPER indicates any abnormal findings, the prescribing or dispensing physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

b. Appropriate clinical reasoning may include adjustment of dose strength or frequency of visits, increased screening, a consultation with a specialist, or an alternative treatment.

c. Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day and the prescribing or dispensing physician is not certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry, then the prescribing or dispensing physician shall refer the patient for consultation by a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry for an opinion as to whether continued treatment and dosage is appropriate and shall accurately document the results of that consultation in the patient chart.

d. The prescribing or dispensing physician shall adjust dosages according to the individual patient's condition and within acceptable and prevailing medical standards, with the goal of improving the patient's quality of life and ability to function in the community.

e. Every twelve (12) months following initiation of treatment, the prescribing or dispensing physician shall evaluate for and document the medical necessity for continued treatment at the established dose.

f. The prescribing or dispensing physician shall obtain at least eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan. For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the prescribing or dispensing physician shall obtain at least six (6) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

(i) At least two (2) of the drug screens shall be random and shall be coupled with a pill count.

(ii) Each drug screen shall at a minimum screen for buprenorphine, methadone, oxycodone, other opioids, THC, benzodiazepines, amphetamines, and cocaine.

(iii) If a drug screen indicates any abnormal findings, the prescribing or dispensing physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

(iv) Appropriate clinical reasoning may include adjustment of dose strength or frequency of visits, increased screening, a consultation with a specialist, or an alternative treatment.

6. The prescribing or dispensing physician shall document a plan for handling any lost or stolen medication, which:

a. Shall not provide for the automatic replacement of medication prior to the specified interval date; and

b. If the prescribing or dispensing physician determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies.

Section 3. Violations. Failure to comply with or a violation of the professional standards established in Section 2 of this administrative regulation shall constitute a "departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky," in violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3), subjecting the licensed physician to sanctions authorized by KRS 311.595.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: November 10, 2015

FILED WITH LRC: November 12, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2015 at 10:00 a.m., at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by December 16, 2015, five (5) 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. This hearing will not be transcribed unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on January 4, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment expands the training opportunities by which physicians may become qualified to prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky; clarifies how physicians may monitor their patients' compliance with treatment directives through use of Kentucky Health Information Exchange without violating federal confidentiality laws in regard to mental health/addiction issues; and allows physicians to extend patient visits out to 3-month intervals for patients with long-term demonstrated progress and compliance with treatment.

(b) The necessity of the amendment to this administrative regulation: It was necessary to amend the regulation in order to clarify and address concerns raised by licensees in regard to (1) training/education, (2) protecting patient confidentiality and (3) frequency of visits for long-term patients being prescribed or dispensed Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation acts specifically to further clarify the acceptable and prevailing medical practices for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation acts specifically to further clarify the acceptable and prevailing medical practices for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in the Commonwealth of Kentucky who prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians will be required to follow the professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician including having professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone which will help curb the prescription drug epidemic in the Commonwealth of Kentucky.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals 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 Kentucky Board of Medical Licensure will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.205(3)(a), 314.011(7), 314.011(8), 314.042, 314.193(2), 314.196

STATUTORY AUTHORITY: KRS 218A.205(3)(a), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) requires the Board of Nursing to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting system established in KRS 218A.202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric-Mental Health Nursing 2nd Edition: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) Standards for Office Based Anesthesia Practice;

(l) Standards for the Practice of Midwifery;

(m) Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice; and

(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the name, address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the specialty area of

practice of the advanced practice registered nurse.

(b) Pursuant to KRS 314.196(2), an advanced practice registered nurse shall use the Common CAPA-NS Form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS).

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the Notification to Discontinue the CAPA-NS After Four Years.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS).

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS shall report all of his or her United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate numbers to the board when issued to the APRN by mailing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) Any change in the status of a DEA Controlled Substance Registration Certificate number shall be reported in writing to the board within thirty (30) days.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except when a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or the provisions of KRS 314.196(4)(b) apply.

Section 8. The board may make an unannounced monitoring visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to an APRN with a CAPA-CS if prescribing a controlled substance[~~other than a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone~~]. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits set out in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall[~~This section shall not apply to:~~

~~(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;~~

~~(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or~~

~~(c) An APRN prescribing a controlled substance:~~

~~1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;~~

~~2. As part of the patient's hospice or end-of-life treatment;~~

~~3. For the treatment of pain associated with cancer or with the treatment of cancer;~~

~~4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;~~

~~5. Within seven (7) days of an initial prescribing pursuant to subsection (1) of this section if the prescribing:~~

~~a. Is done as a substitute for the initial prescribing;~~

~~b. Cancels any refills for the initial prescription; and~~

~~c. Requires the patient to dispose of any remaining unconsumed medication;~~

~~6. Within ninety (90) days of an initial prescribing pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition;~~

~~7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;~~

~~8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;~~

~~9. Administering or prescribing controlled substances to prisoners in a state, county, or municipal correctional facility;~~

~~10. Prescribing a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event~~[~~; or~~

~~11. That has been classified as a Schedule V controlled substance.~~

~~(3) The APRN shall, prior to initially prescribing a controlled substance for a medical complaint for a patient~~]:

(a) Obtain the patient's medical history and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient and maintain copies of these records in the patient's record;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued when the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for[~~that the patient consented to~~] the treatment.

(3)[~~(4)~~] The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4)[~~(5)~~] For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.

(5)[~~(6)~~] During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for all available data on the patient before issuing a new prescription or a refill for a controlled substance. The APRN shall maintain copies in the

patient's record.

(6)[~~(7)~~] These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7)[~~(8)~~] If prescribing a controlled substance for the treatment of chronic, noncancer pain, the APRN, in addition to the requirements of this section, shall obtain a baseline drug screen or further random drug screens if the APRN:

(a) Finds a drug screen to be clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8)[~~(9)~~] If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section.

(9)[~~(10) If prescribing a controlled substance for a patient younger than sixteen (16) years of age, the APRN shall obtain and review an initial KASPER report. If prescribing a controlled substance for an individual sixteen (16) years of age or older, the requirements of this section shall apply.~~

~~(11)~~] Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation[~~as specified in subsection (2) of this section~~], the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to the treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) KASPER records.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient when presenting for a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescribing:

a. Is done as a substitute for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. Administering or ordering controlled substances to prisoners in a state, county, or municipal correctional facility;

10. Prescribing a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) Federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not be utilized by APRNs in this state.

(13) An APRN may order a reverse KASPER report to review their prescribing practices and to verify the information contained in KASPER is correct.

Section 10.[~~Prescribing Standards for Controlled Substances from Schedule II and Schedule III Containing Hydrocodone. (1)(a) This section shall apply to an APRN with a CAPA-CS if prescribing a controlled substance from Schedule II or Schedule III controlled substance containing hydrocodone.~~

~~(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus.~~

~~(2) This section shall not apply to:~~

~~(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;~~

~~(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or~~

~~(c) An APRN prescribing a controlled substance:~~

~~1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;~~

~~2. As part of the patient's hospice or end-of-life treatment;~~

~~3. For the treatment of pain associated with cancer or with the treatment of cancer;~~

~~4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;~~

~~5. Within seven (7) days of an initial prescribing pursuant to subsection (1) of this section if the prescribing or dispensing:~~

~~a. Is done as a substitute for the initial prescribing;~~

~~b. Cancels any refills for the initial prescription; and~~

~~c. Requires the patient to dispose of any remaining unconsumed medication;~~

~~6. Within ninety (90) days of an initial prescribing pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or~~

~~7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health.~~

~~(3) Prior to the initial prescribing of a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to a human patient, an APRN shall:~~

~~(a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;~~

~~(b) Query the electronic monitoring system established in KRS 218A.202 for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient;~~

~~(c) Make a written plan stating the objectives of the treatment and further diagnostic examinations required;~~

~~(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and~~

~~(e) Obtain written consent for the treatment.~~

~~(4)(a) An APRN prescribing an additional amount of a Schedule II controlled substance or Schedule III controlled substance containing hydrocodone for the same medical complaint and related symptoms shall:~~

~~1. Review the plan of care at reasonable intervals based on the patient's individual circumstances and course of treatment;~~

~~2. Provide to the patient any new information about the treatment; and~~

~~3. Modify or terminate the treatment as appropriate.~~

~~(b) If the course of treatment extends beyond three (3) months, the licensee shall:~~

~~1. Query KASPER no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and~~

~~2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.~~

~~(5) For each patient for whom an APRN prescribes a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone, the licensee shall keep accurate, readily accessible, and complete medical records, which include, as appropriate:~~

~~(a) Medical history and physical or mental health examination;~~

~~(b) Diagnostic, therapeutic, and laboratory results;~~

~~(c) Evaluations and consultations;~~

~~(d) Treatment objectives;~~

~~(e) Discussion of risk, benefits, and limitations of treatments;~~

~~(f) Treatments;~~

~~(g) Medications, including date, type, dosage, and quantity prescribed;~~

~~(h) Instructions and agreements; and~~

~~(i) Periodic reviews of the patient's file.~~

~~Section 11.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2012 Edition, American Association of Critical-Care Nurses;

(b) "AACN Scope and Standards for Acute and Critical Care Clinical Nurse Specialist Practice", 2014[~~2010~~] Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015[~~2010~~] Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015[~~2008~~] Edition, American Nurses Association/Society of Pediatric Nursing/National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing 2nd Edition: Scope and Standards of Practice", 2014, American Nurses Association/American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2013 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(k) "Standards for Office Based Anesthesia Practice", 2015[~~2013~~] Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery"; 2011 Edition, American College of Nurse-Midwives;

(m) "Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice", 2013 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014[~~2008~~] Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS)", 12/2014, Kentucky Board of Nursing;

(p) "Notification of a Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs (CAPA-NS)", 12/2014, Kentucky Board of Nursing;[~~and~~]

(q) "Notification to Discontinue the CAPA-NS After Four Years", 8/2015[~~12/2014~~], Kentucky Board of Nursing; and

(r) "Common CAPA-NS Form", 6/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

GAIL WISE, President

APPROVED BY AGENCY: October 15, 2015

FILED WITH LRC: November 6, 2015 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2015 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, January 4,

2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets the scope and standards of practice for advanced practice registered nurses (APRN).

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting scopes and standards.

(d) How this administrative regulation currently assists.

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

(a) How the amendment will change this existing administrative regulation: It adds a form for prescriptive authority which was adopted pursuant to KRS 314.196. It incorporates several current scope and function statements. It combines the two sections on prescriptive authority that had been divided by certain schedules.

(b) The necessity of the amendment to this administrative regulation: The new form and updated scope and function statements are required by statute. The prescription standards sections were combined for better understanding.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized by statute to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By recognizing the new form and update statements and by a clearer understanding of the prescription standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRNs, approximately 5,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to use the new form and comply with the standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:162. Procedures for disciplinary hearings pursuant to KRS 314.091.

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. This administrative regulation establishes procedures for conducting an administrative hearing.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel. (1)(a) Except as provided in subsection (b) of this section, a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the board, one (1) of which shall be a registered nurse, and a hearing officer, who shall be:

1. An assistant attorney general; or

2. Other attorney designated by the board.

(b) A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or

2. Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

(a) Discussed the merits of the action with agency staff;

(b) Personal knowledge of the facts giving rise to the disciplinary action; or

(c) Participated in the investigation of a disciplinary action.

(3) The hearing shall be transcribed by a court stenographer.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations

contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall have one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1), that shall be:

(a) Consistent with the panel's deliberations; and

(b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. The board shall not postpone a case which has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer. The burden shall be upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Fee. If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314, a hearing fee in the[~~an~~] amount of $400 per day plus[~~equal to~~] the cost of stenographic services[~~and the cost of the hearing officer~~] shall be assessed against the licensee or applicant. In a case of financial hardship, the board may waive all or part of the fee.

Section 8. Reconsideration of Default Orders. (1) A default order issued by the board may be reconsidered.

(2) The party in default shall submit a written motion to the hearing officer requesting reconsideration.

(3) The hearing officer shall schedule a hearing on the motion for reconsideration. The hearing officer may order that the default order be set aside if the party in default presents good cause.

(4) If a default order is set aside, the provisions of 201 KAR 20:161 shall apply.

GAIL WISE, President

APPROVED BY AGENCY: October 15, 2015

FILED WITH LRC: November 6, 2015 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2015 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, January 4, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON:, Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets procedures for disciplinary hearings conducted by the Board of Nursing which are in addition and not in conflict with KRS Chapter 13B.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting procedures.

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

(a) How the amendment will change this existing administrative regulation: It adds a specific fee for the hearing officer which will be the same for any hearing.

(b) The necessity of the amendment to this administrative regulation: Prior to this amendment, the fee was determined by type of hearing and was set by guideline.

(c) How the amendment conforms to the content of the authorizing statutes: The Board believes that the better practice, pursuant to KRS Chapter 13A, is to set the fee in the administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The fee for the hearing officer will be set.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses who have a disciplinary hearing, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will pay the fee set by the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee is being set at $350.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It sets the hearing officer fee at $400.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unknown.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Licensure for Pastoral Counselors
(Amendment)

201 KAR 38:070. Renewal of licenses and continuing education.

RELATES TO: KRS 210.366, 335.625

STATUTORY AUTHORITY: KRS 210.366, 335.615(6), 335.625

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 335.625(1) and (2) and sets forth in detail all fees charged by the board necessary for renewal of licenses and sets forth in detail all required continuing education necessary for renewal of licenses. 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.

Section 1. Renewal. Each license holder of the board shall renew his or her license on or before a date that is three (3) years from the date of his or her original license or certification or last renewal on a form prescribed by the board, ["]Renewal Application,["~~"~~ {]August 2001, edition[}].

Section 2. Renewal Fees and Penalties. The following fees shall be paid in connection with all renewals of licenses of the board. (1) The renewal fee for licensure shall be $300.[;]

(2) The late renewal fee, including penalty, for renewal of licensure during the three (3) month grace period shall be $400.[;]

(3) The reinstatement fee for reinstatement and renewal of licensure after the expiration of the three (3) month grace period and before the expiration of one (1) year after the renewal date, including penalty, shall be $500.

Section 3. Continuing Education. (1) Each license holder of the board, before his or her license renewal date, shall obtain twenty (20) clock or credit hours of continuing education completed since the date of the last renewal of the license or the date of the original issuance of the license, whichever is later. Continuing education shall be obtained from any of the following providers or for any of the following activities approved by the board:

(a) Individual or group supervision of other license holders of this board at the supervisory level;

(b) Attendance at any educational conferences, continuing education seminars, or educational meetings where seminars are provided in a live or two (2) way video, presentation format and which regard mental health and which are approved for continuing education by:

1. The American Association of Pastoral Counselors;

2. The Kentucky Board of Licensure for Marriage and Family Therapists;

3. The Kentucky Board of Medical Licensure;

4. The Kentucky Board of Examiners of Psychology;

5. The Kentucky Board of[~~Certification for~~] Alcohol and Drug Counselors;

6. The Kentucky Board of Certification for Professional Art Therapists;

7. The Kentucky Board of Licensed[~~Certification for~~] Professional Counselors;

8. The Kentucky Board of Social Work;

9. The Kentucky Board of Nursing; or

10. A mental health credentialing agency or board of any other state in the United States for which continuing education credit is awarded in that state;

(c) Writing and publishing professionally-related articles in mental health publications regarding pastoral counseling which shall not be counted for more than five (5) hours.

(2) A person holding a license shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management within the first year of licensure and every six (6) years thereafter as required by KRS 210.366. A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management from the six (6) year continuing education if, during the six (6) year requirement, the licensee:

(a) Teaches a graduate-level psychology course in suicide assessment, training, and management; or

(b) Teaches a continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(3) If audited by the board, the license holder shall within ten (10) days submit written proof of compliance with this section[~~3 of this administrative regulation~~] to the board.

Section 4. Expired Licenses. (1) No person holding a license shall represent himself or herself as a licensed pastoral counselor in this state after the renewal date of his or her license unless:

(a) That license has been renewed as provided by this administrative regulation;

(b) The license holder has retained proof of continuing education as set forth by Section 3 of this administrative regulation; and

(c) The prescribed fee has been paid as set forth by Section 1 of this administrative regulation.

(2) All licenses not renewed within three (3) months after the renewal date shall be deemed expired for nonrenewal.

Section 5. Duplicate License Fees. The fee for a duplicate certificate shall be twenty-five (25) dollars.

Section 6. Incorporation by Reference. (1) "Renewal Application", [{]August 2001, edition[}], Kentucky Board of Licensure for Pastoral Counselors, is incorporated by reference.

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

DONALD CUTTER, Chairperson

APPROVED BY AGENCY: November 13, 2015

FILED WITH LRC: November 13, 2015 at noon

PUBLIC HEARING AND COMMENT PERIOD: A public

hearing on this administrative regulation shall be held on December 23, 2015, at 11:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 4, 2016.

CONTACT PERSON: Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Chessica Louden, Board Administrator, Kentucky Board of Licensure for Pastoral Counselors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Louden

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the renewal and continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the renewal and 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.

(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: There are presently 34 Licensed Pastoral Counselors.

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

(a) List 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 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? Board of Licensure for Pastoral 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, 335.615(6), 335.625.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(Amendment)

201 KAR 45:130. Continuing education.

RELATES TO: KRS 309.337
STATUTORY AUTHORITY: KRS 309.331
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.337 requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for licensed diabetes educators.

Section 1. Accrual of Continuing Education Hours. (1)(a) The annual continuing education accrual period shall be from November 1 of each year to October 31 of the next year.
(b) Prior to renewal of a license for the next licensure period, a licensee shall have earned fifteen (15) hours of approved continuing education.
(2) More than fifteen (15) hours of continuing education shall not be carried over into the next continuing education period.
(3) It shall be the responsibility of each licensee to finance the costs of continuing education.

Section 2. Methods of Acquiring Continuing Education Hours. (1) Continuing education hours for license renewal shall be applicable to diabetes and presented at a professional level that enhances the quality and effectiveness of diabetes self-management education.
(2) A licensee shall obtain continuing education courses from any of the following continuing education providers or programs approved by the providers:
(a) American Association of Diabetes Educators (AADE);
(b) American Diabetes Association (ADA);
(c) Academy of Nutrition and Dietetics (AND);
(d) Accreditation Council for Pharmacy Education (ACPE);
(e) Accreditation Council for Continuing Medical Education (ACCME-AMA);
(f) American Nurses Credentialing Center (ANCC);
(g) American Academy of Family Physicians (AAFP);
(h) American Academy of Nurse Practitioners (AANP);
(i) American Academy of Optometry (AAO);
(j) American Academy of Physician Assistants (AAPA);
(k) American Association of Clinical Endocrinologists (AACE);
(l) American College of Endocrinology (ACE);
(m) American College of Sports Medicine (ACSM);
(n) American Medical Association (AMA) or its Kentucky affiliate;
(o) American Nurses Association (ANA);
(p) American Occupational Therapy Association (AOTA);
(q) American Physical Therapy Association (APTA);
(r) American Psychological Association (APA);
(s) Commission on Dietetic Registration (CDR);
(t) Council on Continuing Medical Education (CCME-AOA);
(u) Council on Podiatric Medical Education (CPME-APMA);
(v) International Diabetes Federation (IDF);
(w) National Association of Clinical Nurse Specialists (NACNS);
(x) National Association of Social Workers (NASW);
(y) Kentucky Board of Nursing (KBN);
(z) Kentucky Board of Pharmacy;
(aa) Kentucky Board of Medical Licensure; or
(bb) Kentucky Nurses Association (KNA).

Section 3. Recordkeeping of Continuing Education Hours. (1) A licensee shall maintain a record of all continuing education courses attended for two (2) years after attending the course.
(2) Appropriate documentation to be kept shall include:
(a) Proof of attendance;
(b) Date of activity;
(c) Description of activity;
(d) Total hours of instruction, excluding breaks; and
(e) Names and professional qualifications of the presenters.
(3)(a) Each licensee shall sign a statement on the Renewal Application form incorporated by reference in 201 KAR 45:120, indicating compliance with the continuing education requirements.
(b) A license shall not be renewed without the licensee signing this sworn statement.

Section 4. Reconsideration. (1) A licensee may request the board to reconsider its denial of a continuing education course by filing a written request with the board.
(2)(a) A licensee shall file the request for reconsideration pursuant to KRS Chapter 13B within thirty (30) calendar days of notification of the denial.
(b) The request will be reviewed by the board at its next regularly scheduled meeting.

Section 5. Auditing of Continuing Education. (1) In January following the renewal period, the board shall annually conduct a random audit of up to fifteen (15) percent of licensees and permit holders from the preceding renewal period.
(2) Each licensee or permit holder selected for audit shall submit documentation of completion of continuing education units from the preceding renewal period to the board within forty-five (45) days of the date of the request.
(3) A licensee or permit holder who fails to comply with the audit request or the continuing education requirements shall be subject to disciplinary action, which may include fines, suspension, or revocation of the license or permit.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: October 21, 2015
FILED WITH LRC: October 21, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 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 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 4, 2016. 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) 564-5380.

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 continuing education required to maintain licensure.
(b) The necessity of this administrative regulation: Since licensees are required to obtain continuing education, they must know what will be accepted for continuing education credit.
(c) How this administrative regulation conforms to the content of the authorizing statues: The Board is given the authority to establish regulations setting the requirements for continuing education.
(d) How this administrative regulation currently assists or will assist in the effective
administration of the statutes: This administrative regulation sets forth the activities that are acceptable for continuing education and

the licensee's duty to maintain records regarding the courses attended.

(2) If 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 the board to conduct a random audit of continuing education documentation of licensees.

(b) The necessity of the amendment to this administrative regulation: This amendment requires the board to take reasonable steps to ensure that its licensees are completing their continuing education requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.331(1) authorizes the board to promulgate administrative regulations establishing continuing education requirements for licensed diabetes educators.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will require the board to take reasonable steps to verify that its licensees are completing their continuing education requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 600 individuals have been issued licenses or permits by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Licensees selected for a random audit will be required to provide proof of completion of continuing education requirements to the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost licensees anything other than copying or postage costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to maintain licensure and stay aware of the developments in the profession of diabetes educator.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the regulation applies equally to all licensees and permit holders.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, countries fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and 309.337

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

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

301 KAR 2:122. Seasons, methods, and limits for small game.

RELATES TO: KRS 150.340, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. This administrative regulation establishes seasons, bag limits, and methods of take for small game.

Section 1. Definitions. (1) "Eastern Zone" means the third through the ninth wildlife districts as established in 301 KAR 4:010.

(2) "Grouse Zone" means the area consisting of Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(3) "Modern gun deer season" means the season as established in[~~by~~] 301 KAR 2:172.

(4) "Rabbit" means an eastern cottontail rabbit, swamp rabbit, or Appalachian cottontail rabbit.

(5) "Small game" means squirrels, rabbits, northern bobwhite or ruffed grouse.

(6) "Squirrel" means a gray squirrel or fox squirrel.

(7) "Western Zone" means the first and second wildlife districts as established in 301 KAR 4:010.

Section 2. Methods of Harvest for Small Game. (1) A person shall use any of the following to take small game:

(a) Rimfire gun or rimfire handgun;

(b) Shotguns no larger than 10-gauge;

(c) Muzzle-loading gun;

(d) .410-gauge[~~.22 caliber~~] handgun;

(e) Bow and arrow;

(f) Crossbow;

(g) The following caliber air-guns with pellets:

1. .177;

2. .20;

3. .22; or

4. .25;

(h) Dogs;

(i) Falconry, pursuant to 301 KAR 2:195; or

(j) Trapping, pursuant to Section 5 of this administrative regulation, for:

1. Rabbits; or

2. Squirrel.

(2) A person shall not use the following to take small game:

(a) A shotgun shell containing a shot size larger than number two (2); or

(b) Single projectile shotgun ammunition.

Section 3. Small Game Hunting Seasons. (1) Except as established[~~specified~~] in 301 KAR 2:049[~~or 2:125~~], a person shall not take small game except during the dates specified in this section.

(2) Small game taken by falconry: September 1 through March 30.

(3) Squirrel:

(a) The third Saturday in May through the third Friday in June; and

(b) The third Saturday in August through the last day of February, except the season shall be closed during the first two (2) days of modern gun deer season.

(4) Rabbit and northern bobwhite:

(a) Western Zone: the third day of modern gun deer season through February 10.

(b) Eastern Zone: November 1 until January 31, except the season shall be closed during the first two (2) days of modern gun deer season.

(5) Ruffed Grouse: November 1 through the last day of February in the Grouse Zone, except the season shall be closed during the first two (2) days of modern gun deer season.

(6) There shall not be a closed season for chasing rabbits during daylight hours for sport and not to kill.

(7) Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting or trapping license, but shall be in compliance with all other statewide requirements.

Section 4. Limits and Other Requirements. (1) The small game possession limits shall be twice the daily bag limits.

(2) Daily bag limits:

(a) Squirrel: six (6);

(b) Rabbit: four (4);

(c) Northern bobwhite: eight (8); and

(d) Ruffed grouse: four (4).

(3) A falconer hunting outside any of the dates specified in Section 3(2) through (4) of this administrative regulation shall not take more than two (2) small game animals per day.

(4) A person shall hunt small game during daylight hours only.

Section 5. Trapping for Squirrel and Rabbit. A person trapping for squirrel or rabbit shall:

(1) Comply with the requirements established in[~~of~~] 301 KAR 2:251;[~~.~~]

(2) Only trap when the small game hunting season and trapping season overlap;

(3) Possess a trapping license;

(4) Comply with daily bag and possession limits pursuant to Section 4 of this administrative regulation; and

(5) Harvest squirrel and rabbits upon capture, except for a person possessing a valid captive wildlife permit, pursuant to 301 KAR 2:081[~~and 3:022~~].

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: November 9, 2015

FILED WITH LRC: November 12, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held December 21, 2015, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business January 4, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes statewide seasons, bag limits, and methods of take for small game.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly conserve and manage small game species in Kentucky and provide ample recreational hunting opportunity to small game hunters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the administration of the statute by establishing small game hunting seasons, limiting take and possession of small game, and restricting the methods of take in order to conserve small game species, while providing reasonable hunting opportunity.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands the methods of take for small game by authorizing the use of handguns.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to authorize the use of rimfire and .410-guage handguns.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those people wishing to use handguns to hunt small game species in the Commonwealth may be affected. There are approximately 200,000 small game hunters 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: Small game hunters will be authorized to use rimfire and .410-guage handguns to harvest small game.

(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 associated with the implementation of this amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Small game hunters who wish to use handguns will benefit.

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

(a) Initially: There will be no cost for the Kentucky Department of Fish and Wildlife Resources to administer initially.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees were established, and no fees were increased.

(9) TIERING: Is tiering applied? Tiering was not used because all hunters in Kentucky will need to comply equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate future revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be additional costs to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be not be additional costs to implement this administrative regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

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

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

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60

(4) "Waterfowl" is defined by KRS 150.010(40).

Section 2. (1) Except as established in 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser. The season shall:

(a) Begin on Thanksgiving Day for four (4) consecutive days; and

(b) Be for fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) Canada goose.

(a) In the Eastern, Pennyrile, and Western Goose Zones, the season shall begin on Thanksgiving Day and continue until January 31.

(b) In the Northeast Goose Zone, the season shall begin on the third Saturday in December and continue until January 31.

(3) White-fronted goose and brant[~~geese~~]. The season shall begin on Thanksgiving Day and continue until January 31.

(4) Light goose. The season shall begin on Thanksgiving Day and continue until January 31.

(5) Light Goose Conservation Order.

(a) In the Western Duck Zone, the season shall be from February 1 through March 31, except:

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

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

(b) In the Eastern Duck Zone, the season shall be from February 1 through March 31.

(6) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Zone that is established in 301 KAR 2:224:

(1) A person hunting waterfowl shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks. The daily limit shall be six (6), which shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) One (1) black duck;

(e) Two (2) redheads;

(f) Two (2) pintails;

(g) Three (3) scaup;

(h) One (1) mottled duck; or

(i) Two (2)[~~One (1)~~] canvasback.

(2) Coot. The daily limit shall be fifteen (15).

(3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose. The daily limit shall be five (5), which shall not include more than:

(a) Three (3) Canada goose[~~geese~~];

(b) Two (2) white-fronted goose[~~geese~~]; or

(c) One (1) brant.

(5) Light goose. The daily limit shall be twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be triple the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1)[~~2 p.m. if hunting geese in the Northeast Goose Zone during a Canada goose season;~~

~~(2)~~] Sunset[~~in the remainder of the state~~]**,** except as established in 301 KAR 2:222; or

(2)[~~(3)~~] One-half (1/2) hour after sunset if hunting light goose[~~geese~~] during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) The Light goose season shall be November 5 through January 31.

(2) Light Goose Conservation Order season.

(a) In the Western Duck Zone, the season shall be from February 1 through March 31, except:

1. The falconry season shall be closed during the first full weekend in February; and

2. Youth waterfowl hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.

(b) In the remainder of the state, the season shall be from February 1 through March 31.

(3) The season for all other waterfowl shall be from November 5 through January 31.

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

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

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

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

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

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

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

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

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 23, 2015

FILED WITH LRC: November 3, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2015, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business January 4, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

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

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2015-2016 waterfowl hunting seasons in accordance with the USFWS.

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

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

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

(a) How the amendment will change the existing administrative regulation: This amendment will allow the Northeast Goose Zone to hunt until sunset bringing it in line with all other goose hunting zones. In addition, the amendment will adjust waterfowl daily bag and possession limits to reflect that allowed by federal waterfowl season frameworks under the current season structure.

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

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting season and bag limits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

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

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

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

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

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

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

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

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

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

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

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

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

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

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

(5) "Party" means:

(a) A person hunting alone; or

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

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

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

(8) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind;

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or

c. An area closed to waterfowl hunting;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

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

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

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be the second[~~first~~] Wednesday in December through the last Sunday in January;

(b) Youth waterfowl season shall be the first full weekend in February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

3. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from the second[~~first~~] Wednesday in December through the last Sunday in January; and

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting;

(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January;

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat; and

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site in December and January during the regular waterfowl season.

(7) On the Peal unit of Boatwright WMA:

(a) More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

(b) More than four (4) parties shall not hunt at the same time on Fish Lake;

(c) More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and

(d) A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during December and January.

(8) On the Swan Lake Unit of Boatwright WMA:

(a) A person shall not hunt waterfowl from Thanksgiving Day through the second[~~first~~] Tuesday in December;

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

(c) Blind restrictions shall not apply to the Light Goose Conservation Order season.

(9) Lake Barkley WMA.

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

(b) Waterfowl refuge areas shall be:

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

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

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

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10) Barren River Lake WMA. A person hunting waterfowl:

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

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

(11) Big Rivers WMA.

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

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

(12) Cedar Creek WMA.

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

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

(13) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

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

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

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

(15) Dix River WMA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

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

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

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

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

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

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

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

(20)[~~(18)~~] Kentucky River WMA.

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

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

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

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

1. Long Creek Pond;

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

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

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

1. The Environmental Education Center; and

2. Energy Lake.

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

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

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

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

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

1. On an inland area; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(25) Pioneer Weapons WMA. A person hunting waterfowl:

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

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

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

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

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

until 2 p.m.

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

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

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

1. Hunt:

a. From a department blind;

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

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

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

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

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

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

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

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

2. A person may occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;

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

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

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

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

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

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

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

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

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

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

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

(b) A hunter shall use a department blind.

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

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

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

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

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

(a) The Greenbrier Creek embayment; and

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

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

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

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

(32)[~~(29) Cedar Creek WMA.~~

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

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

~~(30) Dix River WMA.~~

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

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

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

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

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

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

(a) Apply by:

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

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

(b) Apply from September 1 through September 30;

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

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

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

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

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

(a) Barren River;

(b) Grayson Lake;

(c) Greenbo Lake;

(d) Lake Barkley;

(e) Lincoln Homestead;

(f) Nolin Lake;

(g) Paintsville Lake;

(h) Pennyrile Lake;

(i) Rough River Lake; and

(j) Yatesville Lake.

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

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

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

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

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

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

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

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

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

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

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

(9) A person shall:

(a) Hunt from an established blind; and

(b) Not change blinds.

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

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

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

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

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

(15) A hunter shall:

(a) Cease hunting by noon; and

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

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

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

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

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

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

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

the Fish and Wildlife Commission

GREGORY K. JOHNSON, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: October 23, 2015

FILED WITH LRC: November 3, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2015, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business January 4, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

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

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2015-2016 waterfowl hunting requirements on public lands in accordance with the USFWS and Department management objectives.

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

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists the above statutes by managing waterfowl populations and hunting opportunity consistent with state and national management requirements and strategies.

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

(a) How the amendment will change the existing administrative regulation: This amendment sets a daily stop times for waterfowl hunting on Big Rivers WMA and allows for the creation of seasonally drawn blinds at Doug Travis WMA Town Creek Moist Soil Unit.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide quality public hunting opportunity with minimal area use conflict that is consistent with meeting state and federal waterfowl management objectives.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting seasons.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional or amended costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity for quality waterfowl hunting on public areas.

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

(a) Initially: This administrative regulation change will not result in any additional cost for the Department to administer initially.

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation amendment for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation amendment in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 2:020. Definitions for 501 KAR Chapter 2.

RELATES TO: KRS 532.060, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(4) requires the Department of Corrections to house qualifying Class D and Class C felons in county jails and promulgate administrative regulations establishing required programs for the jails where they are housed. This administrative regulation establishes the definitions used in 501 KAR Chapter 2, which implements the required housing program.

Section 1. Definitions. (1) "Assessment and Classification Center" or "AC Center" means the units at Roederer Correctional Complex and Kentucky Correctional Institution for Women that initially receive all convicted felons, except for those sentenced to the death penalty, who are committed to the Kentucky Department of Corrections.

(2) "Class C felon" means an inmate convicted of a Class C felony that meets the requirements established in KRS 532.100(4)(c)1.

(3) "Class D felon" means an inmate convicted of a Class D felony that meets the requirements established in KRS 532.100(4)(a), (b), or (c).

(4) "Classification branch manager" means the Department of Corrections employee who approves inmates for placement in jails and in halfway house facilities throughout the state and oversees the prerelease programs.

(5) "Close custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(6) "Community custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(7) "Controlled intake inmate" means a convicted felon who is entering into the Kentucky Adult Correctional System.

(8) "Department" is defined in KRS 441.005(5).

(9) "Educational good time" means a credit on an inmate's sentence for an educational accomplishment pursuant to KRS 197.045(1)(a)2.

(10) "Escape" is defined in KRS 520.010(5).

(11) "Jail" is defined in KRS 441.005(1).

(12) "Jail administrator" means the official appointed by a regional jail authority and charged with the responsibility of administering the regional jail.

(13) "Jail personnel" is defined in KRS 441.005(6).

(14) "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail;

(b) A department as defined in KRS 67B.020(1); or

(c) A correctional services division as described in KRS 67A.028.

(15)[~~(13)~~] "KOMS" means Kentucky Offender Management System.

(16)[~~(14)~~] "Maximum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(17)[~~(15)~~] "Medium custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(18)[~~(16)~~] "Meritorious good time" means a credit on an inmate's sentence pursuant to KRS 197.045(1)(b)2.

(19)[~~(17)~~] "Minimum custody" means that the inmate meets the requirements for that classification level established in the

Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(20) "Qualified inmate" means an inmate which may be housed in county jails electing to house state inmates as described in KRS 532.100(4).

(21)[~~(18)~~] "Restricted custody" means that the inmate meets the requirements for that subcategory of the minimum custody classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(22)[~~(19)~~] "Statutory good time" means a credit on an inmate's sentence pursuant to KRS 197.045(1)(b)1.

(23)[~~(20)~~] "Waiver" means that the department has granted the county an exemption from housing any Class D or Class C felons in its county jail pursuant to KRS 532.100.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: October 23, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes definitions for 501 KAR Chapter 2, governing the housing of Class C and D felons in county jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 532.100.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes definitions for the operation of the Class C and D felon program required by KRS 532.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes definitions for the operation of the Class C and D felon program.

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

(a) How the amendment will change this existing administrative regulation: It adds definitions for "Jail administrator" and "Jailer", and renumbers.

(b) The necessity of the amendment to this administrative regulation: To standardize words used for the Class C and D program in local jails.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Review Advisory Commission's recommendations and revises definitions for the housing of Class C and D inmates in jails.

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear definitions for the administration of the Class C and D program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 78 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 14 Local Facilities staff, and approximately 6,467 Class C and D felons in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will all receive better understanding of the program and its requirements by having updated and clarified definitions.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

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

(9) TIERING: Is tiering applied? No. The regulation applies equally to all involved in the housing program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 the Department of Corrections and jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.100(1), 441.055, 532.100

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation does not create any additional revenue for the Kentucky Department of Corrections, the counties, or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this regulation does not create any additional revenue for the Kentucky Department of Corrections, the counties, or other government entity.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the Kentucky Department of Corrections and the jails operate. The amendment is not expected to increase cost for the Kentucky Department of Corrections, the counties, or other government entity.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impact how the Kentucky Department of Corrections and the jails operate. The amendment is not expected to increase cost for the Kentucky Department of Corrections, the counties, or other government entity.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 2:060. Procedures for housing of Class D and Class C felons.

RELATES TO: KRS 196.035, 197.020, 197.045, 431.215, 441.045, 441.075, 441.510, 532.100

STATUTORY AUTHORITY: KRS 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(4) requires the Department of Corrections to house qualifying Class D and Class C felons in county jails. This administrative regulation establishes the procedures to implement the required housing program.

Section 1. Eligibility. Any county housing qualified inmates[~~Class D and Class C felons~~] pursuant to KRS 532.100(4) shall be eligible to continue to do so unless the department, through its minimum jail standards enforcement procedures established by KRS 441.075, orders a county jail to cease housing Class D and Class C felons.

Section 2. Submission of Documents for Class D Felons. In any county jail housing Class D felons, the jailer shall forward to the assessment and classification center the following documents, within ten (10) working days of receipt of the judgment, for each Class D felon for whom a transfer has not been requested:

(1) Picture which shall be updated annually;

(2) Any detainers;

(3) Any incident or disciplinary reports; and

(4) Body identification sheet.

Section 3. Custody Assignment for Class D Felons. (1) The assessment and classification center staff shall, within ten (10) working days of receipt of the presentence investigation and the judgment documents, review the inmate file and assign a custody classification level to the Class D felon.

(2) The AC Center staff shall notify the jailer of the custody classification level assignment.[~~forward the inmate file to~~] Offender Information Branch, Central Office,[~~which~~] shall audit the file within five (5) working days of receipt.

(3)[~~Central Office Offender Information shall notify the jailer of the custody classification level assignment.~~

~~(4)~~] If the custody level assigned is minimum or community, the Class D felon may participate in community service work or any program offered inside and outside the secure perimeter of the jail.

(a) If the custody level assigned is minimum or community, the Class D felon may be housed inside the secure perimeter of the jail, in the restricted custody area of the jail, or in a restricted custody center.

(4)[~~(5)~~] If the custody level assigned is restricted, the Class D felon:

(a) May only participate in community service work under direct supervision of jail personnel;[~~and~~]

(b) Shall not participate in any outside program; and

(c) Shall be housed:

1. Inside the secure perimeter of the jail;

2. In a restricted custody area with a barrier fence; or

3. In a restricted custody center with a barrier fence.

(5)[~~(6)~~] If the custody level assigned is medium, close, or maximum, the Class D felon:

(a) Shall not be eligible to participate in any program or work outside the secure perimeter of the jail; and

(b) Shall be housed in the secure perimeter of the jail.

(6)[~~(7)~~] The jailer may request the department to review the assignment ninety (90) days from the date of the last assignment. Any additional custody review may be completed as deemed necessary by the Classification Branch Manager.

Section 4. Assignment of Class C Felons. (1) The assessment and classification center shall identify and inform the jailer of a Class C felon who qualifies under KRS 532.100(4)(c)1. to be housed in a county jail.

(2)[~~The jailer shall forward, within ten (10) working days of receiving the notice, the felon's fingerprints and photographs to the assessment and classification center, in order that the Class C felon may be processed into the program. The photograph shall be updated annually.~~

~~(3)~~] The AC center shall notify the jailer when an inmate has been assigned as a Class C felon.

[~~(4) Class C felons, as inmates with a community custody level as required by KRS 532.100, may perform community service work.~~]

Section 5. Assessment Summary Reports. Prior to the meeting of the Parole Board, jail personnel shall prepare and submit an assessment summary report on each qualified inmate[~~Class D and Class C felon~~] to the Offender Information Branch via KOMS or electronically, as requested by the Parole Board.

Section 6. Transportation. Jail personnel shall be responsible for the transportation of a qualified inmate[~~Class D or Class C felon~~] except as specified in KRS 431.215(1) and 441.510.

Section 7. Release Procedures. (1) The release of a qualified inmate[~~Class D or Class C felon~~] shall follow the procedure established by CPP 25.6, incorporated by reference in 501 KAR 6:020.

(2)(a) Jail personnel shall not release a qualified inmate[~~Class D or Class C felon~~] to any other county jail or agency without submission of external movement information to the Director of Local Facilities or designee. The information shall include:

1. Name;

2. Inmate number;

3. Facility transferring felon;

4. Facility receiving felon; and

5. Date transferred and received.

(b) Any jail that is under order of the department relating to restrictions on state inmates shall receive prior authorization from the Director of Local Facilities before requesting state inmates from the Department or any other county jail.

(c) A qualified inmate[~~Class D or Class C felon~~] shall not be released to another state or to federal authorities without advance notice and approval of the Director of Local Facilities or designee.

(3) Jail personnel shall notify the Director of Local Facilities or the Offender Information Branch of any detainer or holder lodged against the qualified inmate[~~Class D or Class C felon~~] by another jurisdiction.

Section 8. Furlough Program. (1) The Classification Branch Manager shall have the authority and responsibility to grant and monitor any furloughs of a qualified inmate[~~Class D or Class C Felon~~].

(2) Eligibility for a furlough shall be determined as follows:

(a) The furlough of a qualified inmate[~~Class D or Class C felon~~] shall be a privilege, not a right.

(b) To be considered for a furlough, a community or minimum custody qualified inmate[~~Class D felon or a Class C felon~~] shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.

(c) A Class D felon who is community custody or minimum custody or a Class C felon, who meets the requirement established in paragraph (b) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his final sentencing date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.

(d) To be considered for a furlough, a probation or parole violator who is a community or minimum custody qualified inmate[~~Class D or a Class C felon~~] shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.

(e) A probation or parole violator who is a community or minimum custody qualified inmate[~~Class D or a Class C felon~~], who meets the requirement established in paragraph (d) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his commitment date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.

(f) To be considered for a furlough, a qualified inmate[~~Class D or Class C felon~~] shall meet the furlough criteria established in CPP 25.4, incorporated by reference in 501 KAR 6:020, with the exception of the six (6) continuous months of minimum or community custody requirement.

Section 9. Escape. If a qualified inmate[~~Class D or Class C felon~~] escapes, the jailer, jail administrator, or jail personnel shall immediately:

(1) Notify the Division of Local Facilities jail inspector;

(2) Notify Kentucky State Police (KSP) or local law enforcement;

(3) Activate VINE through use of the Emergency Override Line (EOL); and

(4) Enter the prisoner's escape status into the jail management system[~~procedures established in CPP 25.6, incorporated by reference in 501 KAR 6:020, shall be followed~~].

Section 10. Medical Needs. The department shall pay each jail a per diem for state prisoners as established by KRS 532.100(6). The jail shall pay for routine medical and medication expenses. If the inmate requires an admission to a hospital with at least one (1) night stay or outpatient surgery in which a general anesthesia is used, the cost shall be paid by the department. The jailer, jail administrator, or jail personnel shall notify the Department of Corrections Medical Division designee if any qualified inmate is admitted to the hospital for twenty-four (24) hours or longer.

Section 11. Inmate Pay. A qualified inmate[~~Class D or Class C felon~~] on a work assignment shall be paid in accordance with Local Facilities guidelines[~~1.3~~].

Section 12. Good Time. For a qualified inmate[~~Class D or Class C felon~~] housed in a county jail, the awarding of good time or sentence credit shall be as follows:

(1) Statutory good time shall follow the procedures established in KRS 197.045(1)(b)1.;

(2) Meritorious good time shall follow procedures established in KRS 197.045(1)(b)2. and CPP 15.3, incorporated by reference in 501 KAR 6:020;

(3) Educational good time shall follow procedures established in KRS 197.045(1)(a)2. and CPP 20.1, incorporated by reference in 501 KAR 6:020; and

(4) If the jail has a substance abuse program approved by the department, then the felon shall receive credit to his sentence allowed by KRS 197.045(1)(a)3.

Section 13. Annual Photograph. The jailer, jail administrator, or jail personnel shall take a photograph each year of each qualified [~~Class D and Class C~~] inmate and immediately send it by United States mail or electronically[~~email~~] or via KOMS to Offender Information Services, Central Office, P.O. Box 2400, Frankfort, Kentucky 40602.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: October 23, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes the procedures for housing Class C and D felons in county jails.

(b) The necessity of this administrative regulation: To provide procedures for jails housing qualified inmates management and accurate information concerning state inmates and to conform to the requirements of 532.100(4).

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes the procedures for the operation of the Class C and D felon program authorized by KRS 196.035 and as required by KRS 532.100(4).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the procedures for housing Class C and D felons in county jails.

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

(a) How the amendment will change this existing administrative regulation: It clarifies language in the regulation and revises the classification, transfer and escape processes for Class C and D inmates in jails.

(b) The necessity of the amendment to this administrative regulation: To update processes included in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jail Standard Review Advisory Commission's recommendations for programs involving Class C and D inmates in jails and the procedures are authorized by KRS 196.035.

(d) How the amendment will assist in the effective administration of the statutes: It details the process requirements.

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

administrative regulation: This affects approximately 78 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 14 Local Facilities staff, and approximately 6,467 Class C and D felons in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jails will need to follow the revised process in order to appropriately classify, transfer and report escapes of Class C and D felons.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Corrections will have information about jail inmate classification, transfers and escapes more quickly.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

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

(9) TIERING: Is tiering applied? No. The procedures apply equally to all involved in the housing program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 the Department of Corrections and jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.100(1), 441.055, 532.100

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation does not create any additional revenue for the Kentucky Department of Corrections, the counties, or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this regulation does not create any additional revenue for the Kentucky Department of Corrections, the counties, or other government entity.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the Kentucky Department of Corrections and county jails operate. The amendment is not expected to increase cost for the Kentucky Department of Corrections, the counties, or other government entity.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impact how the Kentucky Department of Corrections and the jails operate. The amendment is not expected to increase cost for the Kentucky Department of Corrections, the counties, or other government entity.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

RELATES TO: KRS 67A.028, 67B.020(1), 441.005, 441.045, 441.055, Ky. Const. Sec. 99, 152, 42 U.S.C. 15601-15609

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 3, regulating full-service jail facilities.

Section 1. Definitions. (1) "Automatic fire extinguishing system" means an approved system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire.

(2) "Ceiling" means the overhead area in any area of the jail which is below the secure deck.

(3) "Cell" means an area for housing no more than two (2) prisoners.

(4)[~~(2)~~] "Commissioner" is defined in KRS 196.010(2).

(5)[~~(3)~~] "Dayroom" means a secure area with controlled access from the prisoner living area, to which prisoners may be admitted for daytime activities including dining, bathing, and selected recreation or exercise.

(6)[~~(4)~~] "Deck" means the secure overhead area of the jail, which is part of the security perimeter.

(7)[~~(5)~~] "Department" is defined in KRS 441.005(5).

(8)[~~(6)~~] "Detoxification area" means an area used to hold one (1) or more chemically impaired persons temporarily during the detoxification process until they can care for themselves.

(9)[~~(7)~~] "Direct supervision area" means an area used to house seventy (70) or fewer prisoners in which jail personnel is always present and directly supervising the prisoners.

(10)[~~(8)~~] "Dormitory" means:

(a) An area equipped for housing not less than three (3) nor more than thirty-six (36) persons; or

(b) If in a direct supervision area, an area equipped for housing not more than seventy (70) persons.

(11)[~~(9)~~] "Full-service jails" means jails that may house state prisoners pursuant to KRS 441.055 and that meet the standards established by 501 KAR Chapter 3.

(12)[~~(10)~~] "Governing authority" means a county fiscal court, urban-county government, charter county government, consolidated local government, unified local government, or regional jail authority.

(13) "Jail" is defined in KRS 441.005(1).

(14)[~~(12)~~] "Jail administrator" means the official appointed by a regional jail authority and charged with the responsibility of administering the regional jail.

(15)[~~(13)~~] "Jail personnel" is defined in KRS 441.005(6).

(16)[~~(14)~~] "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail;

(b) A department as defined in KRS 67B.020(1); or

(c) A correctional services division as created by KRS

67A.028.

(17)[~~(15)~~] "Medical authority" means the person or persons licensed to provide medical care to prisoners in the jail's custody.

(18)[~~(16)~~] "Passive Holding Area", "Diversion Holding Area", or "Temporary Holding Area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, or discharge, or until they can be moved to a general housing area.

(19)[~~(17)~~] "Pat or frisk" means a manual search of a clothed person and includes a visual inspection of the open mouth.

(20)[~~(18)~~] "Penal type" means furnishings, fixtures, and equipment approved by the department.

(21)[~~(19)~~] "Prisoner" is defined in KRS 441.005(3).

(22)[~~(20)~~] "Prisoner living area" means a group of rooms or cells that provide housing for the prisoner population.

(23)[~~(21)~~] "PREA" means the Prison Rape Elimination Act, 42 U.S.C. 15601-15609.

(24)[~~(22)~~]"Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.

(25)[~~(23)~~] "Religion Reference Manual" means the Kentucky Department of Corrections Religion Reference Manual incorporated by reference in 501 KAR 6:080.

(26)[~~(24)~~] "Sally port" means a covered vehicular drive-through, located adjacent to the jail intake area.

(27)[~~(25)~~] "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(28)[~~(26)~~] "Security vestibule" means a defined space that promotes security by the use of two (2) or more doors used to contain and observe those who pass.

(29)[~~(27)~~] "Sexually abusive conduct" means:

(a) Sexual contact, sexual intercourse, and deviate sexual intercourse, as defined by KRS 510.010;

(b) Sexual abuse as defined by 28 C.F.R. 115.6; and

(c) Other types of similar sexually based conduct.

(30)[~~(28)~~] "Sick call" means the evaluation and treatment of an ambulatory patient in a clinical setting, either on or off site of the jail, by the medical authority.

(31)[~~(29)~~]"Special Needs Area" means an area used to hold one (1) prisoner for observation when displaying violent, erratic, or suicidal behavior or expressing suicidal ideations.

(32)[~~(30)~~] "Strip search" means a body search during which a person is required to open or remove clothing, during which a person is subject to visual inspection of the torso, female breast, genital area, anal area, and other body cavities.

(33)[~~(31)~~] "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, transfer of health or medical data, and continuing education.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes definitions for 501 KAR Chapter 3 concerning full-service jails that house state prisoners.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It provides definitions for 501 KAR Chapter 3, which establishes minimum standards for full-service jails that house state prisoners as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes definitions for the regulations concerning full-service jails.

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

(a) How the amendment will change this existing administrative regulation: It adds definitions for "automatic fire extinguishing system" and "cell" and renumbers.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process required in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear definitions for the full-service jail regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state prisoners and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to apply the new definitions in their operations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better understanding of the program and its requirements by having updated and clarified definitions.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The definitions apply equally to all involved in full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department will have approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:020. Administration; management.

RELATES TO: KRS 69.210, 202A.091, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation sets forth procedures for the administration and management of those jails.

Section 1. Policy and Procedure-Organization. (1) The jailer or jail administrator for a jail that houses state prisoners shall develop and maintain an organizational chart and a policy and procedures manual that has been adopted by the governing authority and filed with the department.

(2) The written policy and procedures manual shall be made available to employees. Employees shall sign documentation attesting they have read and will comply with the jail's policy and procedure manual <u>within thirty (30) days of employment</u>.

(3) The policy and procedures manual shall include, at a minimum, the following aspects of the jail's operation:

(a) Administration;

(b) Fiscal management;(c) Personnel;

(d) Security and control;

(e) Sanitation and management;

(f) Medical services;

(g) Food services;

(h) Emergency and safety procedures;

(i) Classification;

(j) Prisoner programs;

(k) Prisoner services;

(l) Admission and release; and

(m) Training.

(4) The policy and procedures manual shall be reviewed, updated, and any changes approved by the governing authority at least annually. All revisions shall be marked with the effective date and filed with the department.

Section 2. Legal Assistance. (1) The jailer for a jail that houses state prisoners shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the governing authority in writing if legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The governing authority shall provide funds for adequate legal representation for the jailer if the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The governing authority shall be encouraged to carry liability insurance for the jail employees and other county officials.

Section 3. Legal Assistance for Regional Jails. The jail administrator for a regional jail that houses state prisoners shall be represented and advised by the county attorney in the county in which the regional jail is located.

Section 4. Public Information. (1) The jailer <u>or jail administrator</u> for a jail that houses state prisoners shall develop and implement a procedure for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and prisoners shall have access to the procedures.

(2) With the prisoner's written consent on a form authorizing release of information, news media shall be permitted to interview a prisoner as set forth in the jail's policy and procedures manual except if the safety and security of the jail is affected.

Section 5. Information Systems. The jailer <u>or jail administrator</u> for a jail that houses state prisoners shall establish and maintain an information system that shall comply with the requirements of this section. (1) Jail information and prisoner records shall be retained in written form or within computer records.

(2) Jail information and prisoner records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Prisoner records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1.

(3) A telephonic report to the department shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence, and a final written report shall be made within forty-eight (48) hours. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include, but shall not be limited to:

(a) Death of a prisoner;

(b) Suicide or attempted suicide that constitutes a serious health situation;

(c) Serious injury, whether accidental or self-inflicted;

(d) Escape or attempted escape from confinement;

(e) Fire;

(f) Riot;

(g) <u>Assault</u>[~~Battery~~], whether by jail personnel or prisoner;

(h) Sexually abusive conduct;

(i) Occurrence of contagious or infectious disease, or illness within the facility;

(j)[~~Violent acts or behavior by either mental inquest detainees held under KRS Chapter 202A or prisoners known to be or suspected to be mentally ill or mentally retarded; and~~

~~(k)~~] Any serious event that threatens the safety or security of the facility or jail personnel.

(4) Each jail that houses state prisoners shall keep a log of daily activity within the jail.

(5) Each jail that houses state prisoners shall be required to provide the department with a weekly population update that shall include the number of state prisoners, federal prisoners, and county prisoners.

(6) Each jail that houses state prisoners shall provide the Department with all external movements of state prisoners via KOMS or electronically and on a daily basis. This information shall be sent to the Division of Local Facilities.

(7) Each jail that houses state prisoners shall, in the event of an escape, immediately:

(a) Notify the Division of Local Facilities jail inspector;

(b) Notify the Kentucky State Police or local law enforcement;

(c) Activate VINE through use of the Emergency Override Line (EOL); and

(d) Enter the prisoner's escape status into the jail management system.

Section 6. Prisoner Records. (1) The information required by 501 KAR 3:120 and 3:130 for admission and release shall be retained for each prisoner. Other information retained in each prisoner's jail record shall include but not be limited to:

(a) Court orders;

(b) Personal property receipts;

(c) Infraction reports;

(d) Reports of disciplinary actions;

(e) Work record and program involvement; and

(f) Unusual occurrences and in the event of the death of a prisoner, disposition of the prisoner's property and remains.

(2) Medical records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1.

(3) The jailer or jail administrator for a jail that houses state prisoners shall ensure that prisoner records are safeguarded.

(4) The jailer or jail administrator shall not release information, other than public information, to individuals other than law enforcement or court officials unless the prisoner has signed a form authorizing release of information. A copy of the signed form shall be maintained in the prisoner's record. The form shall include:

(a) Name of person, agency, or organization requesting information;

(b) Name of facility releasing information;

(c) Information to be disclosed;

(d) Date consent form is signed; and

(e) Signature of prisoner.

(5) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer for a jail that houses state prisoners shall seal the records and the mental inquest detainee's stay at the jail shall be deemed never to have occurred.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes procedures for the administration and management of full-service jails that house state prisoners.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum administrative and management standards for full-service jails, as required by KRS 441.055(1)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum administrative and management standards for full-service jails.

(2) If 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 revisions standardize terms used within the Chapter and establish a time frame for employees to document understanding of the jail's policy and procedures manual. Escape procedures are added.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear administrative and management standards for full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state prisoners and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The jails will have to comply with the updated documentation requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The jails will have more effective policies and procedures.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department had approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:030. Fiscal management.

RELATES TO: KRS 43.070, 68.020, 441.055, 441.135, 441.215, 441.235

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes fiscal management procedures to be followed in full-service jails.

Section 1. Budgeting. The jailer or jail administrator, county judge/executive and treasurer shall prepare and present a line item budget request to the governing authority in accordance with KRS 441.215.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the jail in accordance with KRS 68.020 and 441.235.

(2) Fiscal records shall have an itemized breakdown of the total operating expenses including[~~but not limited to~~] wages, salaries, food and operating supplies.

Section 3. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide prisoners with approved items.

Section 4. Audits. (1) The county jail budget shall be audited in accordance with KRS 43.070.(2) The records of income, expense, and disbursements of the jail canteen fund shall be examined annually by the Auditor of Public Accounts concurrently with the annual audit of the county conducted in accordance with KRS 43.070(1)(a), unless the Auditor of Public Accounts declines to perform the examination of the canteen fund or has failed to respond to written notice of intent to employ a certified public accountant within thirty (30) days of receipt of the notice.

(a) If the county judge/executive notifies the Auditor of Public Accounts with specific or known jail canteen fund concerns or irregularities, the auditor shall thoroughly investigate the noted concerns or irregularities in the examination if, in the auditor's judgment, the investigation is warranted.

(b)[~~The jailer shall forward a copy of the report of any jail canteen audit to the department.~~

~~(c)~~] The cost of the canteen fund audit shall be paid from the canteen fund as an allowable expense. If the jail's canteen fund is insufficient to cover the expense of the examination, the expense shall be borne by the county jail fund.

Section 5. Payroll. Jail employees shall be paid on the same dates as county employees.

Section 6. Inventory. Each jailer or jail administrator shall implement and utilize the established inventory procedure of the county.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes procedures for the fiscal management of full-service jails that house state prisoners.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum fiscal management standards for full-service jails, as required by KRS 441.055(1)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum fiscal management standards for full-service jails.

(2) If 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 revisions standardize terms used within the chapter and remove the requirement of forwarding jail canteen audit reports to the department.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear fiscal management standards for full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The jails will no longer have to provide jail canteen audit reports to the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will streamline the documentation process.

(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 funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and county full-service jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department had approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:040. Personnel.

RELATES TO: KRS 441.045, 441.055, 441.115

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes personnel procedures to be followed in full-service jails.

Section 1. Staffing. (1)[~~A category I jail with eighty (80) beds or less shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of two (2) jail personnel, excluding jail personnel designated for communication.~~

~~(2)(a) A category I jail with eighty-one (81) to 100 beds shall provide awake supervision for all prisoners by providing a minimum of three (3) jail personnel, excluding jail personnel designated for communication, between the hours of 6:00 a.m. and 10 p.m., except as provided in paragraph (c) of this subsection.~~

~~(b) The jail shall provide a minimum of two (2) jail personnel, excluding jail personnel designated for communication, for the remaining hours of the day.~~

~~(c) If the jail's night shift does not coincide with the hours of 10 p.m. to 6:00 a.m., then the jail may request in writing an exception to allow the jail to meet the minimum requirements in paragraph (a) of this subsection during a different time frame. The division may approve an exception for a different time frame to comply with paragraph (a) of this subsection.~~

~~(3)~~] A category I, II, III, IV, and V jail shall provide twenty-four

(24) hour awake supervision for all prisoners by providing a minimum of three (3) jail personnel, excluding jail personnel designated for communication.

(2)[~~(4)~~] A staffing analysis may be requested by the jailer or governing authority.

(3)[~~(5)~~] If a female prisoner is booked, detained, or otherwise lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. All persons who work inside the secure perimeter of the jail shall be at least twenty-one (21) years of age.

Section 3. Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

Section 4. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every position.

Section 5. Physical Fitness. The jailer or jail administrator shall ensure a level of physical fitness is maintained that will allow each employee to satisfactorily perform his or her duties.

Section 6. Code of Ethics. (1) The jailer or jail administrator shall make a written code of ethics available to each employee.

(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or favor with a prisoner, prisoner's family, or prisoner's friend;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;

4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;

5. Discriminate against a prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;

6. Employ corporal punishment or unnecessary physical force;

7. Subject a prisoner to physical or mental abuse;

8. Intentionally demean or humiliate a prisoner;

9. Bring a weapon or an item declared as contraband into the jail without proper authorization;

10. Engage in critical discussion of jail employees or a prisoner in the presence of another prisoner;

11. Divulge confidential information without proper authorization;

12. Withhold information which threatens the security of the jail, jail employees, visitors, or the community;

13. Through negligence or intentionally, endanger the well-being of self or another;

14. Engage in a business or profitable enterprise with a prisoner;

15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties;

16. Enter into an intimate, personal relationship with a prisoner while the prisoner is incarcerated at the same jail that the employee is employed by; or

17. Enter into an intimate, personal relationship with a former prisoner of the jail within six (6) months of that prisoner's release; and

(b) An employee shall:

1. Comply with established rules, administrative regulations, and lawful orders from a superior;

2. Treat each prisoner in a fair, impartial manner; and

3. Report a violation of the code of ethics to the jailer.

(3) A violation of the code of ethics shall be made a part of the employee's personnel file.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes personnel standards for full-service jails that house state prisoners.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum personnel standards for full-service jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum personnel standards for full-service jails.

(2) If 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 revisions standardize terms used within the Chapter and requires Category I jails to have the same staffing levels as all other categories.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It updates the minimum personnel standards as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

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

in question (3) will have to take to comply with this administrative regulation or amendment: Category I jailers would increase their minimum staff to three jail personnel at all times.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If the jail does not have three jail personnel on duty, then there would be an additional salary cost depending on whether the increase is full time or part time and the salary provided by the jail.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jailers will have a greater ability to maintain control of the jail and respond in an emergency.

(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 funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNME**NT**

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department had approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:050. Physical Plant.

RELATES TO: KRS 441.045, 441.055, 441.064, 441.075, 441.415-441.450

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes standards and procedures to be followed in the design, construction, renovation, and expansion of full-service jails.

Section 1. Definitions. (1) "Construction authority" is defined in KRS 441.415.

(2) "Division" means the Department of Corrections Division of Local Facilities.

(3) "Expansion" means a renovation which includes an increase in the number of square footage of the local correctional facility to add prisoner bed space as described in KRS 441.450(2).

(4) "Local correctional facility" is defined in KRS 441.415.

(5) "Renovation" means changes to the physical plant of or construction on an existing local correctional facility that does not:

(a) Include an increase in the number of square footage of the local correctional facility to add prisoner bed space; and

(b) Require approval of the construction authority as described in KRS 441.450(2).

Section 2. Consultation. The department may provide to a unit of local government seeking to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant may meet with the appropriate officials of that county and advise them concerning:

(1) Site selection;

(2) Probable need as it relates to capacity and types of prisoners to be housed;

(3) Sources of financing for constructing;

(4) Laws and administrative regulations relating to treatment of prisoners;

(5) Laws and administrative regulations relating to facilities for prisoners;

(6) Sources of revenue for operations of the jail;

(7) Probable cost for operation of the jail; and

(8) Potential for sharing facilities with adjoining counties.

Section 3. Application for Construction. (1) Prior to the commencement of any construction for a new local correctional facility or for the renovation or expansion of an existing local correctional facility, a unit of local government shall submit to the division:

(a) An application for approval; and

(b) If the construction is for a new facility or an expansion of an existing facility, any applications and materials submitted to the construction authority in accordance with KRS 441.430.

(2) The application required by subsection (1)(a) of this section shall:

(a) Be signed by the:

1. County judge-executive for each county involved in the proposal;

2. Highest executive of a unit of local government other than a county; or

3. Head of the Regional Jail Authority, if applicable;

(b) State in detail the need for the specific request being proposed;

(c) Identify the unit of local government submitting the request;

(d) Identify other units of local government that are partnering in the pursuit of a full service regional jail, if applicable;

(e) State the following information for the current jailer:

1. Name;

2. Address; and

3. Phone number;

(f) Identify the type of local correctional facility currently being used:

1. Full service;
2. Regional full service;
3. Life safety; or
4. None.

(g) Identify the type of local correctional facility which will exist after the proposed construction is completed:

1. Full service; or
2. Regional full service;

(h) If construction is proposed at a location other than where the current local correctional facility is located, then provide the following information for the new property:

1. Address;
2. Description of new property;
3. Explanation of ownership of new property; and
4. Estimated cost to purchase property if not owned by the unit of local government proposing construction;

(i) If the proposed construction is for a new local correctional facility, then identify the size of facility being requested using the bed capacity increments required for plans in KRS 441.420(3).

(j) If the proposed construction is for an expansion, then state the:

1. Number of proposed additional beds; and
2. Proposed additional square footage;

(k) If the proposed construction is for a renovation, then state:

1. The purpose of the renovation; and
2. The amount of any proposed additional square footage;

(l) For the current local correctional facility, state the:

1. Current capacity;
2. Average daily population (ADP) for the preceding two (2) years;
3. Total amount of remaining bond indebtedness;
4. Amount of monthly debt installment payment; and
5. Remaining number of payments on any note; and

(m) Identify the architect, consultant, or other person or entity with which the unit of local government consulted for the construction proposal.

Section 4. Documentation Required for Application. A unit of local government shall provide a copy of the following documents with any application submitted to the division:

(1) Ordinance for the unit of local government showing an affirmative vote for the proposed construction for the local correctional facility;

(2) If applicable, a resolution or other verified document showing the regional jail authority affirmative vote for the proposed construction for the local correctional facility;

(3) Deed, lease, or legal description of the new property for proposed construction;

(4) Local correctional facility budget for the preceding two (2) years;

(5) General budget for any unit of local government proposing construction;

(6) Feasibility study or other documentation provided by any architect, entity, or other person that consulted on the proposed construction; and

(7) Documentation showing that the unit of local government has sufficient bonding and revenue sources to pay the bond indebtedness, operating costs, and maintenance costs over the anticipated life of the note for the proposed construction.

Section 5. Site Selection Review. The following criteria shall be considered by the Division in its site selection review:

(1) Size;
(2) Proximity to court;
(3) Proximity to community resources;
(4) Availability of public transportation;
(5) Environmental health;
(6) Adequate parking; and
(7) Provisions for future expansion.

Section 6. Construction Documents. (1) A unit of local government shall submit plans and specifications to the Division for approval prior to the commencement of any construction for a new local correctional facility or for the renovation or expansion of an existing local correctional facility. The division may waive some of the requirements of this section on a case-by-case basis depending on the specifics proposed for the construction.

(2) If the construction is for a new facility or expansion of an existing facility, a unit of local government shall submit plans and specifications for the applications required by KRS 441.430 to the Division.

(3) Whether new construction or renovation or expansion of an existing facility, plans and specifications for a local correctional facility shall meet the following criteria and contain the following documentation:

(a) A programming phase to include:

1. Evaluation of the existing facility;
2. Population analysis as based on the NIC (National Institute of Corrections) staffing analysis, and may include, jail operations, jail programs, court location, and transportation issues;
3. Space requirements based on population analysis and standards for the facility and site outlined in this administrative regulation;
4. Staffing analysis;
5. Cost analysis to include construction and operation costs;
6. Financing alternatives, if applicable;
7. Design-construction time schedule; and
8. Summary and recommendations.

(b) A schematic phase to include:

1. A scale drawing of each floor plan with proposed rooms and areas one-eighth (1/8) inch minimum;
2. A scale drawing of the site, locating the building, parking, and other facilities with one (1) inch equaling fifty (50) feet;
3. Documentation of site as to:
a. Size;
b. Proximity to court;
c. Proximity to community resources;
d. Availability of public transportation;
e. Environmental health;
f. Adequate parking; and
g. Provisions for future expansion;
4. Sections through the proposed structure indicating deck heights of rooms, mechanical spaces, roof slopes, and other related information;
5. Scale elevation drawing of exterior walls;
6. Schematic cost estimate to include revised construction and operation costs; and
7. A revised design-construction time schedule.

(c) A design development phase containing:

1. A scale drawing on each floor plan with proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;
2. All necessary construction drawings including construction details;
3. Specifications for materials and workmanship;
4. A proposed contract with general and special conditions;
5. Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting, and plumbing; and
6. Detailed estimates of cost of land, site development, construction, financing, professional services, equipment, and furnishings.

(d) Construction document phase containing:

1. Revised design development construction drawings following review by all applicable agencies, signed by an architect registered in the Commonwealth of Kentucky, and revised if necessary to include changes required by the division; and
2. Revised design development specifications of material and workmanship following review by all applicable agencies.

(e) A contract administration phase containing:

1. Signed copies of the contracts for construction, financing, and bonding;
2. Signed copies of the construction permits; and
3. Documentation of required review by other applicable state agencies.

(4) Whether new construction or renovation or expansion of an existing facility, every change order shall be submitted to the Division jail consultant for review and approval.

Section 7. Approval of Construction Plans and Specifications. (1) Construction shall not begin until the construction plans have been approved by the division and, if required, the construction authority has approved the construction. The division shall:

(a) Review each complete application within thirty (30) days of receipt;

(b) For a renovation, issue:

1. An approval;

2. An acceptance with required changes; or

3. A rejection, with reasons stated;

(c) For an expansion or new local correctional facility, issue a recommendation to the construction authority whether to approve construction; and

(d) For an incomplete application, inform the applicant of the information or documents that need to be submitted to complete the application.

(2) A request for changes to the plans shall be submitted to the division and shall include a description of the changes requested and the reasons for the changes.

(3) A change to the approved plans shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change.

Section 8. Exemption from compliance. (1) If a jail was built before the effective date of the physical plant standards in Section 12[~~10~~] of this administrative regulation, the department shall[~~then it is~~] exempt the jail from a specific requirement if the department finds that the exemption does not significantly affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail, or[~~the standards~~] except as stated in subsection (3) of this section.

(2) If a renovation or expansion was built before the effective date of a physical plant standard in Section 12[~~10~~] of this administrative regulation, the department shall[~~then it is~~] exempt the jail from a specific requirement if the department finds that the exemption does not significantly affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail, or[~~the standard~~] except as stated in subsection (3) of this section.

(3) If a new jail, renovation, or expansion is built after the effective date of a physical plant standard in Section 12[~~10~~] of this administrative regulation, then it shall meet the standard pursuant to Section 15[~~10~~] of this administrative regulation, unless a waiver is obtained pursuant to Section 9 of this administrative regulation.

Section 9. Waiver of Compliance. (1) The department may grant a waiver of the implementation of the physical plant standards in Section 10 of this administrative regulation for an existing jail if the department determines that:

(a) Strict compliance will cause unreasonable difficulties;

(b) A waiver will not significantly[~~seriously~~] affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and

(c) Compliance may be achieved in a manner other than that specified, but in a manner that is sufficient to meet the intent of this administrative regulation.

(2) If a waiver from a standard is desired, the responsible unit of local government shall submit a written request to the department. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of the alternative proposed; and

(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, will not jeopardize the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the department, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a twelve (12) month period shall be reviewed for reapproval at the end of the period.

Section 10. Existing Local Correctional Facilities[~~Physical Plant Design Standards. New local correctional facilities shall comply with the physical plant design standards in this section~~]. All existing local correctional facilities that are in operation shall comply with the physical plant design standards in Section 12 of this administrative regulation, unless the facility is exempt from a standard pursuant to Section 8 of this administrative regulation or has obtained a waiver from the department pursuant to Section 9 of this administrative regulation for a standard in this section.

Section 11. New Local Correctional Facilities and Expansion and Renovation of Existing Local Correctional Facilities. A new local correctional facility and the expansion or renovation of an existing local correctional facility shall comply with the physical plant design standards in Section 12 of this administration regulation and additional requirements incorporated by reference in Section 15[~~12~~] of this administrative regulation unless the facility has obtained a waiver from the department pursuant to Section 9 of this administrative regulation.

Section 12. Physical Plant Design Standards. (1) Entrances. Each jail shall have three (3) separate and distinct entrances: a public entrance, a prisoner entrance, and a service entrance. The department may permit these entrances to be combined.

(a) Public entrance. The purpose of this entrance shall be to divert the general public from the security area of the jail and from contact with incoming prisoners. This area shall be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

1. Provide a clear view of this entrance from the control room by means of direct surveillance or closed circuit TV; and

2. Meet the requirements for handicapped persons.

(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It shall be located in close proximity to storage rooms and the kitchen area.

(c) Prisoner entrance. The purpose of this entrance shall be to provide secure and controlled access to the jail for prisoners. The entrance shall be serviced by a covered drive-through sally port, located adjacent to the jail intake area, and made secure by electronically or manually operated doors for entrance and exit, or a secure walk-in vestibule and shall incorporate the following design features:

1. Be located adjacent to the booking area;

2. Be monitored from the control room;

3. Be free of steps or other obstacles;

4. Be protected from inclement weather;

5. Have a security penal-type pistol locker in the sally port or vestibule; and

6. Have approved penal-type hardware and equipment.

(d) If the vestibule is used for outside entrance, at least the outer entry door shall be remotely operated.

(2) Exits. An opening in the security perimeter shall be secured with a penal device. Fire exits, if possible, shall open into controlled, secured courts or exercise areas.

(3) Administrative areas. Administrative areas shall provide space outside the secured area of the jail for the housing of administrative offices and to accommodate the public. Administrative areas shall contain the following additional areas:

(a) A waiting area which shall provide:

1. Space for the general public;

2. Protection from inclement weather; and

3. If the facility is a new jail, ADA compliant toilet facilities for both male and female persons and drinking fountains;

(b) A visiting area, public side which shall:

1. Provide for private communication with prisoners;

2. Be located in close proximity to the waiting area; and

3. Provide at least one (1) ADA compliant space;

(c) An office area which shall be of sufficient space to house the administrative function of the jail; and

(d) An entrance to the security area which shall:

1. Provide secure access to the security area;

2. Be of penal-type; and

3. Have access controlled from the security area.

(4) Security area. The area shall enclose those facilities and services required for or used by prisoners. It shall contain a booking area. The purpose shall be to provide a private and separate area, properly equipped to carry out admission and release procedures. The equipment shall be penal-type. This area shall be designed for different classes of prisoners. Design features for this area shall include:

(a) Close proximity to a secure area for storage of prisoner personal property;

(b) Close proximity to an area for photography and fingerprinting;

(c) Close proximity to an area for showering, delousing, and strip searching a prisoner and which ensures privacy for the prisoner;

(d) Close proximity to temporary holding and detoxification cells; and

(e) Located in a manner to be monitored by a control room;

(5) Detoxification area. The purpose shall be to provide an area to separate intoxicated prisoners from the general prisoner population. Design features shall include:

(a) A minimum of fifty (50) square feet per prisoner;

(b) A minimum of eight (8) feet deck height including soffits;

(c) One (1) concrete slab thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each prisoner;

(d) A penal commode, lavatory, and a flush floor drain controlled from outside the cell;

(e) A bubble-type drinking fountain;

(f) The fixtures and equipment shall be penal-type;

(g) Each surface inside the area shall be smooth, flush, and free of sharp edges and protrusions;

(h) Each horizontal surface (the bunk and the floor) shall be sloped (one-fourth (1/4) of an inch to the foot) to the floor drain;

(i) The protruding corners (except at deck) shall be covered;

(j) Deck, walls, surfaces of the wall base, and floors shall be of approved masonry, concrete, or steel construction; and

(k) Each detoxification cell shall have sufficient[~~penal-type fixtures capable of providing twenty (20) foot-candles of light with a nightlight capable of providing five (5) foot-candles of~~] light for the tasks being performed.

(6) Holding areas. The purpose of holding areas shall be for temporary detention not to exceed thirty (30)[~~eighteen (18)~~] hours in secure holding or thirty (30)[~~eighteen (18)~~] hours in diversion holding.

(a) Design features for secure holding shall include:

1. Twenty-five (25) square feet per rated capacity with a minimum size of no less than fifty (50) square feet;

2. Eight (8) feet deck height;

3. One (1) commode and lavatory for a rated capacity of ten (10) or less, two (2) commodes and lavatories for a rated capacity of eleven (11) to twenty (20), or three (3) commodes and lavatories for a rated capacity of twenty-one (21) or more;

4. Penal-type equipment;

5. One (1) penal-type lavatory and commode;

6. One (1) penal-type light fixture capable of providing sufficient light for the tasks being performed[~~twenty (20) foot-candles of light~~]; and

7. Decks, walls, surfaces of wall bases and floors that are constructed of approved masonry, concrete or steel construction.

(b) If a diversion holding area is provided, features and requirements shall include:

1. Twenty-five (25) square feet per rated capacity with a minimum size of fifty (50) square feet;

2. Total rated capacity not to exceed twenty-four (24) persons;

3. One (1) bathroom for a rated capacity of eight (8) or less; two (2) bathrooms for a rated capacity of nine (9) or more;

4. At least one (1) water fountain that is located in the area;

5. A phone system that is available for use by prisoners;

6. Fire-rated construction with penal hardware, windows, and door;

7. Fire-rated chairs and tables per rated capacity but no beds;

8. An unobstructed view into the area; and

9. Areas that allow constant in-person surveillance.

(c) Policy and procedure shall set forth criteria for placement of prisoners in the diversion holding area.

(7) Medical exam area. The purpose of this room shall be to provide a separate and secure area for medical examinations and rendering medical treatment. Design features shall include:

(a) Minimum dimensions that are no less than 100;

(b) Minimum deck height that is eight (8) feet including soffits;

(c) One (1) lavatory or counter sink;

(d) One (1) work counter;

(e) Secured lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls or a secure closet;

(f) One (1) or more medical examination tables;

(g) Electrical power outlets with at least one (1) outlet or power source connected to an emergency power source;

(h) Decks, walls, and floors constructed of approved masonry, concrete, or steel construction;

(i) A secure area for storage of medication and medical equipment if medical services are provided outside the jail; and

(j) One (1) bathroom with commercial grade fixtures.

(8) Visiting area, prisoner side. The purpose shall be to provide secure and private visitation for the prisoners. The equipment and furnishings shall be of penal-type and permanently attached. At least one (1) area shall be ADA compliant.

(9) Conference area. The purpose of this area shall be to provide space for confidential conferences between prisoners and lawyers, counselors, clergy, etc. Design features shall include:

(a) Doors, windows, and light fixtures shall be penal-type;

(b) Walls, floors, and decks shall be of approved masonry, concrete, or steel construction; and

(c) Furnishings shall be noncombustible and nontoxic as approved by the department.

(10) Multipurpose room. The purpose of this area shall be to provide space for assembly of prisoners for specific program activities.

(a) The multipurpose room shall be:

1. In jails with 100 or fewer beds, a minimum of 250 square feet;

2. In jails with 101 to 300 beds, a minimum of 500 square feet or two rooms with a minimum of 250 square feet each; and

3. In jails with 301 or more beds, a minimum of 1,000 square feet or four (4) rooms with a minimum of 250 square feet each.

(b) Design features shall include:

1. Doors, windows, and light fixtures shall be penal-type;

2. Walls, floor, and deck shall be of approved masonry, concrete, or steel construction;

3. Furnishings shall be noncombustible and nontoxic as approved by the department; and

4. Deck shall be of approved construction.

(11) Outdoor recreation. The purpose of this area shall be to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per prisoner in an area with a minimum of 385 square feet. At least part of this area shall be covered.

(12) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with the Retail Food Code, 902 KAR 45:005;

(b) Commercial-type stoves and refrigeration units;

(c) Penal-type doors and windows; and

(d) Walls, floors, and decks constructed of fire-rated masonry, concrete, or steel construction.

(13) Control room. The purpose of this area shall be to control all movement of prisoners within the jail and traffic in and out of the security area. Also, this area shall be the hub for operations within the jail. Design features shall include:

(a) Doors and windows shall be of penal-type;

(b) Walls, floors, and deck shall be approved masonry, concrete, or steel construction;

(c) Audio and video monitors shall be located in this area;

(d) Gauges, indicators, and alarms shall be located in this area;

(e) Central control panels shall be located in this area; and

(f) This area shall permit visual observation of all corridors, entrances, and exits under its supervision.

(14) If jail personnel are not within normal hearing distance of prisoners, an audio communication system shall be installed to allow jail personnel to communicate with prisoners.

(15) A panic button, jail personnel call station, or portable communication device shall be installed or available in corridors and jail personnel observation areas, which shall sound an alarm in the control center in an emergency situation.

(16) Confinement areas. The purpose of these areas shall be to provide suitable living conditions for all types of prisoners lodged in the jail.

(a) Design features for all living areas shall include:

1. Sufficient natural or artificial light for the tasks being performed[~~to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light~~];

2. Ventilation to meet air exchange as required in the Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines;

3. Temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit);

4. Approved masonry, concrete, or steel construction;

5. Penal-type furnishings and equipment that are permanently attached;

6. Floor drains that service each living area;

7. An approved securable food pass where appropriate and approved by the division jail consultants;

8. Electrical outlets that if provided, are ground-faulted or have ground-fault circuit breakers; and

9. Penal-type receptacle and switch plate covers.

(b) All cells and housing areas shall meet the following design requirements:

1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the prisoners housed in the area. Depending on the size of the jail, at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.

2. Depending on the size of the jail, at least one (1) male, one (1) female, and one (1) medical isolation cell shall be provided.

3. All cells shall open into a dayroom and a cell shall not be less than seventy (70) square feet. A cell shall not have more than two (2) penal-type bunks. If two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours, except in emergency situations.

4. If the vestibule is used at a cell area, at least the inner door shall be remotely operated.

5. Each cell shall contain:

a. A penal-type commode, lavatory, and drinking fountain, penal-type bunks secured to the floor or wall, penal-type table with two (2) seats, and penal-type storage area for personal property; and

b. A penal-type light fixture with controls inaccessible to prisoners unless it has staff override.

6. The jail shall provide living space for low security prisoners including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they shall include:

a. Forty (40) feet per prisoner;

b. One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) prisoners, but one (1) urinal may be substituted for each commode in male areas so long as the commodes shall not be reduced to less than one-half (1/2) the number required;

c. One (1) shower per twenty (20) prisoners;

d. Sufficient tables and benches to handle the number of prisoners housed in the dorm;

e. One (1) penal-type storage area for personal property per prisoner; and

f. One (1) penal-type bunk per prisoner.

7. Jails may assign conditional housing arrangements relating to overcrowding if they meet the minimum square footage allowable for the area, and have in place an objective classification system relating to the management of the inmate population.

a. The conditional housing arrangement assignment shall be limited to a maximum of seven (7) days.

b. If at any time during the seven (7) days the population drops below the maximum allowable number, the seven (7) day timeframe shall restart. The cycle of assigning conditional housing arrangements shall not exceed a continuous period of more than four (4) consecutive weeks within a sixty (60) day time period without being found in violation.

c. The requirements of subparagraph 7. of this paragraph shall apply to all secure and nonsecure areas where a maximum number of inmates have been predetermined by the jail to be in the area.

8. Each dayroom area shall contain:

a. Thirty-five (35) square feet per prisoner;

b. One (1) commode per ten (10) prisoners, but one (1) urinal may be substituted for each commode in male areas so long as the commodes shall not be reduced to less than one-half (1/2) the number required;

c. One (1) lavatory per ten (10) prisoners;

d. One (1) drinking fountain per twenty (20) prisoners;

e. One (1) shower per twenty (20) prisoners; and

f. Tables and benches sufficient to handle the rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per prisoner.

(17) Direct supervision areas. The purpose of a direct supervision area shall be to provide suitable living conditions for prisoners who are located in the jail whose behavior indicates their ability to function in a less secure setting under the direct supervision of jail personnel. Jails that elect to use the direct supervision concept shall have a sufficient number of secure cell or dormitories, as approved by the Department, in order to separate prisoners who display negative behavior in direct supervision areas. All direct supervision areas shall have a secure perimeter. Direct supervision area design features shall include:

(a) Sufficient natural or artificial light for the tasks being performed[~~to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light~~];

(b) Ventilation to meet air exchange as required in the Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines;

(c) Temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit) to eighty-five (85) degrees Fahrenheit;

(d) Approved masonry or concrete construction;

(e) Penal- or commercial-type furnishings and equipment;

(f) Electrical outlets that are ground-faulted or have ground-fault circuit breakers;

(g) Dormitories that provide not less than forty (40) square feet per person and do not exceed seventy (70) persons;

(h) One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) prisoners, but one (1) urinal may be substituted for each commode in male areas so long as the commodes shall not be reduced to less than one-half (1/2) the number required;

(i) One (1) shower per twenty (20) prisoners;

(j) Sufficient tables and chairs to handle the number of prisoners in the dorm;

(k) One (1) storage area for personal property per prisoner;

(l) A phone system available for use by prisoners; and

(m) Compliance with all other full-service requirements as outlined in 501 KAR Chapter 3.

Section 13.[~~11.~~] In any new construction or expansion of the local correctional facility, there shall not be a 911 Control Center housed within the secure perimeter of the local correctional facility. Any increase of square-footage of an existing 911 Center shall

require the removal of the Center's location to a new location outside the secure perimeter of the local correctional facility.

Section 14. Facility Status. (1) A jail shall not change its status from full service to life safety.

(2) If the Department of Corrections issues an order of closure for a facility or a portion of a facility pursuant to KRS 441.075, before the facility may reopen, it shall:

(a) Obtain approval from the department; and

(b)1. Meet the physical plant design standards in Section 12 of this administrative regulation; or

2. Receive an exemption from compliance pursuant to Section 8 of this administrative regulation.

Section 15.[~~12.~~] Incorporation by Reference. (1) "Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines", 2016[~~9-11~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Corrections, Division of Local Facilities, 2439 Lawrenceburg Road, P.O. 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation established standards and procedures to be followed in the design and construction or renovation of full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum construction and renovation requirements for full-service jails as required by KRS 441.055(1)(a)7.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum construction and renovation requirements for full-service jails.

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

(a) How the amendment will change this existing administrative regulation: It clarifies the availability of exemptions from compliance for existing jails, clarifies the requirement for existing facilities to adhere to the listed physical plant design requirements and clarifies the physical plant requirements for new facilities and facilities undergoing expansion and/or renovation. It removes the requirement of measuring foot-candles of lighting provided and prohibits a facility from changing their status from full service to life safety. It requires any facility issued an order of closure by the department to obtain approval from the department prior to reopening and also requires the facility to meet current physical plant design standards. It incorporates by reference the revised Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum construction and renovation standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides updated minimum construction and renovation standards for full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: For new jails or jails that are being renovated, the updated minimum construction standards will have to be followed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jail facilities will be more accessible and better suited to house inmates.

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

(a) Initially: No additional cost is anticipated unless a new jail is built or a jail is expanded.

(b) On a continuing basis: No additional cost is anticipated unless a new jail is built or a jail is expanded.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. These standards apply equally to all new full service jails and jails that are being renovated.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department will have approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:060. Security; control.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes security procedures to be followed in full-service jails.

Section 1. Policy and Procedure. (1) The jailer or jail administrator shall develop a written policy and procedure governing the security aspects of the jail's operation.

(2) If requested in writing, the department shall provide technical assistance to the jailer or jail administrator in formulating written policy and procedure.

(3) The policies and procedures shall include:

(a) Prisoner rules;

(b) Staffing;

(c) Searches of prisoner and of secure areas;

(d) Visitation;

(e) Key and weapon control;

(f) Prisoner head counts;(g) Surveillance checks;

(h) Emergency situations;

(i) Jail schedule; and

(j) Administering medication.

Section 2. Prisoner Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each prisoner on an irregular schedule, at least every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct in-person surveillance on an irregular schedule, at least every twenty (20) minutes on the following classes of prisoners:

(a) Suicidal;

(b) Mentally or emotionally disturbed, if housed in a single cell; or

(c) In detox cell[~~;~~

~~(d) Juveniles, if housed in the jail; and~~

~~(e) Mental inquest detainees~~].

(3) If available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sally ports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer or jail administrator shall establish a procedure for weekly inspection, for contraband and physical security, of each area accessible to a prisoner.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) The prisoner rules, as specified in Section 1(3)(a) of this administrative regulation, shall contain a clear definition of each item permitted in the jail. All other items shall be considered contraband.

(c) There shall be a written procedure for reporting security irregularities.

(2) A weapon, ammunition, chemical agent, related security equipment, or object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer or jail administrator. Firearms shall not be permitted in the security area unless authorized by the jailer or jail administrator, under emergency circumstances.

(3) If a weapon, ammunition, chemical agent, or related security equipment is not being carried or used, as authorized by the jailer, it shall be stored in an arsenal, vault, or other secure room under lock.

(a) The weapons storage area shall be inaccessible to unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) Security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area located outside the security perimeter of the confinement area.

(6) A prisoner shall use hazardous tools, supplies, or equipment only under the direct supervision of jail personnel.

(7) A prisoner:

(a) May be assigned the responsibility of providing prisoner services, including providing meals, under the direct supervision of jail personnel; and

(b) Shall not be assigned to a position of authority over another prisoner.

(8) A prisoner shall not be permitted to perform or assist in a security duty.

(9) A jail with a work release or community service program shall establish special control procedures to minimize contact between a prisoner with work release privileges and another prisoner.

(10) A prisoner shall be searched, in accordance with the guidelines established in 501 KAR 3:120, if entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting a prisoner outside the jail and shall identify training required before jail personnel are permitted to transport any prisoner.

(12) Each jailer or jail administrator shall develop written policies and procedures governing the use of physical restraints.

(13) A prisoner placed in physical restraints shall be constantly monitored.

(14) The jail shall have key-control procedures which shall include:

(a) A key control center that is secure and inaccessible to an unauthorized person at all times;

(b) An accounting procedure for issuing and returning keys;

(c) A procedure for immediate reporting and repairing of a broken or malfunctioning key or lock;

(d) A set of duplicate keys to be maintained in a separate, secure place;

(e) A prisoner shall not be permitted to handle a key used to operate a jail security lock;

(f) A key operating a lock to an outside door or gate shall not be permitted in the security area;

(g) An emergency key or any key to a critical security area shall be issued in accordance with written procedures established by the jailer or jail administrator;

(h) Precautions similar to those outlined in paragraphs (a) through (g) of this subsection shall be taken to ensure the security of nonkey operated locking devices including electrical switches or levers;

(i) A lock to an outside exit shall be keyed differently from an interior lock; and

(j) The lock to the control room shall be keyed differently from all other locks.

(15) Trustees.

(a) A trustee shall not have access to, or control of, a weapon.

(b) An unsupervised trustee shall not be permitted in either a program, support, or housing area with a prisoner of the opposite sex.

(c) A trustee shall not be permitted in either a program, support, or housing area with a juvenile inmate.

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and shall reflect significant occurrences within the jail. Special reports shall include:

(1) Use of force;

(2) Disciplinary action;

(3) Medical or mental health treatment;

(4) Feeding schedule and menus;

(5) Extraordinary occurrences.

(a) Fire;

(b) Assault;

(c) Suicide or attempted suicide; and

(d) Escape or attempted escape;

(6) Inmate vandalism;

(a) Destruction of jail property; and

(b) Flooding of plumbing fixtures;

(7) Jail personnel roster for each shift; and

(8) Visitor's log.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, telephone number (502) 564-3279, facsimile number (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 administrative regulation establishes security procedures to be followed in full-service jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum security procedures as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum security procedures to be followed in full-service jails.

(2) If 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 standardizes and clarifies terms used in the Chapter, requires twenty minute surveillance to be on an irregular schedule, and removes the requirement for twenty minute checks for certain classes of inmates.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It updates the minimum security procedures as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The jails may review and modify their policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Makes surveillance checks less predictable for inmates who may intend to harm themselves.

(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 funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:070. Safety; emergency procedures.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes safety and emergency procedures to be followed in local full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure that specifies fire prevention practices to provide for the safety of prisoners, visitors, and jail employees. The policy shall include:

(a) A fire emergency planning session for jail employees at least quarterly;

(b) Maintaining written documentation of the fire planning session including evacuation, fire drills, and other procedures covered during the session;

(c) A fire safety inspection by the department at least once a year;

(d) Inspection and testing of fire protection equipment by a qualified person at least annually with visual inspections by jail employees monthly;

(e) All county jails that house state prisoners shall be tobacco free facilities; and

(f) An evacuation plan coordinated with local fire officials and approved by the department.(2) Each jail shall have written policy and procedures for emergency situations including:

(a) Escape;

(b) Hostage taking;

(c) Riot;

(d) Food poisoning;

(e) Civil disturbance in the community;

(f) Natural disaster;

(g) Suicide;

(h) Other death and disorder; and

(i) Mass evacuation disaster plan.

Section 2. Physical Plant. (1) Each jail shall comply with the Kentucky Building Code, incorporated by reference in 815 KAR 7:120. An existing jail for which approval has been granted may continue without change, except if a significant alteration, addition or change of occupancy occurs.

(2) Each exit shall be:

(a) Distinctly and permanently marked;

(b) Visible at all times;

(c) Kept clear; and

(d) Maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, HVAC, and communications in an emergency situation.

(4) In each area where a prisoner may be confined, there shall be an emergency smoke control system activated by smoke detectors and operated by emergency power. Inspection and testing of the smoke control system shall be conducted by a qualified person at least annually.

(5) Each jail shall have a fire alarm and smoke detection system.

(6) Each direct supervision area shall have an automatic fire extinguishing[~~a fire-suppression~~] system.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes safety and emergency procedures for full-service jails that house state inmates.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum security procedures as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum safety standards to be followed in full-service jails.

(2) If 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 standardizes and clarifies terms used in the Chapter. The automatic fire extinguishing system language is taken from the Building Code for clarification and not intended to change what is required.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It updates the minimum safety standards as required by KRS 441.055.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: New jails or those that renovate will have to ensure the direct supervision area includes an automatic fire-extinguishing system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): New jails will comply with Kentucky building code requirements for fire extinguishing systems.

(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 funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:080. Sanitation; hygiene.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation sets forth procedures to provide proper sanitation and hygiene in full-service jails.

Section 1. Procedures. (1) The jailer <u>or jail administrator</u> shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jailer <u>or jail administrator</u> shall have a written preventative maintenance plan that includes[~~but is not limited to~~]:

(a) A cleaning schedule for various locations and items in the jail;

(b) A schedule for inspections by the jailer;

(c) A schedule for trash and garbage removal; and

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The jail shall have fresh air circulating within prisoner living and activity areas.

(5) The jail shall furnish clean sanitized bedding to prisoners except in holding areas and unless it is determined to be detrimental to a particular prisoner. Issuance of bedding in detoxification is optional. Bedding shall include:

(a) One (1) mattress;

(b) One (1) blanket if conditions require;
(c) Two (2) sheets;
(d) One (1) pillow, if not part of the mattress; and
(e) One (1) pillowcase, if applicable.

(6) Prisoner bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week and cleaned prior to reissue to next prisoner;

(b) Blankets shall be laundered upon reissue or quarterly, whichever is sooner; and

(c) Mattresses and pillows shall be cleaned quarterly and cleaned prior to reissue to next prisoner.

(7) Each prisoner shall be issued a clean jail uniform and towel upon admission to a prisoner living area. If a prisoner does not have undergarments upon admission, then the jail shall issue them. Jail uniforms, undergarments, and towels shall be laundered at least twice weekly and laundered prior to reissue to the next prisoner. Prisoners shall not be required to be without a clean uniform, undergarment, or towel while laundry is being processed.

(8) All floors, toilets, and sinks in the jail shall be cleaned daily or more often as necessary.

(9) All showers shall be cleaned on at least a weekly basis.

(10) (a) All prisoners assigned to prisoner living areas shall be issued or permitted to obtain the following hygienic items:

1. Soap;
2. Toothbrush;
3. Toothpaste;
4. Toilet paper; and
5. Female sanitary supplies (if applicable).

(b) Indigent prisoners shall be furnished these items by the jail.

(11) All prisoners shall be permitted to shave a minimum of two (2) times per week. Communal razors shall not be used. A sanitized electric razor may be substituted with jailer approval.

(12) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

(13) All prisoners shall be provided shower facilities within twenty-four (24) hours of admission. Prisoners shall be permitted to shower daily unless there is a documented security risk.

(14) All prisoners in the jail shall be provided with hot and cold running water in showers and lavatories.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes sanitation and hygiene procedures for full-service jails that house state inmates.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum sanitation and hygiene requirements as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum sanitation and hygiene requirements for full-service jails.

(2) If 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 standardizes and clarifies terms used in the Chapter, includes undergarments as part of issued property, if not worn upon admission, and provides provisions for them to be cleaned. Allows for the use of electric razors, and clarifies prisoner access to shower.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It ensures appropriate sanitation and hygiene in full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jails will have to ensure inmates are issued undergarments if needed and that they include them in the laundry schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Jails not currently providing undergarments if needed would have to purchase them.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jails will ensure all inmates have sanitary and hygienic conditions.

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

(a) Initially: A specific cost for indigent undergarments is not known, but is not anticipated to be substantial.

(b) On a continuing basis: A specific cost for indigent undergarments is not known, but is not anticipated to be substantial.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

fees are established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:090. Medical services.

RELATES TO: KRS 72.025, 441.045, 441.047, 441.055, 441.560

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails that house state prisoners. This administrative regulation sets forth procedures for the proper delivery of medical services in full-service jails.

Section 1. Medical Services. (1) The jail's medical services shall be provided by contracting with a health care provider licensed in Kentucky.

(2) The medical authority shall be a licensed practical nurse (LPN), a higher level of licensed nurse, a licensed medical doctor, or licensed doctor of osteopathy. Telehealth services may be used, except for mental health evaluations for involuntary commitments pursuant to KRS Chapter 202A.

(3) The health care staff shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.

(4) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with similar health care personnel working elsewhere in the community. Copies of licenses and certificates for health care staff employed by the jail shall bemaintained on file within the jail.

(5) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.

(6) Prisoners shall not perform any medical functions within the jail.

(7)Prisoners shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.

(8) All medical procedures shall be performed according to orders issued by the responsible medical authority. All medical procedures that require hospital care shall use the Kentucky Correctional Health Care Services Network, or other contracted health care network.

(9) Medical screening shall be performed by the receiving jail personnel on all prisoners upon their admission to the jail and before their placement in prisoner living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include[~~but not be limited to~~]:

(a) Current illnesses and health problems;

(b) Medications taken and special health requirements;

(c) Screening of other health problems designated by the medical authority;

(d) Behavioral observation, state of consciousness, and mental status;

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;

(f) Condition of skin and body orifices, including rashes and infestations; and

(g) Disposition and referral of prisoners to qualified medical personnel on an emergency basis.

(10) Sick call conducted by the medical authority shall be available to each prisoner as follows:

(a) Category I jails[~~Facilities with 100 prisoners or less~~] shall hold sick call two (2) days[~~one (1) day~~] per week, at a minimum;

(b) Category II jails[~~Facilities with 101 to 200 prisoners~~] shall hold sick call three (3)[~~two (2)~~] days per week, at a minimum;

(c) Category III jails[~~Facilities with 201 to 300 prisoners~~] shall hold sick call four (4)[~~three (3)~~] days per week, at a minimum;[~~and~~]

(d) Category IV jails[~~Facilities with more than 300 prisoners~~] shall hold sick call five (5)[~~four (4)~~] days per week, at a minimum; and

(e) Category V jails shall hold sick call six (6) days per week, at a minimum.

(11) Jailers, jail administrators, or jail personnel shall report suicides or attempted suicides that constitute a serious health situation to the department within twenty-four (24) hours.

(12) Each jail shall have a written policy and procedure outlining jail personnel response to detainees who are at risk for suicide or have attempted or completed suicide.

(13) Emergency medical, vision, and dental care shall be available to all prisoners commensurate with the level of care available to the community.

(14) Medical research shall not be permitted on any prisoner in the jail.

(15) Access to the prisoner's medical file shall be controlled by the medical authority and the jailer. The medical record shall be separate from custody and other administrative records of the jail.

(16) The jail shall follow informed consent standards in the community for prisoner care.

(17) The jailer, jail administrator, or jail personnel[~~or designee~~] shall notify the coroner, if a prisoner dies while in the jail's custody, to allow for a postmortem examination pursuant to KRS 72.025.

(18) The jailer or jail administrator shall have written delousing procedures.

(19) The jail shall have first aid kits available at all times.

(20) A prisoner who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility that can

provide the treatment or may be moved to a hospital.

(21) If emergency care is needed, it shall be provided.

Section 2. Medical Transfers pursuant to KRS 441.560. (1) A jailer, jail administrator, or jail personnel may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill;

(d)1. Is severely and persistently mentally ill; and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the Classification Branch in writing and shall contain the following information:

(a) Prisoner's name;

(b) Prisoner's Social Security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and whether felony or misdemeanor;

(f) Estimated sentence or time to serve;

(g) Whether the prisoner has insurance or not;

(h) Whether the prisoner is indigent or not;

(i) Justification for medical transfer;

(j)[~~(k)~~] Whether the care is necessary or not;

(k)[~~(l)~~] Any conflict reports; and

(l)[~~(m)~~] Relevant attachments such as:

1. Copy of prisoner's insurance card;

2. Doctor's report;

3. Incident report;

4. Citation;

5. Booking information;

6. Preexisting medical records; or

7. Current medication.

(3) If a prisoner is approved for transfer to the department, pursuant to KRS 441.560, the jail shall provide the following, unless already provided with the transfer request:

(a) All medical information;

(b) Current medication in proper container;

(c) Booking information;

(d) Incident reports;

(e) Current citation;

(f) Classification information;

(g) Conflict reports;

(h) Any additional pertinent information; and

(i) Custody receipt.

(4) If a prisoner is approved for transfer to the department, pursuant to KRS 441.560, the prisoner shall be transported by the department.

Section 3. Inmate Medications.[~~(1)~~] When a prisoner is transferred from the jail[~~one facility~~] to another facility, or discharged: (1)[~~all pertinent medical information, including a minimum three (3) day supply of prescription medication, a prescription for necessary medications that will allow the medication to be filled at least once, and~~] A copy of the most recent Medical Administration Record (MAR)[~~,~~] shall be sent with the prisoner; and[~~to the receiving facility.~~]

(2) If prescribed medication was[~~is~~] purchased for a prisoner, by the jail[~~a facility~~], then the jail may provide the medication, a prescription, or both to the prisoner[~~upon release to the community from the facility, a minimum supply of three (3) days medication and a prescription for necessary medications that will allow the medication to be filled at least once shall be provided to the prisoner~~].

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 13, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business January 4, 2016. 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, Department of 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 administrative regulation establishes minimum requirements for the provision of medical services in full-service jails that house state inmates.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum health standards for full-service jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum health standards for full-service jails.

(2) If 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 requires an additional day of sick call for category I - IV jails and an additional 2 days for category V jails, it standardizes and clarifies terms used in the Chapter and revises the requirement to provide medications and prescription information for prisoners who are transferred or released.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides improved minimum standards for the provision of medical services in full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jails will have to ensure that their medical services meet the new minimum requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If a jail is not currently offering the minimum required sick call days, they will need to expand sick call to comply. It is anticipated that approximately five jails will be impacted by the additional sick call requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jails will provide greater access to necessary medical services.

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

(a) Initially: A specific cost for the few jails impacted is not known.

(b) On a continuing basis: A specific cost for the few jails impacted is not known.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated for the Department of Corrections by this administrative regulation. The jails assess medical fees for care provided to prisoners.

(b) How 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 is generated for the Department of Corrections by this administrative regulation. The jails assess medical fees for care provided to prisoners.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department will have approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:100. Food Services.

RELATES TO: KRS 196.035,197.020, 217.280-217.390, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails that house state prisoners. This administrative regulation sets forth procedures for proper food services for jails that house state prisoners.

Section 1. Procedures. (1) The jail shall comply with KRS 217.280 through 217.390 and 902 KAR 45:005.

(2) The jailer or jail administrator shall provide adult prisoners with a nutritionally adequate diet containing at least 2,400 calories per day. Condiments shall not be included in the daily caloric totals. If prisoners are housed in the diversion holding area during normal meal times, they shall be fed. Meals may be either hot or cold.

(3)(a) Except as provided by paragraph (b) of this subsection, prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(b) The jailer or jail administrator may elect to provide only two (2) meals on Saturdays, Sundays, and holidays, if both meals still meet the minimum 2,400 calories per day. Condiments shall not be included in the daily caloric totals. If the jailer or jail administrator elects to serve only two (2) meals, more than sixteen (16) hours shall not elapse between any two (2) meals.

(4) The jailer or jail administrator shall provide for religious diets in accordance with 501 KAR 3:130 after review and approval of religious authority.

(5) The jailer or jail administrator shall provide for medical diets if prescribed by a medical authority.

(6) The jailer or jail administrator shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary purposes.

(8) A nutritionist or dietician shall approve the nutritional value of the jail menu on an annual basis.

(9) Jail personnel shall directly supervise all food prepared within the jail.

(10) All food shall be served under the direct supervision of jail personnel.

(11) The jail shall have sufficient cold and dry food storage facilities.

(12) The jailer, jail administrator, or jail personnel[~~or his designee~~] shall inspect the food service area daily.

(13) Canteen food items purchased by prisoners may be stored or prepared in amounts that do not pose a threat to the health or security of the institution.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes procedures for proper food services in full-service jails that house state inmates.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum standards for food services in full-service jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for food services in full-service jails.

(2) If 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 standardizes and clarifies terms used in the Chapter and prevents condiments from being included in the daily caloric totals.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It sets the minimum standards for food service in full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jails will have to ensure condiments are not included in the daily caloric totals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If jails are currently including condiments in their daily caloric totals, they will have to alter their current menu to ensure compliance with minimum requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jails will provide nutritionally adequate diets for all inmates.

(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 funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department had approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.047, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to ensure the protection of rights of prisoners in those full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a

written statement of prisoner rights that shall address:

(a) Access to court;

(b) Access to attorney;

(c) Mail;

(d) Telephone;

(e) Grievance procedure;

(f) Search and seizure;

(g) Disciplinary procedure;

(h) Racial segregation;

(i) Medical care;

(j) Mental health care, if available; and

(k) Religion.

(2) The statement of prisoner rights shall be made available to all inmates being assigned to general housing units. The prisoner rights may be posted in a conspicuous place, provided in hard-copy format, or provided through closed circuit television.

(3) The jailer, jail administrator, or jail personnel shall not prohibit a prisoner's right of access to the judicial process.

(4) The jailer, jail administrator, or jail personnel shall ensure the right of a prisoner to have confidential access to his attorney or authorized representative.

(a) To the extent available in the jail and reasonable for use by an attorney, "confidential access" shall include a meeting with counsel in a private room in the jail. The room may be used for purposes other than attorney-client visits, but shall meet the following conditions:

1. Jail employees and other prisoners shall not enter the room during the attorney-client meeting, unless an emergency or the security of the jail requires;

2. The room should be located so that conversations in ordinary tones with the door closed cannot be overheard by others outside the room;

3. If the room is located so that jail personnel could not hear a call for aid from the room with the door closed, then the room shall contain some other means to summon aid;

4. The room shall contain a desk or table and seating for an attorney, an assistant, and a prisoner;

5. The room shall have a means to access electricity suitable for plugging in a laptop or portable television, if the jail allows these items to be brought into the jail by an attorney, for the purpose of viewing discovery or other litigation materials. The jail may provide a laptop, portable television, or other means for viewing discovery; and

6. The attorney shall be permitted access to a telephone, unless an emergency or the security of the jail requires otherwise. The jail may provide a phone in the meeting room or in another location within the jail.

(b) Prisoners shall not be given access to cellular phones under any circumstances.

(c) Prisoners shall not be given access to a laptop, except to the extent required to review litigation materials in the immediate presence of an attorney or authorized representative, if the jail allows a laptop to be brought in for this purpose.

(d) The jail shall address in its policy and procedures manual the handling of legal mail sent or received by a prisoner. The policy shall include provisions concerning the constitutional limits on reading prisoner legal mail and opening and inspecting legal mail in the presence of the inmate.

(e) The jail shall address in its policy and procedures manual reasonable access for a prisoner to a telephone to make collect calls to counsel. The policy shall include provisions for any required actions by the prisoner or attorney to allow the telephone system to prevent recording of the attorney-client call.

(5) The jailer or jail administrator shall have a written policy and procedure that defines the jail's visitation rules, which shall include:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend;

(b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner is assessed a disciplinary penalty for an infraction of rules governing visitation or the prisoner's current institutional behavior presents an imminent danger or threat of danger to staff or other prisoners;

(c) A visit shall not be less than fifteen (15) minutes;

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; and

(e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) Attorneys, clergy, and health care staff shall be permitted to visit a prisoner at reasonable hours, other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) Each visitor shall register before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) of this section or established in subsection (6) of this section.

(8) A prisoner shall not be restricted in regard to whom he may have as a visitor unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:

1. Represents a clear and present danger to security;

2. Has a past history of disruptive conduct at the jail;

3. Is under the influence of alcohol or drugs;

4. Refuses to submit to a search; or

5. Refuses to show proper identification; or

(b) The prisoner refuses the visit.

(9) Except for visitors pursuant to subsection (6) of this section, the jail personnel may monitor and record visitor and prisoner conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas.

Section 2. Mail. (1) The jailer or jail administrator shall have written policy and procedure for receiving and sending mail that:

(a) Protects prisoners' personal rights; and

(b) Provides for security practices consistent with the operation of the jail.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. A jailer or jail administrator may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer or jail administrator discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner.

Section 3. Telephone. (1) A newly admitted prisoner shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of the prisoner's choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer, jail administrator, or jail personnel[~~or his designee~~] shall maintain a log of telephone calls made by a prisoner during the admission procedure unless those calls are made on a telephone in the housing area. The log shall document the date, time, and party contacted.

(3) Any prisoner admitted to a facility for a temporary stay of forty-eight (48) hours or less before proceeding or returning to another destination shall be considered in transit and therefore not entitled to a phone call.

(4) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(5)[~~(4)~~] A minimum of five (5) minutes shall be allotted for each phone call.

(6)[~~(5)~~] If calls are monitored, the prisoner shall be notified.

(7)[~~(6)~~] Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) A prisoner shall be granted the right to practice his religion within limits necessary to maintain institution order and security.

(2) Each prisoner shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) A prisoner shall not be required to attend or participate in

religious services or discussions.

Section 5. Access to Programs. The jailer, jail administrator, or jail personnel shall ensure each prisoner equal access to programs and services, if the security and order of the jail will not be jeopardized.

Section 6. Grievance Procedure. The jailer or jail administrator shall have a written prisoner grievance procedure. The procedures shall include provisions for:

(1) A response to each written grievance within ten (10) days;
(2) Equal access for each prisoner;
(3) A guarantee against reprisal; and
(4) Resolution of legitimate complaints.

Section 7. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes minimum standards for prisoner rights in full-service jails that house state inmates.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum standards for prisoner rights as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for prisoner rights in full-service jails.

(2) If 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 standardizes and clarifies terms used in the Chapter, and clarifies required access to make phone calls.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It sets the minimum standards for prisoner rights in full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The jail may need to review their current policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Increased safety and security for prisoners and staff involved in transports.

(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 funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first

year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:160. Training.

RELATES TO: KRS 441.045, 441.055, 441.115

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners and KRS 441.115 sets requirements to obtain training allowances. This administrative regulation establishes training requirements for jail personnel.

Section 1. Procedure. (1) Training of Jailers, jail personnel and other employees shall be the responsibility of the governing authority. The department shall provide training assistance and archiving of electronic training records at no cost to the local body of government.

(2) The department shall schedule a Jail Training Curriculum Advisory Committee meeting annually to advise concerning needs and topics for jail training curriculum. The committee shall be comprised of the Deputy Commissioner of Corrections for Local Facilities, the Director of Local Facilities, and the Director of the Division of Corrections Training (DCT). The committee shall also include those members of the Kentucky Jailers Association (KJA) that are appointed by the KJA Executive Board.

Section 2. Information System. (1) A jail shall maintain cumulative records on the types and hours of training completed annually by jail personnel. The records shall be maintained in a manner so that all of the records for a specific jail employee may be readily retrieved and shall be entered into the department training records management system.

(a) If the training is conducted by the department, the department shall enter and maintain records of the training for the jail personnel in the department's training records management system.

(b) If training is conducted by someone other than the Department, jail personnel who have been trained to enter information into the Department training records management system shall enter the training information. Training information shall be entered within ten (10) days of the training being completed. A jail employee shall have access to his individual record.

(2) Training records within the Division of Corrections Training (DCT) Learning Management System shall serve as proof of attendance and successful completion of department training to the governing authority for its employees.

Section 3. Jailer Training. (1) Pursuant to KRS 441.115, training shall be offered to newly elected jailers. The training may be coordinated and conducted with the Kentucky Jailers Association (KJA). A jailer or jail administrator appointed to complete the term of office of an elected jailer who is unable to complete his term or appointed after new jailer training has occurred shall be offered training prior to assuming his duties.

(2) In order to qualify for the training expense allowance pursuant to KRS 441.115, for his first year, the jailer shall successfully complete a minimum of forty (40) hours training provided or approved by the department.

(3) In order to qualify for the training expense allowance pursuant to KRS 441.115 after his first year, the jailer shall complete a minimum of forty (40) hours annual in-service training provided or approved by the department.

Section 4. Curriculum. (1) Jail personnel shall receive a minimum of twenty-four (24)[~~sixteen (16)~~] hours annual in-service training.[~~The training shall be provided by the department or other instruction approved by the jailer.~~]

(2) The training shall include:

(a) A minimum of four (4) hours of mental health training within the first year of service, and one (1) hour of additional mental health training each year thereafter. The initial four (4) hours of mental health training should be conducted by the service provider of mental health triage or mental health services to the jail, if possible;

(b) Medical awareness training for jail personnel within the first thirty (30) days of employment;

(c) Communicable disease training[~~Human immunodeficiency virus infection training and acquired immunodeficiency syndrome training approved by the Cabinet for Health and Family Services~~];

(d)[~~(c)~~] All Jail personnel or health services staff who administer medications to prisoners shall be trained in the proper procedures as outlined in the jail's policy and procedures manual; and

(e)[~~(d)~~] Jail personnel who are assigned to duties within a direct supervision area or facility shall receive forty (40) hours of pre-service training related to direct supervision. The training shall be approved by the department.

Section 5. First Aid and CPR. (1) Jail personnel shall have current training in standard first aid equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive training within their first year of employment.

(2) Jail personnel shall be certified to perform CPR (Cardiopulmonary Resuscitation), equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive certification within their first year of employment.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes training requirements for jail personnel in full-service jails that house state inmates.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum standards for training personnel in full-service jails as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for training personnel in full-service jails.

(2) If 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 standardizes and clarifies terms used in the Chapter, requires jail personnel to receive additional in-service training and updates training topics to conform to statutory requirements.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accepts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b) and complies with statutory changes in KRS 441.115.

(d) How the amendment will assist in the effective administration of the statutes: It sets the minimum standards for training personnel in full-service jails.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 77 full service jails that house state inmates and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 20,750 inmates that are in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jails may have to increase the training hours for personnel and adjust the medical training to meet new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If the jail is not currently meeting the required training hours, they may have to allocate funds to accommodate the increased training requirements. The Department provides training for communicable diseases as part of in-service training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jail personnel will receive additional training for their work.

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

(a) Initially: Additional cost is anticipated to be minimal.

(b) On a continuing basis: Additional cost is anticipated to be minimal.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and full-service county jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035 and 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:010. Definitions for 501 KAR Chapter 7.

RELATES TO: KRS 67.900, 67A.028, 67B.020(1), 441.045, 441.055, Ky. Const. Sec. 99, 152

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 7, regulating restricted custody centers.

Section 1. Definitions. (1) "Automatic fire extinguishing system" means an approved system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire.

(2) "Department" is defined in KRS 441.005(5).

(3)[~~(2)~~] "Governing authority" means a county fiscal court, urban-county government, charter county government, consolidated local government, unified local government, or

regional jail authority.

(4) "Jail administrator" means the official appointed by a regional jail authority and charged with the responsibility of administering the regional jail.

(5)[~~(3)~~] "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the center;

(b) A department as defined in KRS 67B.020(1);[~~or~~]

(c) A correctional services division as created by KRS 67A.028; or

(d) Jail administrator.

(6)[~~(4)~~] "Jail personnel" is defined in KRS 441.005(6).

(7)[~~(5)~~] "Medical authority" means the person or persons licensed to provide medical care to prisoners in the jail's custody.

(8)[~~(6)~~] "Pat or frisk" means a manual search of a clothed person and includes a visual inspection of the open mouth.

(9)[~~(7)~~] "Prisoner" is defined in KRS 441.005(3).

(10)[~~(8)~~] "Prisoner living area" means a group of rooms or cells which provide housing for the prisoner population.

(11)[~~(9)~~] "Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.

(12)[~~(10)~~] "Restricted custody center" or "center" means a facility or area separate from the jail used for the housing of:

(a) Sentenced prisoners who have been approved for educational, work, or program participation release; and

(b) Pretrial prisoners who have been approved by the court for educational, work, or program participation release.

(13)[~~(11)~~] "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(14)[~~(12)~~] "Sexually abusive conduct" means:

(a) Sexual contact, sexual intercourse, and deviate sexual intercourse, as defined by KRS 510.010;

(b) Sexual abuse as defined by 28 C.F.R. 115.6; and

(c) Other types of similar sexually based conduct.

(15)[~~(13)~~] "Strip search" means a body search during which a person is required to open or remove clothing, and during which a person is subject to visual inspection of the torso, female breast, genital area, and anal area, as well as other body cavities.

(16)[~~(14)~~] "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, transfer of health or medical data, and continuing education.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes definitions for 501 KAR Chapter 7, which regulates restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It revises the definitions for the minimum standards set in Chapter 7 regarding restricted custody centers as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes definitions for the minimum standards regarding restricted custody centers as required by KRS 441.055.

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

(a) How the amendment will change this existing administrative regulation: It adds definitions for "automatic fire extinguishing system" and "jail administrator" and renumbers.

(b) The necessity of the amendment to this administrative regulation: It revises the definitions used within Chapter 7 as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear definitions for Chapter 7.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 45 restricted custody centers (20 are in separate buildings apart from the jails and 25 are attached to the jails) and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 2,378 inmate inmates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to apply the new definitions in their operations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jail staff will have a clear understanding of the definitions within Chapter 7.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

fees are established or increased.

(9) TIERING: Is tiering applied? No. Definitions apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:020. Administration; management.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.045, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to be followed for the administration and management of restricted custody centers.

Section 1. Policy, Procedure, and Organization. (1) The jailer shall develop and maintain an organizational chart and a policy and procedures manual which has been adopted by the governing authority and filed with the department.

(2) The written policy and procedures manual shall be available to employees.

(3) The policy and procedures manual shall include the following aspects of the center's operation:

(a) Administration;

(b) Fiscal management;

(c) Personnel;

(d) Security and control;

(e) Sanitation and management; (f) Medical services;

(g) Food services;

(h) Emergency and safety procedures;

(i) Classification;

(j) Prisoner programs;

(k) Prisoner services; and

(l) Admission and release.

(4) The policy and procedures manual shall be reviewed, updated, and any changes approved by the governing authority at least annually. Each revision shall be marked with the effective date and filed with the department.

Section 2. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the center to the public, to government agencies, and to the media. The public and prisoners shall have access to the procedure.

(2) With the prisoner's written consent on a form authorizing release of information, news media shall be permitted to interview a prisoner as set forth in the center's policy and procedures manual, except if the safety and security of the center is affected.

Section 3. Information Systems. The jailer shall establish and maintain an information system.

(1) Center information and prisoner records shall be:

(a) Retained in written or electronic form; and

(b) Stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Prisoner records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1.

(2) A telephonic report to the Department shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence, and a final written report shall be made within forty-eight (48) hours. The report shall be placed in the prisoner's center record. An extraordinary or unusual occurrence shall include:

(a) Death of a prisoner;

(b) Attempted suicide that constitutes a serious health situation, or suicide;

(c) Serious injury, whether accidental or self-inflicted;

(d) Attempted escape or escape from center;

(e) Fire;

(f) Riot;

(g) Assault[~~Battery~~], whether by jail personnel or prisoner;

(h) Sexually abusive conduct; and

(i) Occurrence of contagious or infectious disease, or illness within the center facility.

(3) The center shall keep a log of daily activity.

(4) The center shall, in the event of an escape, immediately:

(a) Notify the Division of Local Facilities jail inspector;

(b) Notify Kentucky State Police or local law enforcement;

(c) Activate VINE through use of the Emergency Override Line (EOL); and

(d) Enter the prisoner's escape status into the jail management system.

Section 4. Prisoner Records. (1) The information required by 501 KAR 7:120 for admission and release shall be retained for each prisoner in the prisoner's center record. Other information retained in each prisoner's center record shall include:

(a) Court orders;

(b) Personal property receipts;

(c) Infraction reports;

(d) Reports of disciplinary actions;

(e) Work record and program involvement;

(f) Any extraordinary or unusual occurrence; and

(g) If a prisoner dies, the disposition of the prisoner's property and remains.

(2) Medical records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1.

(3) The jailer shall ensure that prisoner records are safeguarded.

(4) The jailer shall require a prisoner to sign a form authorizing release of information, prior to the release of information, other than public information, to an individual other than law enforcement or a court official. A copy of the signed form shall be maintained in

the prisoner's record. The form shall include:

(a) Name of person, agency, or organization requesting information;

(b) Name of center releasing information;

(c) Information to be disclosed;

(d) Date consent form is signed; and

(e) Signature of prisoner.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: October 23, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes minimum standards to be followed for the administration and management of restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes administration and management procedures to be followed in restricted custody centers as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for administration and management regarding restricted custody centers as required by KRS 441.055.

(2) If 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 revisions standardize terms used within the Chapter and clarifies escape procedures.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear administrative and management standards for restricted custody centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 45 restricted custody centers (20 are in separate buildings apart from the jails and 25 are attached to the jails) and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 2,378 inmates.

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

(a) List 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 jails will have to apply the new requirements in their operations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The jails may change their policies concerning escapes and the department will have more efficient and effective reporting.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. The department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for

subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:030. Fiscal management.

RELATES TO: KRS 43.070, 441.055, 441.135

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes fiscal management procedures to be followed in restricted custody centers.

Section 1. Budgeting and Accounting. The center's budget and fiscal records shall be kept in accordance with the general records of the center.

Section 2. Canteen. (1) As provided in KRS 441.135, each jailer may establish a canteen to provide prisoners with approved items not supplied by the center.

(2) The records of income, expense, and disbursements of the canteen shall be examined annually by the Auditor of Public Accounts concurrently with the annual audit of the county conducted in accordance with KRS 43.070(1)(a), unless the Auditor of Public Accounts declines to perform the examination of the canteen fund or has failed to respond to written notice of intent to employ a certified public accountant within thirty (30) days of receipt of the notice.

(a) If the county judge/executive notifies the Auditor of Public Accounts with specific or known jail canteen fund concerns or irregularities, the auditor shall thoroughly investigate the noted concerns or irregularities in the examination if, in the auditor's judgment, the investigation is warranted.

(b)[~~The jailer shall forward a copy of the report of any jail canteen audit to the department.~~

~~(c)~~] The cost of the canteen fund audit shall be paid from the canteen fund as an allowable expense. If the jail's canteen fund is insufficient to cover the expense of the examination, the expense shall be borne by the county jail fund.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner

PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: October 23, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes fiscal management procedures to be followed in restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes fiscal management procedures to be followed in restricted custody centers as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes fiscal management minimum standards to be followed in restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: It eliminates the requirement to submit a copy of the jail canteen audit.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear fiscal management standards for restricted custody centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 45 restricted custody centers (20 are in separate buildings apart from the jails and 25 are attached to the jails) and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 2,378 inmates.

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

(a) List 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 jails will have to apply the new requirements in their operations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will streamline the documentation process.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:050. Physical plant.

RELATES TO: KRS 441.045, 441.055, 441.064, 441.075, 441.415-441.450

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes standards and procedures to be followed in the design, construction, renovation, and expansion of restricted custody centers and for measuring compliance of existing centers in accordance with KRS 441.055, 441.064, and 441.075.

Section 1. Definitions. (1) "Barrier Fence" means a chain-link fence that provides a boundary around the restricted custody housing areas or restricted custody center.

(2) "Construction authority" is defined in KRS 441.415.

(3)[~~(2)~~] "Division" means the Department of Corrections Division of Local Facilities.

(4)[~~(3)~~] "Expansion" means a renovation which includes an increase in the number of square footage of the local correctional facility to add prisoner bed space as described in KRS 441.450(2).

(5)[~~(4)~~] "Local correctional facility" is defined in KRS 441.415.

(6)[~~(5)~~] "Renovation" means changes to the physical plant of or construction on an existing local correctional facility that does not:

(a) Include an increase in the number of square footage of the local correctional facility to add prisoner bed space; and

(b) Require approval of the construction authority as described in KRS 441.450(2).

Section 2. Consultation. If requested, the Department may provide to a unit of local government seeking to remodel an existing restricted custody center or construct a new center, a consultant knowledgeable in the design, utilization, and operation of detention facilities. The consultant may meet with the appropriate officials of that county and advise them concerning:

(1) Site selection;

(2) Probable need as it relates to capacity and types of prisoners to be housed;

(3) Sources of financing for constructing;

(4) Laws and administrative regulations relating to treatment of prisoners;

(5) Laws and administrative regulations relating to facilities for prisoners;

(6) Sources of revenue for operations of the center;

(7) Probable cost for operation of the center; and

(8) Potential for sharing facilities with adjoining counties.

Section 3. Application for Construction. (1) Prior to the commencement of any construction for a new restricted custody center or for the renovation or expansion of an existing restricted custody center, a unit of local government shall submit to the division:

(a) An application for approval; and

(b) If the construction is for a new center or an expansion of an existing center, any applications and materials submitted to the construction authority in accordance with KRS 441.430.

(2) The application required by subsection (1)(a) of this section shall:

(a) Be signed by the:

1. County judge-executive for each county involved in the proposal;

2. Highest executive of a unit of local government other than a county; or

3. Head of the Regional Jail Authority, if applicable;

(b) State in detail the need for the specific request being proposed;

(c) Identify the unit of local government submitting the request;

(d) State the following information for the current jailer:

1. Name;

2. Address; and

3. Phone number;

(e) Identify the type of local correctional facility currently being used:

1. Full service;

2. Regional full service;

3. Life safety; or

4. None.

(f) If construction is proposed at a location other than where the current local correctional facility is located, then provide the following information for the new property:

1. Address;

2. Description of new property;

3. Explanation of ownership of new property; and

4. Estimated cost to purchase property if not owned by the unit of local government proposing construction;

(g) If the proposed construction is for a new restricted custody center, then identify the size of center being requested using the bed capacity increments required for plans in KRS 441.420(3).

(h) If the proposed construction is for an expansion, then state the:

1. Number of proposed additional beds; and

2. Proposed additional square footage;
(i) If the proposed construction is for a renovation, then state:
1. The purpose of the renovation; and
2. The amount of any proposed additional square footage;
(j) For the current restricted custody center, state the:
1. Current capacity;
2. Average daily population (ADP) for the preceding two (2) years;
3. Total amount of remaining bond indebtedness;
4. Amount of monthly debt installment payment; and
5. Remaining number of payments on any note; and
(k) Identify the architect, consultant, or other person or entity with which the unit of local government consulted for the construction proposal.

Section 4. Documentation required for application. A unit of local government shall provide a copy of the following documents with any application submitted to the division:
(1) Ordinance for the unit of local government showing an affirmative vote for the proposed construction for the restricted custody center;
(2) Deed, lease, or legal description of the new property for proposed construction;
(3) Local correctional facility budget for the preceding two (2) years;
(4) General budget for any unit of local government proposing construction;
(5) Feasibility study or other documentation provided by any architect, entity, or other person that consulted on the proposed construction; and
(6) Documentation showing that the unit of local government has sufficient bonding and revenue sources to pay the bond indebtedness, operating costs, and maintenance costs over the anticipated life of the note for the proposed construction.

Section 5. Site Selection Review. The following criteria shall be considered by the division in its site selection review:
(1) Size;
(2) Proximity to court;
(3) Proximity to community resources;
(4) Availability of public transportation;
(5) Environmental health;
(6) Adequate parking; and
(7) Provisions for future expansion.

Section 6. Construction Documents. (1) A unit of local government shall submit plans and specifications to the division for approval prior to the commencement of any construction for a new center or for the renovation or expansion of an existing center. The division may waive some of the requirements of this section on a case by case basis depending on the specifics proposed for the construction.
(2) If the construction is for a new center or expansion of an existing center, a unit of local government shall submit plans and specifications for the applications required by KRS 441.430 to the division.
(3) Whether new construction or renovation or expansion of an existing center, plans and specifications for a center shall meet the following criteria and contain the following documentation:
(a) A programming phase to include:
1. Evaluation of the existing center;
2. Population analysis as based on the NIC staffing analysis, and may include, jail operations, jail programs, court location, and transportation issues;
3. Space requirements based on population analysis and standards for the center and site outlined in this administrative regulation;
4. Staffing analysis;
5. Cost analysis to include construction and operation cost;
6. Financing alternatives, if applicable;
7. Design-construction time schedule; and
8. Summary and recommendations.
(b) A schematic phase to include:
1. A scale drawing of each floor plan with proposed rooms and areas one-eighth (1/8) inch minimum;
2. A scale drawing of the site, locating the building, parking, and other facilities with one (1) inch equaling fifty (50) feet;
3. Documentation of site as to:
a. Size;
b. Proximity to court;
c. Proximity to community resources;
d. Availability of public transportation;
e. Environmental health;
f. Adequate parking; and
g. Provisions for future expansion;
4. Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes, and other related information;
5. Scale elevation drawing of exterior walls;
6. Schematic cost estimate to include revised construction and operation costs; and
7. A revised design-construction time schedule.
(c) A design development phase containing:
1. A scale drawing on each floor plan with proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;
2. All necessary construction drawings including construction details;
3. Specifications for materials and workmanship;
4. A proposed contract with general and special conditions;
5. Engineering calculations for the foundation, structure, heating, ventilating, air conditioning, lighting, and plumbing; and
6. Detailed estimates of cost of land, site development, construction, financing, professional services, equipment, and furnishings.
(d) Construction document phase containing:
1. Revised design development construction drawings following review by all applicable agencies, signed by an architect registered in the Commonwealth of Kentucky, and revised, if necessary, to include changes required by the division; and
2. Revised design development specifications of material and workmanship following review by all applicable agencies.
(e) A contract administration phase containing:
1. Signed copies of the contracts for construction, financing, and bonding;
2. Signed copies of the construction permits; and
3. Documentation of required review by other applicable state agencies.
(4) Whether new construction or renovation or expansion of an existing facility, every change order shall be submitted to the division jail consultant for review and approval.

Section 7. Approval of Construction Plans and Specifications. (1) Construction shall not begin until the construction plans have been approved by the division and, if required, the construction authority has approved the construction. The division shall:
(a) Review each complete application within thirty (30) days of receipt;
(b) For renovation, issue:
1. An approval;
2. An acceptance with required changes; or
3. A rejection, with reasons stated;
(c) For an expansion or new center, issue a recommendation to the construction authority whether to approve construction; and
(d) For an incomplete application, inform the applicant of the information or documents that need to be submitted to complete the application.
(2) A request for changes to the plans shall be submitted to the division and shall include a description of the changes requested and the reasons for the changes.
(3) A change to the approved plans shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change.

Section 8. Exemption from Compliance. (1) If a center was built before the effective date of the physical plant standards in Section 12[~~10~~] of this administrative regulation, the department shall[~~then it~~

~~is~~] exempt the center from a specific requirement if the exemption does not significantly affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail, or[~~from the standards~~] except as stated in subsection (3) of this section.

(2) If a renovation or expansion was built before the effective date of a physical plant standard in Section 12[~~10~~] of this administrative regulation, the department shall[~~then it is~~] exempt the center from a specific requirement if the exemption does not significantly affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail, or[~~from the standard~~] except as stated in subsection (3) of this section.

(3) If a new jail, renovation, or expansion is built after the effective date of a physical plant standard in Section 12[~~10~~] of this administrative regulation, then it shall meet the standard pursuant to Section 10 of this administrative regulation, unless a waiver is obtained pursuant to Section 9 of this administrative regulation.

Section 9. Waiver of Compliance. (1) The department may grant a waiver of the implementation of the physical plant standards in Section 10 of this administrative regulation for an existing center if the department determines that:

(a) Strict compliance will cause unreasonable difficulties;

(b) A waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the center; and

(c) Compliance may be achieved in a manner other than that specified, but in a manner which is sufficient to meet the intent of this administrative regulation.

(2) If a waiver from a standard is desired, the responsible unit of local government shall submit a written request to the department. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of alternative proposed; and

(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, will not jeopardize the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the center.

(3) A waiver, if granted by the department, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a twelve (12) month period shall be reviewed for reapproval at the end of the period.

Section 10. Existing Restricted Custody Centers[~~Physical Plant Design Standards. New restricted custody centers shall comply with the physical plant design standards in this section~~]. All existing centers that are in operation shall comply with the physical plant design standards in Section 12 of this administrative regulation, unless the center is exempt from a standard pursuant to Section 8 of this administrative regulation or has obtained a waiver from the department pursuant to Section 9 of this administrative regulation for a standard in this section.

Section 11. New Restricted Custody Centers and Expansion and Renovation of Existing Restricted Custody Centers. A new restricted custody center and the expansion or renovation of an existing restricted custody center shall comply with the physical plant design standards in Section 12 of this administrative regulation.

Section 12. Physical Plant Design Standards. (1) Each center shall have two (2) separate entrances: a prisoner entrance and a service entrance. The department may permit these entrances to be combined.

(a) Prisoners' entry. The purpose of this entrance shall be to provide secure and controlled access to the center for prisoners.

(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It shall be located in close proximity to storage rooms and the kitchen area.

(2) Each exit in the security area shall provide free egress or automatic time delayed emergency release doors with a maximum time delay of thirty (30) seconds[~~be secured~~].

(3) Security area. The area shall enclose those facilities and services required for or used by prisoners. It shall contain the following function areas:

(a) Control area. This area shall be located in close proximity to the prisoner entrance and shall be used to monitor the movement of prisoners in and out of the center.

(b) Visitation. Adequate space shall be made available for contact visits between prisoners and families. Tables and chairs shall be provided. Bathroom facilities shall be available to serve this area.

(c) Multipurpose room. The purpose of this area shall be to provide space for assembly of prisoners for specific program activities. Adequate furnishings shall be provided.

(d) Conference area. The purpose of this space shall be to provide space for confidential conferences between prisoners and lawyers, counselors, clergy, etc. A table and chairs shall be provided.

(e) Barrier Fence. A barrier fence may be installed around the center for added security.

1. The fence shall be no less than eight (8) feet, with a minimum of seven (7) feet from the ground to the top of the fence;

2. The top of the fence may be equipped with concertina wire or barbed wire.

3. The fence shall be installed in accordance with 22.2.7.1 and 22.2.7.2 of the NFPA 101 Life Safety Code.

(f) Living areas.

1. Each sleeping room shall provide a minimum of forty (40) square feet per prisoner. More than forty (40) prisoners shall not be placed in a single sleeping room, with the exception of a direct supervision area as outlined in 501 KAR Chapter 3.

2. Each prisoner shall be provided in the sleeping room, at a minimum: bed, mattress and pillow, supply of bed linen, chair, and closet or locker space for the storage of personal items.

3. A sleeping area shall have lighting[~~of at least twenty (20) foot-candles~~] in the reading and grooming area sufficient for the task being performed[~~, with a nightlight capable of providing five (5) foot-candles of light~~].

4. The center shall have one (1) toilet for every ten (10) prisoners, one (1) washbasin for every ten (10) prisoners, and a shower for every twenty (20) prisoners. One (1) urinal may be substituted for each commode in male areas but the commodes shall not be reduced to less than one-half (1/2) the number required.

5. Phone facilities shall be available for prisoner use.

6. Each occupied area shall have temperature ranges within comfort zones, sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit.

7. Each occupied area shall have ventilation to meet air exchange as required in the Kentucky Building Code, 815 KAR 7:120.

(f) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the center. Design features shall include compliance with standards for the Retail Food Code, 902 KAR 45:005. If food is not prepared in the center, a food distribution area shall be substituted.

(g) Laundry facilities. Laundry facilities shall be available.

(h) Furnishings. Center furnishings shall be noncombustible and nontoxic as approved by the department.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail

Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: November 5, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes standards and procedures to be followed in the design and construction of restricted custody centers and provides minimum standards for the renovation and construction of restricted custody centers and for measuring compliance of existing centers in accordance with KRS 441.055, 441.064, and 441.075.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes construction standards to be followed in restricted custody centers as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards to be followed for design and construction, renovation and construction, and for measuring compliance of existing restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: It adds the definition of "barrier fence," clarifies the availability of exemptions from compliance for existing jails, clarifies the requirement for existing facilities to adhere to the listed physical plant design requirements and clarifies the physical plant requirements for new facilities and facilities undergoing expansion and/or renovation, revises the requirements for exits, allows for the installation of a barrier fence as an added security perimeter, and establishes the minimum requirements for such a fence.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It updates the minimum construction standards for restricted custody centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 45 restricted custody centers (20 are in separate buildings apart from the jails and 25 are attached to the jails) and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 2,378 inmates.

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

(a) List 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 jails will have to apply the new requirements in their operations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Barrier fence specifications are added if the jail seeks to add a barrier fence and lighting requirements may be more varied depending on the task.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:070. Safety; emergency procedures.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes safety and emergency procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall have a written policy and procedure that specifies fire prevention practices to provide for the safety of prisoners, visitors, and jail employees. The policy shall include:
(a) A fire emergency planning session for jail employees at least quarterly;
(b) Maintaining written documentation of the fire planning session including evacuation, fire drills, and other procedures covered during this session;
(c) A fire safety inspection by the department at least once a year;
(d) Inspection and testing of fire protection equipment by a qualified person at least annually with visual inspections by jail personnel monthly;
(e) All restricted custody centers shall be tobacco free facilities; and
(f) An evacuation plan coordinated with local fire officials and approved by the department.
(2) Each center shall have written policy and procedures for emergency situations including:
(a) Escape;
(b) Hostage taking;
(c) Riot;
(d) Food poisoning;
(e) Civil disturbance in the community;
(f) Natural disaster;
(g) Suicide;
(h) Other death and disorder; and
(i) Mass evacuation disaster plan.

Section 2. Physical Plant. (1) The center shall comply with the Kentucky Building Code, incorporated by reference in 815 KAR 7:120. An existing center for which approval has been granted may continue without change, except if a significant alteration, addition, or change of occupancy occurs.
(2) Each exit shall be:
(a) Distinctly and permanently marked;
(b) Visible at all times;
(c) Kept clear; and
(d) Maintained in usable condition.
(3) Each center shall have equipment necessary to maintain essential lights, power, HVAC, and communications in an emergency situation or shall initiate procedures outlined in their emergency plan.
(4) Each center shall have a fire alarm and smoke detection system.
(5) Each area shall have an automatic fire extinguishing system[~~a fire-suppression system~~].

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission
APPROVED BY AGENCY: October 14, 2015
FILED WITH LRC: October 23, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes safety and emergency procedures to be followed in restricted custody centers.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes safety and emergency procedures to be followed in restricted custody centers as required by KRS 441.055.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards to be followed for safety and emergencies in restricted custody centers.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It eliminates the requirement for a backup generator if the facility has an emergency evacuation plan in place and clarifies the requirement for a fire extinguishing system.
(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).
(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).
(d) How the amendment will assist in the effective administration of the statutes: It updates the minimum safety and emergency standards for restricted custody centers.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 45 restricted custody centers (20 are in separate buildings apart from the jails and 25 are attached to the jails) and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 2,378 inmates.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List 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 jails will have to apply the new requirements in their operations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The jails will have an alternative to a generator being in place.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department paid the local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:080. Sanitation; hygiene.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for proper sanitation and hygiene in restricted custody centers.

Section 1. Procedures. (1) The jailer shall provide for:

(a) The control of vermin and pests; and

(b) Both solid and liquid waste disposal.

(2) The jailer shall have a written preventative maintenance plan which includes schedules for:

(a) Cleaning various specified locations and items in the center;

(b) Inspections by the jailer;

(c) Trash and garbage removal; and

(d) Periodic inspection and maintenance of specified mechanical equipment.

(3) The center shall have fresh, purified air circulating within each prisoner living and activity area.

(4) The center shall furnish clean, sanitized bedding to prisoners, including:

(a) One (1) penal mattress;

(b) One (1) blanket, if conditions require;

(c) Two (2) sheets;

(d) One (1) pillow, if not part of the mattress; and

(e) One (1) pillowcase, if applicable.

(5) Prisoner bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week and cleaned prior to reissue to another inmate;

(b) Blankets shall be laundered upon reissue or quarterly, whichever is sooner; and

(c) Mattresses and pillows shall be cleaned quarterly and cleaned prior to reissue to another inmate.

(6) Each prisoner shall be issued a clean towel. Towels shall be laundered at least twice weekly and laundered prior to reissue to another inmate. Prisoners shall not be required to be without a towel while laundry is being processed.

(7) Provisions shall be made for laundering prisoner clothing at least twice weekly. Prisoners shall not be required to be without clean clothing while laundry is being processed.

(8) Floors, toilets, and sinks shall be cleaned daily or more often as necessary.

(9) Showers shall be cleaned on at least a weekly basis.

(10)(a) Prisoners shall be issued or permitted to obtain the following hygienic items:

1. Soap;
2. Toothbrush;
3. Toothpaste;
4. Toilet paper; and
5. Female sanitary supplies, if applicable.

(b) An indigent prisoner shall be furnished these items by the center.

(11) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

(12) All prisoners shall be permitted to shave a minimum of two (2) times per week. Communal razors shall not be used. A sanitized electric razor may be substituted with jailer approval.

(13) All prisoners shall be provided shower facilities within twenty-four (24) hours of admission. Prisoners shall be permitted to shower daily.

(14) All prisoners in the center shall be provided with hot and cold running water in showers and lavatories.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: October 23, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes minimum standards to be followed for proper sanitation and hygiene in restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes minimum sanitation and hygiene requirements for restricted custody centers as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum sanitation and hygiene requirements for restricted custody centers.

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

(a) How the amendment will change this existing administrative regulation: It addes minimum requirements for shaving and showering and requires hot and cold water to be provided in showers and lavatories.

(b) The necessity of the amendment to this administrative regulation: It revises the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It ensures appropriate sanitation and hygiene in restricted custody centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 45 restricted custody centers (20 are in separate buildings apart from the jails and 25 are attached to the jails) and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 2,378 inmates.

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

(a) List 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 jails will have to apply the new requirements in their operations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jails will ensure all inmates have sanitary and hygienic conditions.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

(7) Provide an assessment of whether an 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 are anticipated.

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

(9) TIERING: Is tiering applied? No. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2015, the department will paid local jails approximately $100 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department paid approximately $1,020,000 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 13:010. Life safety issues.

RELATES TO: KRS 67.900, 198B.650-198B.689, 217.280-217.390, 441.005, 441.045, 441.055, 441.560, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health and life safety standards for jails that do not house state prisoners. This administrative regulation sets forth procedures to provide protection for basic health and life safety in jails that do not house state prisoners.

Section 1. Definitions. (1) "Department" is defined in KRS 441.005(5).

(2) "Governing authority" means a county fiscal court, urban-county government, charter county government, consolidated local government, unified local government, or regional jail authority.

(3) "Jail" or "Life Safety Jail" means any county jail and correctional or detention facility, including correctional facilities defined in KRS 67B.020, operated by and under the supervision of a governing authority that does not house state prisoners pursuant to KRS 532.100.

(4) "Jail personnel" is defined in KRS 441.005(6).

(5) "Medical authority" means the person or persons licensed to provide medical care to prisoners in the jail's custody.

(6) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, transfer of health or medical data, and continuing education.

Section 2. Policy and Procedure. The jailer shall develop and maintain a policy and procedures manual that has been adopted by the governing authority and filed with the department. The policy and procedures manual shall include, at a minimum, the following aspects of the jail's operation:

(1) Administration;

(2) Staffing;

(3) Security and control;

(4) Physical plant;

(5) Fire safety;

(6) Sanitation and hygiene;

(7) Medical services; and

(8) Food services.

Section 3. Administration. (1) Jail information and prisoner records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Prisoner records shall be maintained as required by the Department of Libraries and Archives pursuant to 725 KAR Chapter 1.

(2) A telephonic report to the department shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence, and a final written report shall be made within forty-eight (48) hours. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include:

(a) Death of a prisoner;

(b) Suicide or attempted suicide that constitutes a serious health concern;

(c) Serious injury, whether accidental or self-inflicted;

(d) Escape or attempted escape from confinement;

(e) Fire;

(f) Riot;

(g) Assault, whether by jail personnel or prisoner;

(h) Sexually abusive conduct;

(i) Occurrence of contagious or infectious disease, or illness within the facility; and

(j) Any serious event that threatens the safety or security of the facility or jail personnel.

(3) The jail shall, in the event of an escape, immediately:

(a) Notify the Division of Local Facilities jail inspector;

(b) Notify Kentucky State Police or local law enforcement;

(c) Activate VINE through use of the Emergency Override Line (EOL); and

(d) Enter the prisoner's escape status into the jail management system.

Section 4. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of two (2) jail personnel, excluding jail personnel designated for communication. If requested by the jailer or governing authority, the department may conduct a staffing analysis.

(2) Each jail shall be required to provide the Department with a weekly population update.

(3) If a female prisoner is lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

(4) Qualifications. Jail personnel shall be at least twenty-one (21) years of age.

(5) Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

(6) Males and females shall be housed separately.

Section 5. Security and Control. (1) Jail personnel shall conduct and document direct, in-person surveillance of each prisoner on an irregular basis, at least every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct, in-person surveillance every twenty (20) minutes, at irregular intervals, on the following classes of prisoners:

(a) Suicidal; and

(b) Mentally or emotionally disturbed.

(3) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed. At least one (1) count shall be conducted per shift.

(4) A prisoner shall not be assigned to a position of authority over another prisoner.

(5) A prisoner shall not be permitted to perform or assist in a security duty.

(6) A trustee, if used, shall not have access to or control of a weapon.

(7) Daily Jail Log; Special reports: A daily log shall be kept current and shall reflect significant occurrences within the jail. Special reports shall include:

(a) Disciplinary action;

(b) Medical or mental health treatment;

(c) Feeding schedule and menus;

(d) Extraordinary occurrences:

1. Fire;

2. Assault;

3. Suicide or attempted suicide; or

4. Escape or attempted escape;

(e) Inmate vandalism:

1. Destruction of jail property; or

2. Flooding of plumbing fixtures;

(f) Jail personnel roster for each shift; and

(g) Visitor's log.

Section 6.[~~3.~~] Physical Plant. (1) Square footage living space requirement for jails shall be the same as required in 501 KAR 3:050.

(2) All furnishings in the jail shall be noncombustible and nontoxic as approved by the department.

(3) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards of the Retail Food Code, 902 KAR 45:005;

(b) Commercial type stoves and refrigeration units; and

(c) Walls, floors, and decks that are approved fire-rated masonry, concrete, or steel construction.

(4) Gauges, indicators, and alarms shall be located in an area monitored by jail personnel.

(5) The jail shall provide ventilation to meet the air exchange requirements in the Kentucky Department of Corrections Jail Construction, Expansion, and Renovation Guidelines incorporated by reference in 501 KAR 3:050.

(6) Electrical outlets if provided shall be ground-faulted or have ground-fault circuit breakers.

(7) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area not accessible to prisoners.

(8) The jail shall have a procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(9) A set of duplicate keys shall be maintained in a separate, secure place.

(10) Each jail shall comply with the Kentucky Building Code, 815 KAR 7:120.

Section 7.[~~4.~~] Fire Safety. (1) Each jail shall have a written policy and procedure that specifies fire prevention practices to ensure the safety of prisoners, visitors, and jail personnel. These shall include, at a minimum:

(a) Fire emergency planning sessions for jail personnel at least quarterly;

(b) Maintaining written documentation of fire planning sessions and a written copy of the material taught;

(c) A fire safety inspection by the department at least once a year;

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by jail personnel monthly;

(e) Being a tobacco-free facility; and

(f) A written evacuation plan coordinated with local fire officials.

(2) Each jail shall have exits distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, HVAC, and communications in an emergency situation.

(4) In each area[~~all areas~~] where a prisoner may be confined, there[~~each jail~~] shall be[~~have~~] an emergency smoke control[~~evacuation~~] system activated by smoke detectors and operated by emergency power. Inspection and testing of the smoke control system shall be conducted by a qualified person at least annually.

(5) Each jail shall have an approved fire alarm and smoke detection system.

Section 8.[~~5.~~] Sanitation; Hygiene. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jail shall have fresh air circulating within prisoner living and activity areas.

(4) All prisoners shall be provided with hot and cold running water in showers and lavatories.

(5) All prisoners shall be provided with toilet paper or feminine hygiene items when needed.

Section 9.[~~6.~~] Medical Services. (1) Jail personnel shall have current training in standard first aid equivalent to that provided by the American Red Cross, the American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive training within their first year of employment.

(2) At least one (1) jail personnel on site[~~per shift~~] shall be[~~trained and~~] certified to perform CPR (Cardiopulmonary Resuscitation), equivalent to that provided by the American Red Cross, the American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive certification within their first year of employment.

(3) The jail shall have first aid kits available at all times.

(4) Medical screening shall be performed by the receiving jail personnel on all prisoners upon their admission to the jail and before their placement in prisoner living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include:

(a) Current illnesses and health problems;

(b) Medications taken and special health requirements;

(c) Screening of other health problems designated by the medical authority;

(d) Behavioral observation, state of consciousness, and mental status;

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;

(f) Condition of skin and body orifices, including rashes and infestations; and

(g) Disposition and referral of prisoners to qualified medical personnel on an emergency basis[~~A health status (including current medications, known allergies, and diet or other special medical needs) shall be completed on each prisoner during admission~~].

(5) Each prisoner shall be afforded access to necessary medical care as in KRS 441.045.

(6) The medical authority shall be a licensed practical nurse (LPN), a higher level of licensed nurse, a licensed medical doctor, or licensed doctor of osteopathy. Telehealth services may be used.

Section 10.[~~7.~~] Medical Transfers pursuant to KRS 441.560. (1) A jailer may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill;

(d)1. Is severely and persistently mentally ill; and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the Classification Brach in writing and shall contain the following information:

(a) Prisoner's name;

(b) Prisoner's Social Security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and whether felony or misdemeanor;

(f) Estimated sentence or time to serve;

(g) Whether the prisoner has insurance or not;

(h) Whether the prisoner is indigent or not;

(i) Justification for medical transfer;

(k) Whether the care is necessary or not;

(l) Any conflict reports; and

(m) Relevant attachments such as:

1. Copy of prisoner's insurance card;

2. Doctor's report;

3. Incident report;

4. Citation;

5. Booking information;

6. Preexisting medical records; or

7. Current medication.

(3) If a prisoner is approved for transfer to the department as a medical prisoner, the jail shall provide the following, unless already provided with the transfer request:

(a) All medical information;

(b) Current medication in proper container;

(c) Booking information;

(d) Incident reports;

(e) Current citation;

(f) Classification information;

(g) Conflict reports;

(h) Any additional pertinent information; and

(i) Custody receipt.

(4) If a prisoner is approved for transfer to the department as a medical prisoner, the prisoner shall be transported by the

department.

Section 11.[8.] Food Services. (1) The jail shall comply with KRS 217.280 to 217.390, 803 KAR 2:317, and 902 KAR 45:005.

(2) The jail shall provide prisoners with a nutritionally adequate diet containing at least 2,400 calories daily and jail menus shall be approved annually by a nutritionist or dietician. Condiments shall not be included in the daily caloric totals.

(3) Except as provided by subsection (4) of this section, prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(4) The jailer may elect to provide only two (2) meals on Saturdays, Sundays, and holidays, if both meals still meet the minimum 2,400 calories per day. Condiments shall not be included in the daily caloric totals. If the jailer elects to serve only two (2) meals, more than sixteen (16) hours shall not elapse between any two (2) meals.

(5) The jailer shall provide for medical diets if prescribed by a medical authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary purposes.

(8) Jail personnel shall directly supervise all food prepared within the jail.

(9) All food shall be served under the direct supervision of jail personnel.

(10) The jail shall have sufficient cold and dry food storage facilities.

(11) The jailer or his designee shall inspect the food service area daily.

(12) Canteen food items purchased by prisoners may be stored and prepared in amounts that do not pose a threat to the health or security of the institution.

The Jail Standards Review Advisory Commission established pursuant to KRS 441.055(1)(b) has reviewed changes for this administrative regulation in compliance with KRS 13A.120(3) and 13A.220(6)(a).

LADONNA H. THOMPSON, Commissioner
PAULA F. HOLDEN, Designee of the Chairman of the Jail Standards Review Advisory Commission

APPROVED BY AGENCY: October 14, 2015

FILED WITH LRC: October 23, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 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 the close of business, January 4, 2016. 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, Department of 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 administrative regulation establishes procedures for the protection of basic health and life safety issues in jails that do not house state prisoners (life safety jails).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statues: It establishes procedures for the protection of basic health and life safety issues in jails that do not house state prisoners as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the minimum standards required for the protection of basic health and life safety issues in jails that do not house state prisoners.

(2) If 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 requires life safety jails to develop and maintain a policy and procedures manual that is adopted by the governing authority, adds some administrative functions with regards to maintaining records, reporting extraordinary occurrences and escape procedures. It requires some security and control procedures regarding prisoner surveillance and counts, restrictions on prisoners performing security functions and access to weapons. It requires them to keep daily logs and special reports, have annual inspections and testing of smoke control systems and provide toilet paper and feminine hygiene items, when needed. It requires at least one jail personnel on site to be CPR certified and documented medical screenings provided upon prisoner admission. It also prevents condiments from being included in daily caloric totals.

(b) The necessity of the amendment to this administrative regulation: To revise standards concerning life safety jails as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jails Standards Review Advisory Commission's recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It revises the standards as recommended and makes changes to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 4 life safety jails and their staff, approximately 50 Department of Corrections employees, including 14 Local Facilities staff, and approximately 153 inmates in the life safety jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The life safety jail will need to need to develop or revise procedures and policies to include the added requirements and begin keeping the required documentation and records. If the jail has not had yearly testing of the smoke control system, it will have to begin doing so. The jail will have to begin providing toilet paper and feminine hygiene items, when needed and ensure sufficient staff are trained in CPR, so as to provide at least one staff on site for all shifts. Jail staff will need to begin collecting medical screening information during the booking process and the jail will need to ensure the menu meets daily caloric totals without including calories from condiments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The jail will have to ensure sufficient staff are certified in CPR and that their menu provides adequate minimum nutritional requirements. The jail will have to ensure toilet paper and feminine hygiene products are on hand, in the event they are needed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Better health and safety at life

safety jails.

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

(a) Initially: A specific figure is not known and may vary among the jails. See (4)(b).

(b) On a continuing basis: A specific figure is not known and may vary among the jails. See (4)(b).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Jail budgeted 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: Funding may need to increase depending on the jail. See (4)(b).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No. The standards apply equally to all life safety jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Corrections and life safety jails.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055, 441.560.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? Training costs for the jail may increase if the jail was not already requiring adequate CPR training for staff. A specific figure is not known and may vary among the jails.

(d) How much will it cost to administer this program for subsequent years? Approximately same as (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:015. Schedule I substances.

RELATES TO: KRS 218A.010-218A.050, 21 C.F.R. 1308.11

STATUTORY AUTHORITY: KRS 194A.050, 218A.020, 218A.040, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020 authorizes the Cabinet for Health and Family Services to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.040 and 21 C.F.R. 1308.11, the Cabinet for Health and Family Services designates the substances set forth in this administrative regulation as Schedule I controlled substances. This administrative regulation differs from the federal regulation, 21 C.F.R. 1308.11, because it designates substances that are substantially similar to synthetic cannabinoids as Schedule I controlled substances. The Cabinet for Health and Family Services recognizes that synthetic cannabinoids have significant abuse potential and inclusion on Kentucky's Schedule I list will help reduce the risk to public health.

Section 1. Opiates. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphacetylmethadol (except Levo-alphacetylmethadol LAAM);

(2) Acetyl-alpha-methylfentanyl, N-1-(1-methyl-2-phenethyl)-4-piperidinyl -N-phenylacetamide;

(3) Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(4) Alpha-methylthiofentanyl, N-1-methyl-2-(2-thienyl) ethyl-4-piperidinyl-N- phenylpropanamide;

(5) Benzylfentanyl, N-1-benzyl-4-piperidyl-N-phenylpropanamide;

(6) Beta-hydroxyfentanyl, N-1-(2-hydroxy-2-phenethyl)-4-piperidinyl-N-phenypropanamide;

(7) Beta-hydroxy-3-methylfentanyl, N-1-(2-hydroxy-2phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide;

(8) Difenoxin;

(9) 3-Methylfentanyl, N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide;

(10) 3-methylthiofentanyl N-3-methyl-1-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide;

(11) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);

(12) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide;

(13) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);

(14) Thenylfentanyl, N-1-(2-thienyl) methyl-4-piperidyl-N-phenyl-propanamide;

(15) Thiofentanyl N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinylpropan-amide; and

(16) Tilidine.

Section 2. Opium Derivatives. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:

(1) Drotebanol; and

(2) Etorphine (except hydrochloride salt).

Section 3. Hallucinogenic Substances. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers if the existence of these salts: isomers, including the optical position and geometric isomers; and salts of isomers is possible within the specific chemical designation:

(1) alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine,3-(2-aminobutyl)indole);

(2) 4-bromo-2, 5-dimethoxy-amphetamine (4-bromo-2,5-DMA,4-bromo-2,5-dimethoxy-alpha-methylphenethylamine);

(3) 2, 5-dimethoxyamphetamine (2,5-DMA);

(4) 2, 5-dimethoxy-4-ethylamphetamine (DOET);

(5) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, PCE);

(6) 3, 4-methylenedioxymethamphetamine (MDMA);
(7) 4-methoxyamphetamine (PMA, 4-methoxy-alphamethylphen-ethylamine, paramethoxyamphetamine);
(8) 3, 4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);
(9) N-hydroxy-3, 4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-hydroxy MDA);
(10) Parahexyl (Synhexyl, 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo b,d pyran);
(11) Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);
(12) Thiophene analog of phencyclidine (1-(1-(2-thienyl)cyclo-hexyl)piperidine, TCP, TPCP);[~~and~~]
(13) 1-1-(2-thienyl) cyclohexylpyrrolidine (TCPy);
(14) 2-(2,5-dimethoxyphenyl)-N-{(2-methoxypheny)methyl}ethanamine (2,5H-NBOMe);
(15) 2-(4-iodo-2,5-dimethoxyphenyl)-N-{(2-methoxyphenyl)methyl}ethanamine (2,5I-NBOMe);
(16) 2-(4-bromo-2,5-dimethoxyphenyl)-N-{(2-methoxyphenyl)methyl}ethanamine (2,5B-NBOMe); and
(17) 2-(4-chloro-2,5-dimethoxyphenyl)-N-{(2-methoxyphenyl)methyl}ethanamine (2,5C-NBOMe).

Section 4. Depressants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Mecloqualone; and
(2) Methaqualone.

Section 5. Stimulants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Aminorex (aminoxaphen, 2-amino-5-phenyl-2-oxazoline, 4,5-dihydro-5-phenyl-2-oxazolamine);
(2) Cathinone (2-amino-1-phenyl-1-propanone, alpha-aminopro-piophenone, 2-aminopropiophenone, and norephedrone);
(3) (±) cis-4-methylaminorex ((±) cis-4,5-dihydro-4methyl-5-phenyl-2-oxazolamine);
(4) N,N-dimethylamphetamine (N,N-alpha-trimethyl-benzeneetha-namine, N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers;
(5) N-ethylamphetamine;
(6) Fenethylline;[~~and~~]
(7) Methcathinone (2-(methylamino)-propiophenone, alpha (methylamino)-propiophenone, alpha (methylamino)-propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophe-none, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463 and UR1431), its salts, optical isomers and salts of optical isomers;
(8) Paramethoxymethamphetamine (PMMA); and
(9) Paramethoxyamphetamine (PMA).

Section 6. Synthetic Cannabinoids. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any substance, compound, mixture, or preparation which contains any quantity of any synthetic cannabinoid and is not an FDA approved drug, including the following:
(1) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144);
(2) (1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (XLR-11);
(3) 1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (THJ-2201);
(4) 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone (THJ-018);
(5) (1-(5-fluoropentyl)-1H-benzo[d]imidazol-2-yl)(naphthalen-1-yl)methanone (AM2201-benzimidazole analog, FUBIMINA);
(6) Indole-3-carboxylate esters: Any compound containing a 1H-indole-3-carboxylate ester structure with the ester oxygen bearing a napthyl, quinolinyl, isoquinolinyl, or adamantyl group and substitution at the one (1) position of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not further substituted on the naphthyl, quinolinyl, isoquinolinyl, adamantyl, or benzyl groups to any extent. Examples of this structural class include PB-22 and 5F-PB-22; and
(7) Indazole-3-carboxamides: Any compound containing a 1H-indazole-3-carboxamide structure with substitution at the nitrogen of the carboxamide by a naphthyl, quinolinyl, isoquinolinyl, adamantyl, or 1-amino-1-oxoalkan-2-yl group and substitution at the one (1) position of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indazole ring to any extent and whether or not futher substituted on the naphthyl, quinolinyl, isoquinolinyl, adamantyl, 1-amino-oxoalkan-2-yl, or benzyl groups to any extent. Examples of this structural class include AB-FUBINACA and AB-CHMINACA[~~2-(2,5-dimethoxyphenyl)-N-{(2-methoxypheny)methyl}ethanamine (2,5H-NBOMe);~~
~~(4) 2-(4-iodo-2,5-dimethoxyphenyl)-N-{(2-methoxyphenyl)methyl}ethanamine (2,5K-NBOMe);~~
~~(5) 2-(4-bromo-2,5-dimethoxyphenyl)-N-{(2-methoxyphenyl)methyl}ethanamine (2,5B-NBOMe); and~~
~~(6) 2-(4-chloro-2,5-dimethoxyphenyl)-N-{(2-methoxyphenyl)methyl}ethanamine (2,5C-NBOMe)~~].

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: October 28, 2015
FILED WITH LRC: November 4, 2015 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 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 December 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 close of business, January 4, 2016. 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: The substances set forth in this administrative regulation are designated as Schedule I controlled substances.
(b) The necessity of this administrative regulation: This

administrative regulation is necessary to comply with KRS 218A.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to, or delete or reschedule all substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by designating Schedule I controlled substances.

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

(a) How the amendment will change this existing administrative regulation: In collaboration with recommendations from the Kentucky State Police, this amendment adds certain hallucinogenic substances, stimulants, and synthetic cannabinoids to the list of Schedule I controlled substances.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address the threat of harmful drugs that have no legitimate medical use.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by designating certain harmful substances as Schedule I substances.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by designating harmful and addictive substances with no legitimate medical use as Schedule I substances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will enable law enforcement to make arrests for drug abuse violations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, Kentucky's law enforcement agencies and prosecutors will use this administrative regulation to charge individuals for crimes related to controlled substances under KRS Chapter 218A.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No significant costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment is necessary to address harmful drugs that are a threat to the health, safety, and welfare of Kentucky's citizens.

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

(a) Initially: This administrative body will not incur additional costs to implement the changes made by this amendment.

(b) On a continuing basis: This administrative body will not incur additional costs 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 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? Local governments will expend funds to arrest, prosecute, and incarcerate convicted defendants for trafficking, possessing, and manufacturing Schedule I substances. However, this regulation, in combination with existing law, will accomplish a total ban on harmful drugs before they get a foothold in Kentucky and thereby eradicate the problem of use and abuse.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 effective.

(c) How much will it cost to administer this program for the first year? There may be additional incarcerations related to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There may be additional incarcerations related to this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

21 C.F.R. 1308.11 establishes the federal listing of Schedule I controlled substances.

2. State compliance standards. KRS 218A.020 permits the Cabinet for Health and Family Services to adopt a regulation to control a substance if it finds the substance has a potential for abuse.

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.11 lists controlled substances that have been classified by the DEA as Schedule I drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation adds certain harmful substances to Kentucky's list of Schedule I controlled substances that are not listed on the federal listing of Schedule I controlled substances.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment recognizes that certain hallucinogenic substances, stimulants, and synthetic cannabinoids have significant abuse potential and inclusion on Kentucky's Schedule V list will help reduce the risk to public health.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:020. Schedule II substances.

RELATES TO: KRS 218A.010-218A.030, 218A.060-218A.070, 21 C.F.R. 1308.12

STATUTORY AUTHORITY: KRS 218A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. KRS 218A.020(3) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances under federal law. This administrative regulation designates Schedule II controlled substances.

Section 1. **Substances, Vegetable Origin or Chemical Synthesis.** The Cabinet for Health and Family Services designates as a Schedule II controlled substance any material, compound, mixture, or preparation which contains any quantity of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subsection (1) of this section, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw; and

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine, ecgonine, or ioflupane.

Section 2. Opium and Derivatives. The Cabinet for Health and Family Services designates as a Schedule II controlled substance, in addition to those specified by KRS 218A.070, opium and opiates, and a salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxegol, naloxone, and naltrexone, and their respective salts, including the following:

(1) Raw opium;
(2) Opium extracts;
(3) Opium fluid;
(4) Powdered opium;
(5) Granulated opium;
(6) Tincture of opium;
(7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy);
(8) Codeine;
(9) Dihydroetorphine;
(10) Ethylmorphine;
(11) Etorphine hydrochloride;
(12) Hydrocodone (dihydrocodeinone), including all hydrocodone combination products;
(13) Hydromorphone;
(14) Metopon;
(15) Morphine;
(16) Oripavine;
(17) Oxycodone;
(18) Oxymorphone; and
(19) Thebaine.

Section 3. Opiates. The Cabinet for Health and Family Services designates as a Schedule II controlled substance, in addition to those specified by KRS 218A.070, the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers if the existence of such isomers, esters, ethers, or salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene except:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Bulk dextropropoxyphene, in nondosage forms;
(6) Carfentanil;
(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Isomethadone;
(11) Levo-alphacetylmethadol (some other names include levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone;
(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
(17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(18) Pethidine (meperidine);
(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(22) Phenazocine;
(23) Piminodine;
(24) Racemethorphan;
(25) Racemorphan;
(26) Remifentanil;
(27) Sufentanil; and
(28) Tapentadol.

Section 4. Stimulants. The Cabinet for Health and Family Services designates as a Schedule II controlled substance a material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical position or geometric), and salts of those isomers if the existence of the salts, isomers, or salts of isomers is possible within the specific chemical designation:

(1) Amphetamine;
(2) Methamphetamine;
(3) Phenmetrazine;
(4) Methylphenidate; and
(5) Lisdexamfetamine.

Section 5. Depressants. (1) Except as provided in subsection (2) of this section, the Cabinet for Health and Family Services designates as a Schedule II controlled substance[~~substances~~], in addition to those specified by KRS 218A.070, a material, compound, mixture, or preparation which contains a quantity of the following substances:

(a) Amobarbital;
(b) Glutethimide;
(c) Pentobarbital;[~~and~~]
(d) Phencyclidine; and
(e) Secobarbital.

(2) A suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any of their salts, which has been approved by the United States Food and Drug Administration for marketing only as a suppository, shall be in Schedule III.

Section 6.[~~2.~~] Immediate Precursors. The Cabinet for Health

and Family Services designates as a Schedule II controlled substance[substances], in addition to those specified by KRS 218A.070, a material, compound, mixture, or preparation which contains a quantity of the following substances:

(1) Immediate precursors to amphetamine and methamphetamine and substances:

(a) Phenylacetone;

(b) Phenyl-2-propanone;

(c)[(b)] P2P;

(d)[(c)] Benzyl methyl ketone; and

(e)[(d)] Methyl benzyl ketone;[and]

(2) Immediate precursors to phencyclidine:

(a) 1-phenylcyclohexylamine; and

(b) 1-piperidinocyclohexanecarbonitrile, also known as PCC; and

(3) Immediate precursors of fentanyl, 4-anilino-N-phenethyl-4-piperidine (ANPP).

Section 7.[3.] Hallucinogenic Substances. The Cabinet for Health and Family Services designates as a Schedule II controlled substance[substances], in addition to those specified by KRS 218A.070, a material, compound, mixture, or preparation which contains a quantity of the following substances: Nabilone, also known as (plus or minus) - trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo{b,d}pyran-9-one.

[~~Section 4. Opium and Derivatives. The Cabinet for Health Services designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, opium and opiates, and a salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:~~

~~(1) Raw opium;~~

~~(2) Opium extracts;~~

~~(3) Opium fluid;~~

~~(4) Powdered opium;~~

~~(5) Granulated opium;~~

~~(6) Tincture of opium;~~

~~(7) Codeine;~~

~~(8) Ethylmorphine;~~

~~(9) Etorphine hydrochloride;~~

~~(10) Hydrocodone;~~

~~(11) Hydromorphone;~~

~~(12) Metopon;~~

~~(13) Morphine;~~

~~(14) Oxycodone;~~

~~(15) Oxymorphone; and~~

~~(16) Thebaine.~~

~~Section 5. Opiates. The Cabinet for Health Services designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers if the existence of such isomers, esters, ethers, or salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:~~

~~(1) Alfentanil;~~

~~(2) Bulk dextropropoxyphene, in nondosage forms;~~

~~(3) Carfentanil;~~

~~(4) Levo-alphacetylmethadol (LAAM);~~

~~(5) Remifentanil; and~~

~~(6) Sufentanil.~~]

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 28, 2015

FILED WITH LRC: November 4, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 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 December 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 close of business, January 4, 2016. 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 designates Schedule II controlled substances.

(b) The necessity of this administrative regulation: This administrative regulation is needed to designate Schedule II controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to or delete or reschedule all substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by designating Schedule II controlled substances.

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

(a) How the amendment will change this existing administrative regulation: On August 22, 2014, the US Drug Enforcement Administration (DEA) published a final rule in the Federal Register reclassifying hydrocodone combination products (HCP) from Schedule III to Schedule II. Therefore, to ensure consistency with the DEA's rescheduling of these painkillers, this amendment adds HCPs to Kentucky's list of Schedule II drugs. In addition, this amendment adds other drugs to Kentucky's list of Schedule II drugs to ensure consistency with the federal Schedule II regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to promote consistency between the state listing of Schedule II drugs and the federal listing of Schedule II drugs at 21 C.F.R. 1308.12. This amendment further assures that the Cabinet is carrying out its responsibility to establish and amend the state's list of Schedule II controlled substances based upon high potential for abuse, currently accepted medical use, as well as potential for psychic or physical dependence if abused.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to or delete or reschedule substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring the Cabinet is carrying out its responsibility to establish and amend the state's list of Schedule II controlled substances based upon high potential for abuse, currently accepted medical use, as well as potential for psychic or physical dependence if abused.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs as well as law enforcement agencies and prosecutors who use this administrative regulation to charge individuals for crimes related to controlled substances, including HCPs, under KRS Chapter 218A.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, Kentucky's law enforcement agencies and prosecutors will use this administrative regulation to charge individuals for crimes related to controlled substances under KRS Chapter 218A. No additional action needed for pharmacists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By making this administrative regulation consistent with the federal regulations for Schedule II substances, this amendment reduces confusion for pharmacists, law enforcement agencies, and prosecutors who rely on state and federal regulations for scheduling information.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement 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 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 fees or additional 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.

(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 affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs as well as law enforcement agencies and prosecutors who use this administrative regulation to charge individuals for crimes related to controlled substances, including HCPs, under KRS Chapter 218A.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020, KRS 218A.060, KRS 218A.070, 21 C.F.R. 1308.12

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effective.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 1308.12

2. State compliance standards. KRS 218A.020

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.12 lists controlled substances that have been classified by the DEA as Schedule II drugs.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:025. Schedule III substances.

RELATES TO: KRS 218A.010-218A.030, 218A.080, 218A.090, 21 C.F.R. 1300.01, 21 C.F.R. 1308.01, 21 C.F.R. 1308.13, 21 C.F.R. 1308.34, 21 U.S.C. 801, 812

STATUTORY AUTHORITY: KRS 218A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. KRS 218A.020(3) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances controlled under federal law. This administrative regulation designates Schedule III controlled substances. This administrative regulation differs from the federal regulation because it designates pentazocine, barbital, methylphenobarbital, and phenobarbital as a Schedule III controlled substance and the federal regulation designates these substances as Schedule IV controlled substances. The Cabinet for Health and Family Services recognizes that pentazocine and derivatives of barbituric acid or its salts have significant abuse potential, and inclusion on Kentucky's Schedule III list will help reduce the risk to public health.

Section 1. Amphetamine and Methamphetamine Combination Products. The Cabinet for Health and Family Services designates the following amphetamine and methamphetamine combination products as Schedule III controlled substances:

(1) A tablet or capsule containing:

(a) Methamphetamine hydrochloride 1 mg.;

(b) Conjugated estrogens-equine 0.25 mg.; and
(c) Methyl testosterone 2.5 mg; and
(2) A liquid containing, in each 15 cc:
(a) Methamphetamine hydrochloride 1 mg.;
(b) Conjugated estrogens-equine 0.25 mg.; and
(c) Methyl testosterone 2.5 mg.

Section 2. Stimulants. The Cabinet for Health and Family Services designates as Schedule III controlled substances a material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical position or geometric), and salts of those isomers if the existence of the salts, isomers or salts of isomers is possible within the specific chemical designation:
(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine[~~Chlortermine~~]; and
(4) Phendimetrazine.

Section 3. Depressants. The Cabinet for Health and Family Services designates as Schedule III controlled substances the following:
(1) A material, compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital, or any of their salts, and at least one (1) other active medicinal ingredient which is not a controlled substance;
(2) A suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any of their salts, which has been approved by the United States Food and Drug Administration for marketing only as a suppository;
(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof;
(4) Chlorhexadol;
(5) Embutramide;
(6) A drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Chapter 9. Gamma hydroxybutyric acid is also known as:
(a) GHB;
(b) Gamma-hydroxybutyrate;
(c) 4-hydroxybutyrate;
(d) 4-hydroxybutanoic acid;
(e) Sodium oxybate; or
(f) Sodium oxybutyrate;
(7)[~~(4)~~] Ketamine, its salts, isomers, and salts of isomers. Ketamine is also known as (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone[~~cyclhexanone~~];
(8) Lysergic acid;
(9) Lysergic acid amide;
(10) Methyprylon;
(11) Perampanel and its salts, isomers, and salts of isomers;
(12) Sulfondiethylmethane;
(13) Sulfonethylmethane;
(14) Sulfonmethane; and
(15)[~~and (5)~~] Tiletamine and zolazepam or any of their salts.
(a) Tiletamine is also known as 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.
(b) Zolazepam is also known as 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon[~~4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-dizepin-7(1H)one, flupyrazpon~~].

Section 4. Pentazocine Drug Products. The Cabinet for Health and Family Services designates, in addition to the parenteral or injectable form of Pentazocine which is designated as a Schedule III controlled substance by KRS 218A.090(3), a material, compound, mixture, or preparation which contains a quantity of Pentazocine, including its salts.

Section 5. Anabolic Steroids. (1) The Cabinet for Health and Family Services designates as Schedule III Controlled Substances, in addition to those listed in KRS 218.090(5), any material, compound, mixture, or preparation containing any quality of an anabolic steroid as defined by 21 C.F.R. 1300.01, including its salts, esters, and ethers.
(2) As used in this section, the term anabolic steroid does not include an anabolic steroid:
(a) That is expressly intended for administration through implants to cattle or other nonhuman species; and
(b) Which has been approved by the Secretary of the United States Department of Health and Human Services for administration as described in paragraph (a) of this subsection.
(3) If any person prescribes, dispenses, or distributes a product identified in subsection (2) of this section for human use, the person shall be considered to have prescribed, dispensed, or distributed a Schedule III anabolic steroid[~~a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers, if the existence of salts of isomers is possible within the specific chemical designation:~~
~~(1) Chlorotestosterone;~~
~~(2) Dihydrotestosterone; and~~
~~(3) Methandranone~~].

Section 6. Hallucinogenic Substances. The Cabinet for Health and Family Services designates as Schedule III controlled substances, in addition to those listed in KRS 218A.090, a material, compound, mixture, or preparation which contains a quantity of dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved product. Dronabinol is also known as:
(1) (6aR-trans)-6a,7,8,10a- tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d][~~{b,d}~~]pyran-1-ol; or
(2) (-)-delta-9-(trans)-tetrahydrocannabinol.

Section 7. Narcotics. (1) The Cabinet for Health and Family Services designates as Schedule III controlled substance any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as established in this subsection:
(a) Not more than one and four-fifths (1.8) grams of codeine per 100 milliliters or not more than ninety (90) milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium;
(b) Not more than one and four-fifths (1.8) grams of codeine per 100 milliliters or not more than ninety (90) milligrams per dosage unit with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(c) Not more than one and four-fifths (1.8) grams of dihydrocodeine per 100 milliliters or not more than ninety (90) milligrams per dosage unit with one (1) or more active nonnarcotic ingredients in recognized therapeutic amounts;
(d) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than fifteen (15) milligrams per dosage unit with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(e) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than twenty-five (25) milligrams per dosage unit with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts; and
(f) Not more than fifty (50) milligrams of morphine per 100 milliliters or per 100 grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.
(2) The Cabinet for Health and Family Services designates as Schedule III controlled substance a material, compound, mixture, or preparation which contains any quantity of buprenorphine, or its salts.

Section 8. Nalorphine. The Cabinet for Health and Family Services designates as Schedule III controlled substance a material, compound, mixture, or preparation which contains any quantity of nalorphine or its salts.

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 28, 2015

FILED WITH LRC: November 4, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 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 December 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 close of business, January 4, 2016. 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 designates Schedule III controlled substances.

(b) The necessity of this administrative regulation: This administrative regulation is needed to designate Schedule III controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to or delete or reschedule all substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by designating Schedule III controlled substances.

(2) If 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 to Kentucky's list of Schedule III controlled substances to ensure consistency with the federal Schedule III regulations, and corrects typographical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that Kentucky's list of Schedule III drugs is consistent with the federal Schedule III regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to or delete or reschedule substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring that Kentucky's list of Schedule III drugs is consistent with the federal Schedule III regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no additional action needed for pharmacists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By making this administrative regulation consistent with the federal regulations for Schedule III substances, this amendment reduces confusion for pharmacists who rely on state and federal regulations for scheduling information.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement 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 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 fees or additional 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.

(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? The administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020, KRS 218A.080, KRS 218A.090

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 1308.13
2. State compliance standards. KRS 218A.020
3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.13 lists controlled substances that have been classified by the DEA as Schedule III drugs.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation differs from the federal regulation because it designates pentazocine as a Schedule III controlled substance and the federal regulation designates pentazocine as a Schedule IV controlled substance. NOTE: Designating pentazocine, barbital, methylphenobarbital, and phenobarbital as Schedule III controlled substances is not a new change.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Cabinet for Health and Family Services recognizes that pentazocine and derivatives of barbituric acid or its salts have significant abuse potential and inclusion on Kentucky's Schedule III list helps reduce the risk to public health.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS 218A.010-218A.030, 218A.100, 218A.110, 21 C.F.R. 1308.14, 21 U.S.C. 801, 812
STATUTORY AUTHORITY: KRS 218A.020
NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to add, delete, or reschedule substance enumerated in KRS Chapter 218A. KRS 218A.020(3) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances controlled under federal law. This administrative regulation designates Schedule IV controlled substances. This administrative regulation differs from the federal regulation because it designates nalbuphine[~~the following substances~~] as a Schedule IV controlled substance[~~: Tramadol, Carisoprodol, and Nalbuphine~~]. The Cabinet for Health and Family Services recognizes that[~~Tramadol, Carisoprodol, and~~] nalbuphine has[~~have~~] significant abuse potential and inclusion on Kentucky's Schedule IV list will help reduce the risk to public health.

Section 1. Stimulants. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including their salts, isomers whether optical, position, or geometric, and salts of the isomers, if the existence of the salts, isomers, and salts of isomers is possible:
(1) Cathine ((+)-norpseudoephedrine);
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenproporex;
(5) Mazindol;
(6) Mefenorex;
(7) Modafinil;
(8) Pemoline, including organometallic complexes and chelates;
(9) Phentermine;
(10) Pipradrol;
(11) Sibutramine; and
(12) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

Section 2. Depressants. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Alfaxalone;
(2) Alprazolam;
(3)[~~(2)~~] Bromazepam;
(4)[~~(3)~~] Camazepam;
(5)[~~(4)~~] Carisoprodol;
(6) Chloral betaine;
(7) Chloral hydrate;
(8)[~~(5)~~] Chlordiazepoxide;
(9)[~~(6)~~] Clobazam;
(10)[~~(7)~~] Clonazepam;
(11)[~~(8)~~] Clorazepate;
(12)[~~(9)~~] Clotiazepam;
(13)[~~(10)~~] Cloxazolam;
(14)[~~(11)~~] Delorazepam;
(15)[~~(12)~~] Diazepam;
(16)[~~(13)~~] Dichloralphenazone;
(17)[~~(14)~~] Estazolam;
(18) Ethchlorvynol;
(19) Ethinamate;
(20)[~~(15)~~] Ethyl loflazepate;
(21)[~~(16)~~] Fludiazepam;
(22)[~~(17)~~] Flunitrazepam;
(23)[~~(18)~~] Flurazepam;
(24) Fospropofol;
(25)[~~(19)~~] Halazepam;
(26)[~~(20)~~] Haloxazolam;
(27)[~~(21)~~] Ketazolam;
(28)[~~(22)~~] Loprazolam;
(29)[~~(23)~~] Lorazepam;
(30)[~~(24)~~] Lormetazepam;
(31)[~~(25)~~] Mebutamate;
(32)[~~(26)~~] Medazepam;
(33) Meprobamate;
(34)[~~(27)~~] Methohexital;
(35)[~~(28)~~] Midazolam;
(36)[~~(29)~~] Nimetazepam;
(37)[~~(30)~~] Nitrazepam;
(38)[~~(31)~~] Nordiazepam;
(39)[~~(32)~~] Oxazepam;
(40)[~~(33)~~] Oxazolam;
(41) Paraldehyde;
(42) Petrichloral;
(43)[~~(34)~~] Pinazepam;
(44)[~~(35)~~] Prazepam;
(45)[~~(36)~~] Quazepam;
(46) Suvorexant;
(47)[~~(37)~~] Temazepam;
(48)[~~(38)~~] Tetrazepam;
(49)[~~(39)~~] Triazolam;
(50)[~~(40)~~] Zaleplon;
(51)[~~(41)~~] Zolpidem; and
(52)[~~(42)~~] Zopiclone.

Section 3. Fenfluramine[~~Fenfluamine~~]. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains any quantity of fenfluramine, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

Section 4. Lorcaserin. The Cabinet for Health and Family

Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains any quantity of lorcaserin, including its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible.

Section 5. Narcotics. The Cabinet for Health and Family Services designates as Schedule IV controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation containing a quantity of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, as set forth below:

(1) Butorphanol (including its optical isomers);

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane);

(3) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;[~~and~~]

(4) Nalbuphine; and

(5) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers, including tramadol.

[~~Section 5. Central Analgesics. The Cabinet for Health and Family Services designates as a Schedule IV controlled substance material, compound, mixture, or preparation which contains any quantity of Tramadol or its salts.~~]

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 28, 2015

FILED WITH LRC: November 4, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 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 December 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 close of business, January 4, 2016. 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 designates Schedule IV controlled substances.

(b) The necessity of this administrative regulation: This administrative regulation is needed to designate Schedule IV controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to or delete or reschedule all substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by designating Schedule IV controlled substances.

(2) If 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 to Kentucky's list of Schedule IV controlled substances to ensure consistency with the federal Schedule IV regulations, and corrects typographical errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that Kentucky's list of Schedule IV drugs is consistent with the federal Schedule IV regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to or delete or reschedule substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring that Kentucky's list of Schedule IV drugs is consistent with the federal Schedule IV regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no additional action needed for pharmacists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By making this administrative regulation consistent with the federal regulations for Schedule IV substances, this amendment reduces confusion for pharmacists who rely on state and federal regulations for scheduling information.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement 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 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 fees or additional 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.

(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? The administrative

regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020, KRS 218A.100, KRS 218A.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 amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 1308.14

2. State compliance standards. KRS 218A.020

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.14 lists controlled substances that have been classified by the DEA as Schedule IV drugs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation differs from the federal regulation because it designates nalbuphine as a Schedule IV controlled substance and the federal regulation does not designate nalbuphine as a controlled substance. NOTE: Designating nalbuphine as a Schedule IV controlled substance is not a new change made by this amendment to 902 KAR 55:030.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Cabinet for Health and Family Services recognizes that nalbuphine has significant abuse potential and inclusion on Kentucky's Schedule IV list helps reduce the risk to public health.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:035. Schedule V substances.

RELATES TO: KRS 218A.010-218A.030, 218A.120, 218A.130, 21 C.F.R. 1308.15, 21 U.S.C. 812

STATUTORY AUTHORITY: KRS 218A.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to add, delete, or reschedule substances enumerated in KRS Chapter 218A. KRS 218.020(3) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances controlled under federal law. This administrative regulation designates Schedule V controlled substances.

Section 1. Schedule V Controlled Substances. The Cabinet for Health and Family Services hereby designates as Schedule V controlled substances, in addition to those specified by KRS 218A.130, the following:

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. A compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c)[~~(b)~~] Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d)[~~(c)~~] Not more than two and five-tenths (2.5) milligrams of diphenoxylate[~~hydrochloride~~] and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(e)[~~(d)~~] Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f)[~~(e)~~] Not more than five-tenths (0.5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

(2) Stimulants. A material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(3) Depressants. A material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts:

(a) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

(b) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]; and

(c) Pregabalin[(S)-3-(aminomethyl)-5-methylhexanoic acid].

Section 2. Dispensing Without Prescription. A controlled substance listed in Schedule V which is not a prescription drug under the Federal Food, Drug, and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, if:

(1) The medicinal preparation contains in addition to the controlled substances, some drug or drugs conferring upon it medicinal qualities other than those possessed by the controlled substances alone;

(2) Not more than 240cc (eight (8) ounces) nor more than forty-eight (48) dosage units of any such controlled substance containing opium, is dispensed at retail to the same purchaser in any given forty-eight (48) hour period;

(3) The labeling and packaging is in accordance with the requirements of the federal and state Food, Drug, and Cosmetic Act and the United States Pharmacopeia;

(4) The preparation is dispensed or sold in good faith as a medicine, and not for the purpose of evading the provisions of KRS Chapter 218A;

(5) The preparation is not displayed in areas open to the public;

(6) The dispensing is made only by a pharmacist, and not by a nonpharmacist employee even if under the supervision of a pharmacist. Although, after the pharmacist has fulfilled his professional and legal responsibilities set forth in this section, the actual cash, credit transaction, or delivery, may be completed by a nonpharmacist;

(7) The purchaser is at least eighteen (18) years of age;

(8) The pharmacist requires every purchaser of a controlled substance under this section, not known to him, to furnish suitable identification, including proof of age if appropriate; and

(9) The dispensing of exempt controlled substances under this administrative regulation is recorded in a bound book, maintained by the pharmacist, which shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who dispensed the substance to the purchaser. The book shall be maintained in accordance with the recordkeeping requirements of KRS 218A.200.

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: October 28, 2015

FILED WITH LRC: November 4, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 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 December 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 close of business, January 4, 2016. 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 designates Schedule V controlled substances.

(b) The necessity of this administrative regulation: This administrative regulation is needed to designate Schedule V controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to or delete or reschedule all substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by designating Schedule V controlled substances.

(2) If 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 to Kentucky's list of Schedule V controlled substances to ensure consistency with the federal Schedule V regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that Kentucky's list of Schedule V drugs is consistent with the federal Schedule V regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 218A.020 which allows the Cabinet for Health and Family Services to add substances to or delete or reschedule substances enumerated in the schedules set forth in KRS Chapter 218A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring that Kentucky's list of Schedule V drugs is consistent with the federal Schedule V regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no additional action needed for pharmacists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By making this administrative regulation consistent with the federal regulations for Schedule V substances, this amendment reduces confusion for pharmacists who rely on state and federal regulations for scheduling information.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement 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 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 fees or additional 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.

(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? The administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding Scheduled drugs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020, KRS 218A.120, KRS 218A.130

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first

year? No additional costs are necessary to administer this program during the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 1308.15

2. State compliance standards. KRS 218A.020, 218A.120, 218A.130

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.15 lists controlled substances that have been classified by the DEA as Schedule V drugs.

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

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

NEW ADMINISTRATIVE REGULATIONS

NONE

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 10, 2015

Members: Senators Perry Clark, Alice Forgy Kerr, Ernie Harris and Representatives Denver Butler, Mary Lou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Ange Bertholf, Emily Caudill, Betsy Cupp, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

Guests: Sharron Burton, Personnel Cabinet; Steve Hart, Cheryl LaLonde, Board of Pharmacy; Karalee Oldenkamp, Board of Chiropractic Examiners; Louis Kelly, Board of Physical Therapy; Nicole Biddle, Robert Levine, Board of Podiatry; Brian Judy, Dr. Owen Nichols, Board of Examiners of Psychology; Nicole Biddle, Larry Disney, Tom Veit, Board of Real Estate Appraisers; Mary Badami, Nicole Biddle, Board of Marriage and Family Therapy; Matt Jones, Board of Licensed Diabetes Educators; Ron Brook, Karen Waldrop, David Wicker, Department of Fish and Wildlife Resources; John Enochs, Katie Smith, Cabinet for Economic Development; Amy Barker, Department of Corrections; Mark Cook, Miranda Denney, LaDonna Koebel, Veronica Koontz, Kris Mann, Kristie Stutler, Department of Juvenile Justice; Ann Dangelo, Rodney Kuhl, Rick Taylor, Transportation Cabinet; David Couch, Bob Hackworth, Lisa Moore, Amy Peabody, Department of Education; Paul Gannoe, Barry Poynter, Eastern Kentucky University; Charles Lowther, Department of Workers' Claims; Steve Humphress, Melissa McQueen, Department of Alcoholic Beverage Control; Mark Guilfoil, Dr. Mary Scollay, Susan Speckert, Horse Racing Commission; Noelle Bailey, Scott Jones, Department of Charitable Gaming; Diona Mullins, Office of Health Policy; Deborah Anderson, Victoria Elridge, Phyllis Sosa, Bob White, Department for Aging and Independent Living; Raymond Trybus, Walden College; Vanessa Paddy, Kentucky Coordinating Body of American Association of Diabetes Educators.

The Administrative Regulation Review Subcommittee met on Tuesday, November 10, 2015, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet; Classified

101 KAR 2:210 & E. 2016 Plan Year Handbook for the public employee health insurance program. Sharron Burton, deputy executive director, Office of Legal Services, represented the cabinet.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:220. Collaborative care agreements. Steve Hart, executive director, and Cheryl LaLonde, general counsel, represented the board.

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 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Chiropractic Examiners: Board

201 KAR 21:015. Code of ethical conduct and standards of practice. Karalee Oldenkamp, D.C., executive director, represented the board.

In response to a question by Co-Chair Harris, Dr. Oldenkamp stated that a U.S. District Court upheld 2015 House Bill 153, which prohibited licensees from contacting or causing to be contacted an injured person; however, the commensurate provision in this administrative regulation was questionable because a time limit was not established. In order to prevent further loss of board funds through litigation, the board opted to delete the provision from this administrative regulation and rely on the statutory provisions alone.

Board of Physical Therapy: Board

201 KAR 22:020. Eligibility and credentialing procedure. Louis Kelly, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to clarify that retakes of the examination and the remediation provisions shall only apply to an applicant for licensure or certification; (2) to amend Section 4 to clarify that retakes of an examination or remediation shall not apply to an applicant for a temporary permit; and (3) to amend Sections 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.

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or physical therapist assistant.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add the edition date on both forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 22:070. Requirements for foreign-educated physical therapists.

A motion was made and seconded to approve the following amendments: to amend Section 3 to update the edition dates of the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Board of Podiatry: Board

201 KAR 25:011. Approved schools; examination application; fees. Nicole Biddle, assistant attorney general, and Robert Levine, chair, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, RELATES TO paragraph, and Sections 1, 2, 3, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to require both a state and federal background check to be consistent with KRS 218A.205(7). Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 25:021. Annual renewal of licenses, fees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 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.

201 KAR 25:031. Continuing education.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Examiners of Psychology: Board

201 KAR 26:121. Scope of practice and dual licensure. Brian Judy, assistant attorney general, and Dr. Owen Nichols, board chair and psychologist, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend 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.

201 KAR 26:175. Continuing education.

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, 2, 3, 5, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

In response to a question by Co-Chair Harris, Mr. Judy stated that education requirements for licensure varied from state to state. Some states allowed online courses. This administrative regulation established a blended requirement mixing hours obtained traditionally on campus as well as online. This standard benefited patients by increasing access through increased licensure. Dr. Nichols stated that licensees still received extensive practicum in the educational programs prior to licensure. Licensees still had doctoral training and supervised experiences.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Real Estate Appraisers Board: Board

201 KAR 30:050. Examination and experience requirement. Nicole Biddle, assistant attorney general; 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 this administrative regulation allowed more hands-on experience, rather than evaluation of the experience of others.

201 KAR 30:380. Individual appraiser license renewal and fee.

Board of Licensure of Marriage and Family Therapists: Board

201 KAR 32:025. Marriage and family therapist associate. Mary Badami, LMFT, chair, and Nicole Biddle, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: 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.

201 KAR 32:035. Supervision of marriage and family therapist associates.

A motion was made and seconded to approve the following amendments: to amend Sections 2 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.

201 KAR 32:045. Examination.

A motion was made and seconded to approve the following amendment: to amend Section 1 to include a cross-reference citation to 201 KAR 32:030, which establishes the referenced fees. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 32:060. Continuing education requirements.

In response to questions by Co-Chair Harris, Ms. Badami stated that continuing education requirements pertaining to suicide were added to comply with the authorizing statute. The requirement was one (1), six (6) hour course, rather than six (6), one (1) hour courses, every six (6) years. Licensed marriage and family therapists were required to obtain at least fifteen (15) continuing education hours annually, and associates were required to obtain at least ten (10) continuing education hours annually.

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 the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 1:161. Repeal of 301 KAR 1:160. Ron Brooks, fisheries director; 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 the Farm Pond Stocking program was being terminated in order to reallocate those funds to the Fishing in Neighborhoods program, which was very successful and provided opportunities for fishing to many who would not normally have an opportunity, such as those who live in inner-city areas, senior citizens, and those who need ADA accommodations. The department would still assist those seeking to stock farm ponds; however, the actual suppliers would now tend to be private suppliers.

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

Game

301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting.

CABINET FOR ECONOMIC DEVELOPMENT: Economic Development Finance Authority: Authority

307 KAR 1:005. Applications for Kentucky Incentive Programs. John Enochs, senior attorney, and Katie Smith, executive director, represented the authority.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend Section 9 for clarity and consistency. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:050. Luther Luckett Correctional Complex. Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) correct a policy number; (2) clarify behavior watch procedures; and (3) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Juvenile Justice: Child Welfare

505 KAR 1:100 & E. Department of Juvenile Justice Policies and Procedures: admissions. Miranda Denney, deputy commissioner; LaDonna Koebel, assistant general counsel; and Kristie Stutler, administrative coordinator, represented the department.

505 KAR 1:110 & E. Department of Juvenile Justice Policy and Procedures Manual: program services.

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

TRANSPORTATION CABINET: **Department of Vehicle Regulation**: **Division of Motor Carriers**: **Motor Carriers**

601 KAR 1:113 & E. Transportation network company. Ann D'Angelo, assistant general counsel; Rodney Kuhl, commissioner; and Rick Taylor, deputy commissioner, represented the division.

Co-Chair Harris thanked the cabinet for working with the industry to reach an agreement regarding this administrative regulation.

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 through 8 to comply with the

drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: General Admission

702 KAR 1:170. School district data security and breach procedures. David Couch, chief information officer; Robert Hackworth, chief information security officer; and Amy Peabody, assistant general counsel, represented the department.

In response to questions by Co-Chair Harris, Mr. Hackworth stated that this administrative regulation established education on how to prevent and manage a security breach. Each year, each school board would consider security measures regarding preventing and managing a security breach. The boards would consider how to reach a board-specific balance between risk and cost, using best practices guidelines.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

EASTERN KENTUCKY UNIVERSITY: Board of Regents

775 KAR 1:070. Capital construction procedures. Paul Gannoe, director of capital construction, and Barry Poynter, vice president of finance, represented the board.

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 clarify that the EKU Board of Regents is electing to perform these duties and subsequently, delegating these duties to the President of EKU, which is more consistent with the authorizing language in KRS 164A.630. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workers' Claims: Workers' Claims

803 KAR 25:185. Procedure for e-mail notification of cancellation or removal of location of specific workers' compensation coverage. Dwight Lovan, commissioner, represented the department.

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 Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:015 & E. Interlocking substantial interest between licensees prohibited. Steve Humphress, general counsel, and Melissa McQueen, staff attorney, 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 1 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Local Administrators

804 KAR 10:031. Local government regulatory license fees.

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 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Horse Racing Commission: Thoroughbred Racing

810 KAR 1:018. Medication; testing procedures; prohibited practices. Marc Guilfoil, director of racing; Dr. Mary Scollay, equine medical director; and Susan Speckert, general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend Sections 1, 2, 6, 12, and 20 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:028. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: to amend Section 1 to correct the proper name of the withdrawal guidelines. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:040. Drug, medication, and substance classification schedule and withdrawal guidelines.

Harness Racing

811 KAR 1:090. Medication; testing procedures; prohibited practices.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend Sections 1, 2, 6, 12, and 20 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:093. Drug, medication, and substance classification schedule and withdrawal guidelines.

811 KAR 1:095. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct the proper name of the withdrawal guidelines; and (2) to amend Sections 1, 2, 4, 9, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:093. Drug, medication, and substance classification schedule and withdrawal guidelines.

811 KAR 2:096. Medication; testing procedures; prohibited practices.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend Sections 1, 2, 6, 12, and 20 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 2:100. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: to amend Section 1 to correct the proper name of the withdrawal guidelines. Without objection, and with agreement of the agency, the amendments were approved.

Department of Charitable Gaming: Charitable Gaming

820 KAR 1:005. Exempt Organizations. Noelle Bailey, general counsel, and Scott Jones, commissioner, represented the department.

820 KAR 1:015. Issuance of annual license for a charitable

organization.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) to amend Section 4 to clarify that a lease shall be submitted if required because sessions may be held at the organization's building so there is not a lease. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:016. Distributor and manufacturer licensees.

820 KAR 1:017. Licensing inspections.

820 KAR 1:025. Financial reports of a licensed charitable organization.

820 KAR 1:027. Quarterly reports of a licensed distributor and a licensed manufacturer.

820 KAR 1:029. Facility licensees.

820 KAR 1:034. Pulltab dispenser construction and use.

820 KAR 1:036. Pulltab rules of play.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:046. Bingo rules of play.

820 KAR 1:050. Raffle standards.

820 KAR 1:055. Charity fundraising event standards.

820 KAR 1:056. Special limited charity fundraising event standards.

820 KAR 1:057. Accurate records.

820 KAR 1:058. Gaming occasion records.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:120. Allowable expenses.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:125. Gaming inspections.

A motion was made and seconded to approve the following amendment: to amend Section 3 to delete the provision that required a manufacturer or distributor to pay for the cost of the audit or inspection. Without objection, and with agreement of the agency, the amendment was approved.

820 KAR 1:130. Administrative actions.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:055. Certificate of need forms. Diona Mullins, policy advisor, represented the office.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:075. Certificate of need nonsubstantive review.

A motion was made and seconded to approve the following amendments: 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.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Division of Quality Living: Aging Services

910 KAR 1:240. Certification of assisted-living communities. Deborah Anderson, commissioner; Victoria Elridge, deputy commissioner; and Bob White, executive director, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 6, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the December 9, 2015, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Veterinary Examiners: Board

201 KAR 16:050. Continuing education.

Board of Alcohol and Drug Counselors: Board

201 KAR 35:010 & E. Definitions for 201 KAR Chapter 35.

201 KAR 35:015 & E. Grandparenting of certification to licensure.

201 KAR 35:020 & E. Fees.

201 KAR 35:030 & E. Code of ethics.

201 KAR 35:040 & E. Continuing education requirements.

201 KAR 35:050 & E. Curriculum of study.

201 KAR 35:055 & E. Temporary registration or certification.

201 KAR 35:060 & E. Complaint procedure.

201 KAR 35:075 & E. Substitution for work experience for an applicant for certification as an alcohol and drug counselor.

201 KAR 35:080. Voluntary inactive status.

201 KAR 35:090 & E. Appeal from a denial of or refusal to renew or reinstate a registration, certificate, or license, or denial of continuing education hours by the board.

Board of Licensed Diabetes Educators: Board

201 KAR 45:110. Supervision and work experience. Matt James, assistant attorney general, represented the board. Vanessa Paddy, diabetes educator, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair Harris, Mr. James stated that the standard for in-person, supervisor – apprentice diabetes educator interactions was being eased because it was overburdensome and was impacting access. Educators were geographically isolated in some rural areas, so that in-person interaction requirements discouraged eligible supervisors from

taking on apprentices. Co-Chair Harris stated that this administrative regulation seemed to focus on making requirements easier for the supervisors, rather than ensuring quality for the patients and the diabetes problem in Kentucky. Mr. James stated that if supervisor requirements were onerous, the board would not have enough licensed diabetes educators.

Ms. Paddy stated that, although she was a member of the Kentucky State Coordinating Body of the American Association of Diabetes Educators (AADE), she appeared in opposition to this administrative regulation on behalf of Kentucky diabetes patients, not diabetes educators or the AADE. The AADE submitted comments during the public comment period; however, the board chose not to amend this administrative regulation as a response to the public comments. The AADE, during the public comment period, requested that this administrative regulation be amended to require that an apprentice diabetes educator shall interact with the supervisor no less than two (2) hours quarterly, both of which shall be during direct observation of a patient – apprentice education interaction encompassing comprehensive diabetes education as established in the Scope of Practice, 201 KAR 45:160. The board declined the request because of privacy concerns; burdensome travel time, which resulted in fewer supervisors willing to take on apprentices, thus negatively impacting access; the interaction time being a minimum requirement, but supervisors were not prohibited from meeting with apprentices more often; and apprentices being allowed to provide diabetes education without direct observation other than this proposed minimum requirement.

Regarding the board's concern pertaining to patient privacy, Ms. Paddy stated that supervisors were health professionals, accountable by employers and licensing bodies to know and adhere to privacy and HIPAA requirements. Because a supervisor was limited to no more than four (4) apprentices, a two (2) hour quarterly requirement for an in-person interaction was not overburdensome. Direct observation may be via teleconference, and costs may be offset through patient fees. One (1) hour was insufficient, especially because the one (1) hour was not required to include patient interaction. It was crucial to maintain quality as this program progressed, and this administrative regulation was a step backward. Care should be of high quality and should include baseline knowledge of at least the established Scope of Practice. Licensees were not required to pass a national examination, which was unique among most professional boards; therefore, a minimum requirement of at least two (2) hours was necessary to establish quality in this program.

Senator Kerr stated that it was necessary to have access and quality.

In response to questions by Co-Chair Marzian, Mr. James stated that this administrative regulation would promote more licensed diabetes educators, which would then improve patient access. Licensees were not required to pass a national examination. The board agreed to defer consideration of this administrative regulation to the December 9 meeting of the Subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred to the December 9 meeting of the Subcommittee.

Department of Agriculture: Office of Consumer and Environmental Protection: Division of Environmental Services: Structural Pest Control

302 KAR 29:010. Definitions for 302 KAR Chapter 29.

302 KAR 29:020. General provisions for structural pest control.

302 KAR 29:040. Settlement proceedings.

302 KAR 29:050. Commercial structural pest control and fumigation.

302 KAR 29:060. Certification.

PUBLIC PROTECTION CABINET: Department of Charitable Gaming: Charitable Gaming

820 KAR 1:044. Bingo equipment.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General

Division of Health Care: Health Services and Facilities

902 KAR 20:091. Facilities specifications, operation and services; community mental health center.

902 KAR 20:180. Psychiatric hospitals; operation and services.

902 KAR 20:200. Tuberculosis (TB) testing for residents in long-term care settings.

Department for Medicaid Services: Division of Policy and Operations: Medicaid Services

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

Division of Community Alternatives: Medicaid Services

907 KAR 1:045. 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: Medicaid Services

907 KAR 1:595. Model Waiver II service coverage and reimbursement policies and requirements.

907 KAR 1:626. Reimbursement of dental services.

Division of Policy and Operations: 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 2:05 p.m. until December 9, 2015, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
November 5, 2015

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of November 5, 2015, having been referred to the Committee on October 7, 2015, pursuant to KRS 13A.290(6):

301 KAR 1:201

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:

301 KAR 1:201

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 November 5, 2015 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
November 5, 2015

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of November 5, 2015, having been referred to the Committee on October 7, 2015, pursuant to KRS 13A.290(6):

603 KAR 10:010
603 KAR 10:002
603 KAR 10:021
603 KAR 5:155

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 5, 2015 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of November 18, 2015

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of November 18, 2015, having been referred to the Committee on August 11, 2015 and November 4, 2015, pursuant to KRS 13A.290(6):

201 KAR 5:030
201 KAR 5:110
201 KAR 6:070
201 KAR 9:305
201 KAR 9:310
201 KAR 46:010
201 KAR 46:020
201 KAR 46:030
201 KAR 46:040
201 KAR 46:045
201 KAR 46:050
201 KAR 46:060
201 KAR 46:070
201 KAR 46:081
902 KAR 20:320
921 KAR 2:006
921 KAR 2:016
921 KAR 2:017
921 KAR 2:046
921 KAR 2:050
921 KAR 2:055
921 KAR 2:060
921 KAR 2:370
921 KAR 2:500
921 KAR 2:510
921 KAR 2:520
921 KAR 3:035
921 KAR 3:042
921 KAR 3:050
921 KAR 3:090 & E
922 KAR 1:310
922 KAR 1:340
922 KAR 1:350
922 KAR 1:495

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 18, 2015 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **F - 2**

The Locator Index lists all administrative regulations published in VOLUME 42 of the *Administrative Register of Kentucky* from July 2015 through June 2016. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 41 are those administrative regulations that were originally published in VOLUME 41 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2015 Kentucky Administrative Regulations Service* was published.

KRS Index **F - 13**

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 **F - 23**

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 **F - 24**

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.

VOLUME 41

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
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	41 Ky.R. Page No.	Effective Date
13 KAR 2:045E	2062	3-2-15
Replaced		See 42 Ky.R.
31 KAR 4:180E	2527	5-5-15
Replaced		See 42 Ky.R.
103 KAR 3:030E	1958	1-16-15
Replaced	2226	7-6-15
103 KAR 3:040E	1742	12-31-14
Replaced	2199	6-5-15
201 KAR 2:360E	2529	5-14-15
Replaced		See 42 Ky.R.
201 KAR 21:090E	1969	2-10-15
Replaced	2026	7-15-15
601 KAR 1:112E	1481	12-5-14
Withdrawn		7-8-15
900 KAR 7:030E	1755	12-31-14
Replaced	1891	6-5-15
907 KAR 1:045E	1759	12-31-14
Expired		8-1-15
907 KAR 3:017E	1764	12-31-14
Replaced	2224	6-5-15
908 KAR 2:220E	1766	1-7-15
Replaced	2560	6-17-15
908 KAR 2:230E	1770	1-7-15
Replaced	2562	6-17-15
908 KAR 2:260E	1773	1-7-15
Replaced	2565	6-17-15
921 KAR 2:015E	1776	12-30-14
Replaced	1932	6-5-15
921 KAR 3:060E	2530	4-30-15
Replaced		See 42 Ky.R.
921 KAR 3:070E	2533	4-30-15
Replaced		See 42 Ky.R.

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	41 Ky.R. Page No.	Effective Date
11 KAR 4:080		
Amended	2099	7-6-15
11 KAR 5:145		
Amended	2100	7-6-15
11 KAR 15:010		
Amended	2102	
As Amended	2538	7-6-15
11 KAR 15:090		
Amended	2104	7-6-15
13 KAR 2:045		
Amended	2108	See 42 Ky.R.
31 KAR 3:040	2447	See 42 Ky.R.
31 KAR 4:120		
Amended	2285	See 42 Ky.R.
31 KAR 4:180	2689	See 42 Ky.R.
101 KAR 2:102		
Amended	2113	
As Amended	2538	7-6-15
101 KAR 2:105		
Amended	2118	
As Amended	2542	7-6-15
101 KAR 2:106		
Amended	2120	
As Amended	2543	7-6-15
101 KAR 2:160		
Amended	2121	7-6-15
101 KAR 2:180		
Amended	2123	
As Amended	2544	7-6-15
101 KAR 2:210		
Amended	845	
101 KAR 3:015		
Amended	2125	
As Amended	2546	7-6-15
103 KAR 3:010		
Amended	2287	See 42 Ky.R.
103 KAR 3:030		
Amended	2015	
AmComments	2226	7-6-15
103 KAR 3:040		
Amended	1841	
As Amended	2199	6-5-15
103 KAR 15:180		
Amended	85	
As Amended	439	10-3-14
200 KAR 14:011		
Amended	2604	9-4-15
200 KAR 14:081		
Amended	2607	9-4-15
201 KAR 2:015		
Amended	2609	See 42 Ky.R.
201 KAR 2:360	2691	See 42 Ky.R.
201 KAR 10:050		
Amended	2131	7-6-15
201 KAR 12:083		
Amended	2292	See 42 Ky.R.
201 KAR 12:110		
Amended	2294	
Withdrawn		6-17-15
201 KAR 20:063	2692	See 42 Ky.R.
201 KAR 21:090		
Amended	2026	7-15-15
201 KAR 44:010		
Amended	2132	
As Amended	2550	7-6-15
201 KAR 45:120		
Amended	2611	See 42 Ky.R.
201 KAR 45:170	211	
Amended	2612	9-4-15
201 KAR 46:010		
Amended	2295	See 42 Ky.R.
201 KAR 46:020		
Amended	2299	
201 KAR 46:030		
Amended	2301	See 42 Ky.R.
201 KAR 46:040		
Amended	2304	See 42 Ky.R.
201 KAR 46:045	2449	See 42 Ky.R.
201 KAR 46:050	2450	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date
201 KAR 46:060	2452	
201 KAR 46:070		
Amended	2308	
201 KAR 46:081		
Amended	2309	
202 KAR 7:701		
Amended	2313	See 42 Ky.R.
301 KAR 1:122		See 42 Ky.R.
Amended	2614	See 42 Ky.R.
301 KAR 2:049		See 42 Ky.R.
Amended	2615	See 42 Ky.R.
301 KAR 2:132		
Amended	1868	6-5-15
301 KAR 2:172		
Amended	1873	
AmComments	2092	6-5-15
301 KAR 2:178		
Amended	1878	
As Amended	2212	6-5-15
301 KAR 2:300		
Amended	2318	9-4-15
301 KAR 3:132		
As Amended	2208	
302 KAR 20:110		
Amended	2027	
As Amended	2217	6-5-15
302 KAR 20:120		
Amended	2030	
As Amended	2219	6-5-15
402 KAR 3:010		
Amended	2619	See 42 Ky.R.
402 KAR 3:030		
Amended	2621	9-3-15
402 KAR 3:050	2694	See 42 Ky.R.
500 KAR 13:020		
Amended	2623	See 42 Ky.R.
501 KAR 1:080		
Amended	2032	
501 KAR 6:020		
Amended	1887	See 42 Ky.R.
503 KAR 1:060		
Amended	326	
As Amended	747	10-31-14
503 KAR 1:080		
Amended	591	
As Amended	1056	12-5-15
503 KAR 1:100		
Amended	595	
As Amended	1057	12-5-15
503 KAR 1:110		
Amended	2626	See 42 Ky.R.
503 KAR 1:120		
Amended	327	
As Amended	747	10-31-14
601 KAR 1:112	1725	
AmComments	2095	
Withdrawn		7-8-2015
601 KAR 9:135		
Amended	2321	See 42 Ky.R.
601 KAR 14:020		See 42 Ky.R.
603 KAR 5:155	2453	See 42 Ky.R.
603 KAR 10:002	2456	See 42 Ky.R.
603 KAR 10:010		
Amended	2325	See 42 Ky.R.
603 KAR 10:021	2458	See 42 Ky.R.
702 KAR 3:320	1728	
AmComments	2012	
As Amended	2220	6-5-15
703 KAR 5:200		
Amended	2034	
AmComments	2236	See 42 Ky.R.
703 KAR 5:225		
Amended	2037	
AmComments	2240	See 42 Ky.R.
703 KAR 5:240		
Amended	2042	See 42 Ky.R.
704 KAR 3:370		
Amended	2342	See 42 Ky.R.
704 KAR 5:070		
Amended	2351	8-10-15
705 KAR 4:250		
Amended	1144	
AmComments	1672	
As Amended	2223	6-5-15
725 KAR 1:061		
Amended	2353	7-13-15
803 KAR 1:035		
Amended	2045	
As Amended	2550	7-6-15
804 KAR 1:060		
Repealed	2696	9-4-15
804 KAR 1:061*(r)*	2696	9-4-15
804 KAR 4:370		
Amended	2630	See 42 Ky.R.
804 KAR 7:010		
Repealed	2180	7-6-15
804 KAR 7:011*(r)*	2180	7-6-15
804 KAR 10:010		
Amended	2632	See 42 Ky.R.
804 KAR 10:020		
Amended	2633	See 42 Ky.R.
804 KAR 10:025	2697	See 42 Ky.R.
805 KAR 1:100		
Amended	2355	See 42 Ky.R.
805 KAR 1:130		
Amended	2361	See 42 Ky.R.
805 KAR 1:140		
Amended	2364	See 42 Ky.R.
805 KAR 1:170		
Amended	2366	See 42 Ky.R.
808 KAR 6:015	2462	See 42 Ky.R.
808 KAR 6:105		
Amended	2369	See 42 Ky.R.
808 KAR 9:010		
Amended	2634	See 42 Ky.R.
808 KAR 12:020		
Amended	2636	See 42 Ky.R.
808 KAR 12:021		
Amended	2638	See 42 Ky.R.
808 KAR 12:110	2698	See 42 Ky.R.
810 KAR 1:027		
Amended	612	
As Amended	1066	12-5-15
810 KAR 1:090		
Amended	2371	See 42 Ky.R.
810 KAR 1:300	2699	See 42 Ky.R.
811 KAR 1:300	2701	See 42 Ky.R.
811 KAR 2:300	2702	See 42 Ky.R.
815 KAR 6:010		
Amended	2641	See 42 Ky.R.
815 KAR 35:015		
Amended	2645	See 42 Ky.R.
900 KAR 2:050		
Amended	2133	
As Amended	2551	6-17-15
900 KAR 5:020		
Amended	2649	See 42 Ky.R.
900 KAR 7:030		
Amended	1891	6-5-15
900 KAR 10:010		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date
Amended	2651	See 42 Ky.R.
900 KAR 10:020		
Amended	2658	See 42 Ky.R.
900 KAR 10:040	2464	See 42 Ky.R.
900 KAR 10:050		
Amended	2664	See 42 Ky.R.
900 KAR 10:100		
Amended	2667	See 42 Ky.R.
900 KAR 10:110	2704	See 42 Ky.R.
900 KAR 4:040		
Repealed	2051	6-5-15
902 KAR 4:041(r)	2051	6-5-15
902 KAR 10:020		
Repealed	2468	9-4-15
902 KAR 10:021		
Repealed	2468	9-4-15
902 KAR 10:022*(r)*	2468	9-4-15
902 KAR 20:091		
Amended	1896	
AmComments	2245	
902 KAR 20:160		
Amended	2374	See 42 Ky.R.
902 KAR 20:180		
Amended	2383	
902 KAR 20:320		
Amended	2393	See 42 Ky.R.
902 KAR 20:400		
Amended	1905	
AmComments	2256	See 42 Ky.R.
902 KAR 45:010		
Repealed	2469	9-4-15
902 KAR 45:011*(r)*	2469	9-4-15
902 KAR 45:030		
Repealed	2469	9-4-15
902 KAR 45:040		
Repealed	2469	9-4-15
902 KAR 45:050		
Repealed	2469	9-4-15
902 KAR 45:060		
Repealed	2469	9-4-15
902 KAR 45:110		
Amended	2414	See 42 Ky.R.
902 KAR 45:120		
Amended	2672	See 42 Ky.R.
902 KAR 45:130		
Repealed	2469	9-4-15
902 KAR 45:160	2470	See 42 Ky.R.
907 KAR 1:044		
Amended	1910	
AmComments	2261	
As Amended	2553	7-6-15
907 KAR 1:045		
Amended	1915	
907 KAR 1:046	1940	
AmComments	2266	
907 KAR 1:055		
Amended	2674	See 42 Ky.R.
907 KAR 1:102		
Amended	1920	
AmComments	2268	
As Amended	2556	7-6-15
907 KAR 1:350		
Amended	2136	
As Amended	2559	7-6-15
907 KAR 3:017	1943	
As Amended	2224	6-5-15
907 KAR 9:005		
Amended	2417	See 42 Ky.R.
907 KAR 9:010		
Amended	2425	See 42 Ky.R.
907 KAR 9:015	2475	See 42 Ky.R.
907 KAR 9:020	2487	See 42 Ky.R.
907 KAR 10:014		
Amended	2428	See 42 Ky.R.
907 KAR 10:016		
Amended	2442	See 42 Ky.R.
907 KAR 10:020	2491	See 42 Ky.R.
907 KAR 10:025	2503	
907 KAR 10:825		
Repealed	2181	10-1-15
907 KAR 10:826*(r)*	2181	10-1-15
907 KAR 10:830	2182	See 42 Ky.R.
907 KAR 15:080	2507	See 42 Ky.R.
907 KAR 15:085	2515	10-2-15
908 KAR 2:220		
Amended	1925	
AmComments	2273	
As Amended	2560	6-17-15
908 KAR 2:230		
Amended	1929	
AmComments	2277	
As Amended	2562	6-17-15
908 KAR 2:260	1945	
AmComments	2280	
As Amended	2565	6-17-15
910 KAR 1:140		
Amended	2138	
As Amended	2568	6-17-15
910 KAR 1:170		
Amended	2143	
As Amended	2573	See 42 Ky.R.
910 KAR 1:210		
Amended	2150	
As Amended	2578	6-17-15
910 KAR 1:220		
Amended	2157	
As Amended	2583	6-17-15
921 KAR 2:015		
Amended	1932	6-5-15
921 KAR 3:045		
Amended	2177	7-15-15
921 KAR 3:060		
Amended	2682	See 42 Ky.R.
921 KAR 3:070		
Amended	2685	See 42 Ky.R.

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

VOLUME 42

SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	42 Ky.R. Page No.	Effective Date
13 KAR 2:045		See 41 Ky.R.
Replaced	9	7-13-15
31 KAR 4:180E		See 41 Ky.R.
Replaced	658	9-4-15
101 KAR 2:210E	1084	9-15-15
200 KAR 5:365E	231	6-16-15
Replaced	1130	11-6-15
201 KAR 2:360E		See 41 Ky.R.
Replaced	273	9-4-15
201 KAR 11:170E	233	6-29-15
201 KAR 11:175E	236	6-29-15
201 KAR 11:235E	238	6-29-15
201 KAR 11:240E	240	6-29-15
201 KAR 12:110E	244	6-17-15
Replaced	1132	11-6-15
201 KAR 35:010E	1086	8-25-15
201 KAR 35:015E	1088	8-25-15
201 KAR 35:020E	1089	8-25-15
201 KAR 35:030E	1092	8-25-15
201 KAR 35:040E	1095	8-25-15
201 KAR 35:050E	1098	8-25-15
201 KAR 35:055E	1100	8-25-15
201 KAR 35:060E	1102	8-25-15
201 KAR 35:070E	1104	8-25-15
201 KAR 35:075E	1108	8-25-15
201 KAR 35:090E	1110	8-25-15
301 KAR 2:221E	1699	11-3-15
301 KAR 2:222E	1701	11-3-15
301 KAR 2:225E	1111	8-21-15
505 KAR 1:100E	246	7-1-15
505 KAR 1:110E	248	7-1-15
505 KAR 1:130E	250	7-1-15
601 KAR 1:113E	252	7-8-15
601 KAR 2:030E	1114	9-1-15
787 KAR 2:040E	6	5-21-15
804 KAR 4:015E	256	6-23-15
804 KAR 4:400E	258	6-23-15
Replaced	527	11-6-15
804 KAR 4:410E	259	7-10-15
Replaced	1177	11-6-15
902 KAR 20:420E	261	6-25-15
Replaced	1202	11-6-15
902 KAR 55:020E	1706	11-4-15
921 KAR 3:060E		See 41 Ky.R.
Replaced	1214	11-6-15
921 KAR 3:070E		See 41 Ky.R.
Replaced	1216	11-6-15
921 KAR 3:090E		7-2-15

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	42 Ky.R. Page No.	Effective Date
11 KAR 15:090		
Amended	44	
As Amended	1121	10-12-15
11 KAR 15:100	627	See 41 Ky.R.
As Amended	1124	10-12-15
11 KAR 16:060		
Amended	449	
As Amended	1125	10-12-15
13 KAR 2:045		See 41 Ky.R.
As Amended	9	7-13-15
16 KAR 2:020		
Amended	72	
As Amended	660	9-14-15
16 KAR 2:100		
Amended	794	
As Amended	1446	
16 KAR 2:110		
Amended	796	
As Amended	1447	
16 KAR 2:140		
Amended	797	
As Amended	1447	
16 KAR 2:150		
Amended	799	
As Amended	1448	
16 KAR 2:160		
Amended	801	
As Amended	1449	
16 KAR 2:170		
Amended	803	
As Amended	1450	
16 KAR 2:200		
Amended	805	
16 KAR 3:030		
Amended	807	
As Amended	1451	
16 KAR 3:040		
Amended	809	
As Amended	1452	
16 KAR 4:030		
Amended	74	
As Amended	661	9-14-15
16 KAR 9:030		
Amended	811	
As Amended	1453	
16 KAR 9:040		
Amended	812	
As Amended	1454	
30 KAR 7:010	628	See 41 Ky.R.
As Amended	1126	11-6-15
31 KAR 3:040		
As Amended	270	9-4-15
31 KAR 4:120		See 41 Ky.R.
As Amended	271	9-4-15
31 KAR 4:180		See 41 Ky.R.
As Amended	271	
Reprinted	658	9-4-15
101 KAR 1:325		
Amended	1582	
101 KAR 2:020		
Amended	76	
101 KAR 2:034		
Amended	78	
As Amended	1126	11-6-15
101 KAR 2:046		
Amended	83	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date
As Amended	662	
101 KAR 2:056		
Amended	85	
101 KAR 2:066		
Amended	86	
As Amended	663	
101 KAR 2:120		
Amended	88	
101 KAR 2:210		
Amended	1278	
101 KAR 3:045		
Amended	91	
As Amended	664	
103 KAR 3:010		See 41 Ky.R.
As Amended	12	7-31-15
105 KAR 1:200		
Amended	452	11-6-15
106 KAR 3:010		
Amended	814	
As Amended	1455	
200 KAR 5:021		
Amended	1906	
200 KAR 5:365		
Amended	456	
As Amended	1130	11-6-15
201 KAR 1:050		
Amended	817	
As Amended	1456	
201 KAR 1:063		
Amended	819	
As Amended	1457	
201 KAR 1:071*(r)*	1068	
201 KAR 1:081		
Amended	820	
As Amended	1458	
201 KAR 1:140		
Amended	822	
As Amended	1459	
201 KAR 1:150		
Amended	823	
As Amended	1460	
201 KAR 2:015		
Amended		
As Amended	272	9-4-15
201 KAR 2:220		
Amended	458	
AmComments	1548	
AsAmended	1710	
201 KAR 2:360		See 41 Ky.R.
As Amended	273	9-4-15
201 KAR 2:370	630	
As Amended	1131	11-6-15
201 KAR 5:030		
Amended	824	
As Amended	1460	
201 KAR 5:110		
Amended	826	
As Amended	1461	
201 KAR 6:070		
Amended	828	
As Amended	1462	
201 KAR 9:270		
Amended	1907	
201 KAR 9:305		
Amended	460	
As Amended	1464	
201 KAR 9:310		
Amended	461	
As Amended	1464	
201 KAR 9:470	1668	
201 KAR 11:170		
Amended	463	
AmComments	1219	
As Amended	1466	
201 KAR 11:175		
Amended	466	
As Amended	1468	
201 KAR 11:195	631	
As Amended	1469	
201 KAR 11:210		
Amended	468	
As Amended	1469	
201 KAR 11:230		
Amended	469	
As Amended	1469	
201 KAR 11:232	632	
AmComments	1221	
As Amended	1472	
201 KAR 11:235		
AmComments	1223	
As Amended	1473	
201 KAR 11:240		
Amended	473	
As Amended	1475	
201 KAR 11:460		
Amended	476	
As Amended	1477	
201 KAR 12:083		See 41 Ky.R
As Amended	274	9-4-15
201 KAR 12:110		
Amended	478	
As Amended	1132	11-6-15
201 KAR 16:050		
Amended	1279	
201 KAR 18:104		
Amended	831	
As Amended	1478	
201 KAR 18:142		
Amended	833	
As Amended	1479	
201 KAR 19:035		
Amended	1584	
201 KAR 19:087		
Amended	1586	
201 KAR 20:056		
Amended	480	
As Amended	1133	11-6-15
201 KAR 20:057		
Amended	1910	
201 KAR 20:061		
Repealed	637	11-6-15
201 KAR 20:062		
Amended	483	
As Amended	1135	11-6-15
201 KAR 20:063		See 41 Ky.R.
As Amended	275	9-4-15
201 KAR 20:064*(r)*	637	11-6-15
201 KAR 20:070		
Amended	488	
As Amended	1140	11-6-15
201 KAR 20:110		
Amended	490	
As Amended	1141	11-6-15
201 KAR 20:162		
Amended	1914	
201 KAR 20:215		
Amended	492	
As Amended	1142	11-6-15
201 KAR 20:225		
Amended	494	

Regulation Number	42 Ky.R. Page No.	Effective Date
As Amended	1144	11-6-15
201 KAR 20:230		
Amended	496	
As Amended	1145	
Withdrawn		10-15-15
201 KAR 20:370		
Amended	497	11-6-15
201 KAR 20:390		
Amended	499	
As Amended	1145	11-6-15
201 KAR 21:015		
Amended	1282	
201 KAR 22:020		
Amended	1283	
As Amended	1710	
201 KAR 22:040		
Amended	1285	
As Amended	1712	
201 KAR 22:070		
Amended	1287	
As Amended	1712	
201 KAR 25:011		
Amended	1289	
As Amended	1713	
201 KAR 25:021		
Amended	1289	
As Amended	1714	
201 KAR 25:031		
Amended	1292	
As Amended	1715	
201 KAR 26:115		
Amended	501	
Withdrawn	*	10-15-15
201 KAR 26:121		
Amended	503	
As Amended	1716	
201 KAR 26:175		
Amended	505	
AmComments	1549	
As Amended	1717	
201 KAR 26:200		
Amended	507	
As Amended	1719	
201 KAR 30:050		
Amended	1294	
201 KAR 30:070		
Amended	95	
As Amended	668	
201 KAR 30:380	1410	
201 KAR 32:025		
Amended	835	
AmComments	1551	
As Amended	1719	
201 KAR 32:035		
Amended	837	
AmComments	1553	
As Amended	1720	
201 KAR 32:045		
Amended	840	
AmComments	1555	
As Amended	1722	
201 KAR 32:060		
Amended	509	
AmComments	1557	
As Amended	1722	
201 KAR 33:015		
Amended	1296	
201 KAR 33:020		
Amended	1298	
201 KAR 33:030		
Amended	1299	
201 KAR 35:010	1411	
201 KAR 35:015	1413	
201 KAR 35:020		
Amended	1303	
201 KAR 35:030		
Amended	1305	
201 KAR 35:040		
Amended	1308	
201 KAR 35:050		
Amended	1312	
201 KAR 35:055	1414	
201 KAR 35:060		
Amended	1314	
201 KAR 35:070		
Amended	1316	
AmComments	1792	
201 KAR 35:075	1415	
201 KAR 35:080		
Amended	1320	
201 KAR 35:090	1417	
201 KAR 36:030		
Amended	841	
AmComments	1795	
201 KAR 38:070		
Amended	1916	
201 KAR 39:030		
Amended	844	
201 KAR 39:070		
Amended	845	
201 KAR 42:020		
Amended	1588	
201 KAR 42:035		
Amended	1590	
201 KAR 42:040		
Amended	1592	
201 KAR 42:050		
Amended	1594	
201 KAR 42:080		
Amended	1596	
201 KAR 42:110		
Amended	1599	
201 KAR 43:010		
Amended	847	
As Amended	1481	
201 KAR 43:020		
Amended	848	
As Amended	1481	
201 KAR 43:050		
Amended	850	
As Amended	1482	
201 KAR 43:080		
Amended	854	
As Amended	1485	
201 KAR 45:110		
Amended	855	
201 KAR 45:130		
Amended	1918	
201 KAR 45:170		See 41 Ky.R.
As Amended	276	9-4-15
201 KAR 46:010		See 41 Ky.R.
AmComments	338	
As Amended	1486	
*201 KAR 46:020		
As Amended	1488	
201 KAR 46:030		See 41 Ky.R.
AmComments	341	
As Amended	1490	
201 KAR 46:040		See 41 Ky.R.
AmComments	344	

Regulation Number	42 Ky.R. Page No.	Effective Date
As Amended	1492	
201 KAR 46:045		See 41 Ky.R.
AmComments	347	
As Amended	1495	
*201 KAR 46:050		
As Amended	1496	
*201 KAR 46:060		
As Amended	1496	
*201 KAR 46:070		
As Amended	1497	
*201 KAR 46:081		
As Amended	1498	
202 KAR 7:701		See 41 Ky.R.
As Amended	17	7-15-15
301 KAR 1:015		
Amended	511	
As Amended	1147	11-6-15
301 KAR 1:146		
Amended	97	9-3-15
301 KAR 1:201		
Amended	514	
As Amended	1149	11-5-15
As Amended	1724	
301 KAR 1:122		See 41 Ky.R.
As Amended	277	9-4-15
301 KAR 1:161*(r)*	1418	
301 KAR 1:410		
Amended	1322	
301 KAR 2:030		
Amended	1602	
301 KAR 2:049		
Amended		See 41 Ky.R.
As Amended	278	
301 KAR 2:083		
Amended	1604	
301 KAR 2:122		
Amended	1919	
301 KAR 2:142		
Amended	1608	
301 KAR 2:221		
Amended	1921	
301 KAR 2:222		
Amended	1923	
301 KAR 2:225		
Amended	1325	
302 KAR 29:010		
Amended	1327	
302 KAR 29:020		
Amended	1330	
302 KAR 29:040		
Amended	1332	
302 KAR 29:050		
Amended	1333	
302 KAR 29:060		
Amended	1338	
307 KAR 1:005		
Amended	857	
As Amended	1729	
401 KAR 10:026		
Amended	859	
401 KAR 10:029		
Amended	881	
401 KAR 10:030		
Amended	884	
401 KAR 10:031		
Amended	900	
AmComments	1798	
401 KAR 42:045		
Amended	1610	
401 KAR 59:174		
Amended	1341	
402 KAR 3:010		
As Amended	281	9-3-15
402 KAR 3:050		
As Amended	282	
As Amended	1153	
Reprint	1960	9-3-15
500 KAR 13:020		
As Amended	282	9-4-15
501 KAR 1:080		
As Amended	1501	
501 KAR 2:020		
Amended	1928	
501 KAR 2:060		
Amended	1930	
501 KAR 3:010		
Amended	1932	
501 KAR 3:020		
Amended	1934	
501 KAR 3:030		
Amended	1936	
501 KAR 3:040		
Amended	1937	
501 KAR 3:050		
Amended	1939	
501 KAR 3:060		
Amended	1945	
501 KAR 3:070		
Amended	1947	
501 KAR 3:080		
Amended	1948	
501 KAR 3:090		
Amended	1950	
501 KAR 3:100		
Amended	1952	
501 KAR 3:140		
Amended	1953	
501 KAR 3:160		
Amended	1956	
501 KAR 6:020		See 41 Ky.R.
As Amended	21	7-31-15
501 KAR 6:050		
Amended	907	
AmComments	1559	
As Amended	1730	
501 KAR 6:060		
Amended	1612	
501 KAR 6:240		
Repealed	638	11-6-15
501 KAR 6:241*(r)*	638	11-6-15
501 KAR 6:270		
Amended	99	
As Amended	668	
501 KAR 7:010		
Amended	1957	
501 KAR 7:020		
Amended	1959	
501 KAR 7:030		
Amended	1961	
501 KAR 7:050		
Amended	1962	
501 KAR 7:070		
Amended	1966	
501 KAR 7:080		
Amended	1967	
501 KAR 13:010		
Amended	1969	
503 KAR 1:110		See 41 Ky.R.
As Amended	284	
503 KAR 1:140		

Regulation Number	42 Ky.R. Page No.	Effective Date
Amended	909	
As Amended	1502	
505 KAR 1:100		
Amended	519	
AmComments	1561	
505 KAR 1:110		
Amended	521	
AmComments	1563	
505 KAR 1:130		
Amended	523	
AmComments	1565	
601 KAR 1:113	639	
AmComments	1567	
As Amended	1732	
601 KAR 2:030		
Amended	1347	
601 KAR 9:135		See 41 Ky.R.
As Amended	22	7-7-15
601 KAR 14:020		See 41 Ky.R.
As Amended	25	7-7-15
603 KAR 5:155		See 41 Ky.R.
AmComments	348	
As Amended	1153	11-5-15
603 KAR 10:002		See 41 Ky.R.
AmComments	351	
As Amended	1155	11-5-15
603 KAR 10:010		See 41 Ky.R.
AmComments	353	
As Amended	1156	11-5-15
603 KAR 10:021		See 41 Ky.R.
AmComments	371	
As Amended	1173	11-5-15
702 KAR 1:170	1069	
As Amended	1735	
702 KAR 7:065		
Amended	101	
As Amended	669	9-14-15
703 KAR 5:200		See 41 Ky.R.
As Amended	26	
703 KAR 5:225		See 41 Ky.R.
As Amended	29	
703 KAR 5:240		See 41 Ky.R.
As Amended	33	
704 KAR 3:303		
Amended	104	9-14-15
704 KAR 3:370		See 41 Ky.R.
AmComments	38	
As Amended	287	
As Amended	672	8-10-15
705 KAR 4:041		
Amended	106	
As Amended	679	9-14-15
775 KAR 1:070	1420	
As Amended	1735	
781 KAR 1:030		
Amended	1614	
787 KAR 2:040	196	10-15-15
803 KAR 2:180		
Amended	108	
As Amended	680	
803 KAR 2:200		
Amended	110	
As Amended	680	
803 KAR 2:250		
Amended	113	
As Amended	682	
803 KAR 2:305		
Amended	116	
As Amended	683	
803 KAR 2:317		
Amended	117	
As Amended	683	
803 KAR 2:402		
Amended	119	
As Amended	684	
803 KAR 2:421		
Amended	121	
As Amended	684	
803 KAR 2:505		
Amended	124	
As Amended	685	
803 KAR 25:008	198	
Withdrawn		8-27-15
803 KAR 25:013*(r)*	208	
Withdrawn		8-27-15
803 KAR 25:185	1421	
As Amended	1736	
804 KAR 4:015		
Amended	525	
AmComments	1571	
As Amended	1736	
804 KAR 4:370		See 41 Ky.R.
AmComments	375	
As Amended	685	
804 KAR 4:390		
Amended	126	
AmComments	771	
As Amended	1176	11-6-15
804 KAR 4:400		
Amended	527	11-6-15
804 KAR 4:410		
Amended	528	
As Amended	1177	11-6-15
804 KAR 9:040		
Amended	530	
As Amended	1177	11-6-15
804 KAR 9:050		
Amended	532	
As Amended	1179	11-6-15
804 KAR 10:010		9-4-15
As Amended	294	
804 KAR 10:020		9-4-15
As Amended	294	
804 KAR 10:025		9-4-15
As Amended	295	
804 KAR 10:031		
Amended	1353	
As Amended	1737	
805 KAR 1:100		See 41 Ky.R.
AmComments	46	
As Amended	1180	9-3-15
805 KAR 1:130		See 41 Ky.R.
AmComments	53	9-4-15
805 KAR 1:140		See 41 Ky.R.
AmComments	55	9-4-15
805 KAR 1:170		See 41 Ky.R.
AmComments	58	9-4-15
805 KAR 3:100		
Amended	1616	
808 KAR 6:015		See 41 Ky.R.
As Amended	35	7-31-15
808 KAR 6:105		See 41 Ky.R.
As Amended	35	7-31-15
808 KAR 9:010		See 41 Ky.R.
As Amended	686	
808 KAR 10:500	643	
As Amended	1186	11-6-15
808 KAR 12:020		See 41 Ky.R.
As Amended	687	
808 KAR 12:021		See 41 Ky.R.

Regulation Number	42 Ky.R. Page No.	Effective Date
As Amended	688	
808 KAR 12:110		See 41 Ky.R.
As Amended	690	
810 KAR 1:018		
Amended	1354	
As Amended	1738	
810 KAR 1:028		
Amended	1362	
As Amended	1744	
810 KAR 1:040		
Amended	1368	
810 KAR 1:070		
Amended	534	
As Amended	1187	11-6-15
810 KAR 1:090		See 41 Ky.R.
As Amended	36	7-31-15
810 KAR 1:300		See 41 Ky.R.
As Amended	1192	11-6-15
811 KAR 1:090		
Amended	1370	
As Amended	1749	
811 KAR 1:093		
Amended	1379	
811 KAR 1:095		
Amended	1380	
As Amended	1756	
811 KAR 1:300		See 41 Ky.R.
As Amended	1192	11-6-15
811 KAR 2:093		
Amended	1387	
811 KAR 2:096		
Amended	1389	
As Amended	1761	
811 KAR 2:100		
Amended	1397	
As Amended	1767	
811 KAR 2:300		See 41 Ky.R.
As Amended	1193	11-6-15
815 KAR 6:010		See 41 Ky.R.
As Amended	295	9-4-15
815 KAR 15:010		
Amended	1618	
815 KAR 15:025		
Amended	1621	
815 KAR 15:026		
Amended	1625	
815 KAR 15:027		
Amended	1629	
815 KAR 15:040		
Amended	1631	
815 KAR 15:051		
Amended	1636	
815 KAR 15:060		
Amended	1639	
815 KAR 15:080		
Amended	1641	
815 KAR 20:060		
Amended	127	
As Amended	1193	11-6-15
815 KAR 20:100		
Amended	130	11-6-15
815 KAR 20:130		
Amended	133	11-6-15
815 KAR 35:015		See 41 Ky.R.
As Amended	298	9-4-15
815 KAR 35:020		
Amended	540	
As Amended	1195	11-6-15
820 KAR 1:001		
Amended	138	
As Amended	1508	
820 KAR 1:005		
Amended	916	
820 KAR 1:015		
Amended	918	
As Amended	1772	
820 KAR 1:016		
Amended	920	
820 KAR 1:017		
Amended	922	
820 KAR 1:025		
Amended	924	
820 KAR 1:027		
Amended	926	
AmComments	1572	
820 KAR 1:029		
Amended	927	
820 KAR 1:032		
Amended	142	
As Amended	1510	
820 KAR 1:033	209	
As Amended	1512	
820 KAR 1:034		
Amended	930	
820 KAR 1:036		
Amended	932	
As Amended	1773	
820 KAR 1:044		
Amended	936	
820 KAR 1:046		
Amended	941	
820 KAR 1:050		
Amended	944	
820 KAR 1:055		
Amended	946	
820 KAR 1:056		
Amended	948	
820 KAR 1:057		
Amended	950	
820 KAR 1:058		
Amended	952	
As Amended	1776	
820 KAR 1:120		
Amended	957	
As Amended	1779	
820 KAR 1:125		
Amended	959	
As Amended	1780	
820 KAR 1:130		
Amended	960	
900 KAR 5:020		See 41 Ky.R.
AmComments	772	
As Amended	1196	10-21-15
900 KAR 6:055		
Amended	542	
AmComments	1574	
As Amended	1781	
900 KAR 6:070		
Amended	544	
Withdrawn		11-9-15
900 KAR 6:075		
Amended	546	
As Amended	1781	
900 KAR 6:090		
Amended	550	
As Amended	1784	
900 KAR 6:100		
Amended	1643	
900 KAR 7:030		
Amended	1646	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date
900 KAR 10:010		See 41 Ky.R.
AmComments	773	
As Amended	1197	11-6-15
900 KAR 10:020		
As Amended	301	9-4-15
900 KAR 10:040		
As Amended	306	9-4-15
900 KAR 10:050		
As Amended	309	9-4-15
900 KAR 10:100		
As Amended	311	9-4-15
900 KAR 10:110		
As Amended	315	9-4-15
902 KAR 4:030		
Amended	1650	
902 KAR 20:160		See 41 Ky.R.
AmComments	377	
As Amended	690	9-16-15
902 KAR 20:200		
Amended	1403	
902 KAR 20:205	1422	
902 KAR 20:260		
Amended	962	
AmComments	1805	
902 KAR 20:320		See 41 Ky.R.
As Amended	698	
902 KAR 20:400		
As Amended	316	9-4-15
902 KAR 20:420		
Amended	553	
As Amended	1202	11-6-15
902 KAR 45:110		See 41 Ky.R.
As Amended	320	9-4-15
902 KAR 45:120		See 41 Ky.R.
AmComments	780	
As Amended	1207	11-6-15
902 KAR 45:160		See 41 Ky.R.
As Amended	321	9-4-15
902 KAR 55:015		
Amended	1972	
902 KAR 55:020		
Amended	1975	
902 KAR 55:025		
Amended	1977	
902 KAR 55:030		
Amended	1980	
902 KAR 55:035		
Amended	1982	
902 KAR 100:037	1669	
902 KAR 115:010		
Amended	145	
As Amended	719	9-16-15
907 KAR 1:026		
Amended	148	
AmComments	1226	
907 KAR 1:055		See 41 Ky.R.
AmComments	782	
As Amended	1208	11-6-15
907 KAR 1:160		
Amended	1655	
907 KAR 1:170		
Amended	1664	
907 KAR 1:595		
Amended	968	
907 KAR 1:626		
Amended	155	
AmComments	1234	
907 KAR 1:835		
Amended	972	
AmComments	1811	
907 KAR 3:090		
Amended	987	
AmComments	1828	
907 KAR 3:210		
Amended	1008	
AmComments	1848	
907 KAR 7:010	1671	
907 KAR 7:015	1683	
907 KAR 9:005		
AmComments	386	See 41 Ky.R.
As Amended	720	
907 KAR 9:010		See 41 Ky.R.
As Amended	727	
907 KAR 9:015		See 41 Ky.R.
AmComments	394	
As Amended	729	
907 KAR 9:020		See 41 Ky.R.
As Amended	738	
907 KAR 10:014		See 41 Ky.R.
AmComments	406	
As Amended	741	
907 KAR 10:016		See 41 Ky.R.
AmComments	420	
As Amended	753	
907 KAR 10:020		See 41 Ky.R.
AmComments	424	
907 KAR 10:830		See 41 Ky.R.
AmComments	62	
As Amended	325	9-4-15
907 KAR 12:010		
Amended	1031	
AmComments	1871	
907 KAR 12:020		
Amended	1063	
907 KAR 15:080		See 41 Ky.R.
AmComments	436	
As Amended	756	
908 KAR 3:050		
Amended	559	11-6-15
908 KAR 3:060		
Amended	561	11-6-15
910 KAR 1:170		See 41 Ky.R.
As Amended	332	7-15-15
910 KAR 1:240		
Amended	565	
AmComments	1576	
As Amended	1786	
910 KAR 1:270		
Amended	161	
As Amended	763	9-16-15
921 KAR 1:400		
Amended	570	11-6-15
921 KAR 2:006		
Amended	572	
921 KAR 2:016		
Amended	581	
921 KAR 2:017		
Amended	588	
921 KAR 2:046		
Amended	592	
921 KAR 2:050		
Amended	594	
921 KAR 2:055		
Amended	597	
AmComments	1239	
921 KAR 2:060		See 41 Ky.R.
Amended	601	
AmComments	1243	
921 KAR 2:370		
Amended	602	

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
921 KAR 2:500					
Amended	607				
921 KAR 2:510					
Amended	610				
921 KAR 2:520					
Amended	612				
921 KAR 3:090					
Amended					
921 KAR 3:035					
Amended	614				
921 KAR 3:042					
Amended	617				
921 KAR 3:050					
Amended	620				
921 KAR 3:060					
AmComments	791				
As Amended	1214	11-6-15			
921 KAR 3:070		See 41 Ky.R.			
As Amended	1216	11-6-15			
921 KAR 3:090					
Amended	624				
922 KAR 1:310					
Amended	170				
AmComments	1244				
As Amended	1518				
922 KAR 1:340	216				
AmComments	1259				
As Amended	1532				
922 KAR 1:350					
Amended	184				
AmComments	1262				
As Amended	1534				
922 KAR 1:495	219				
AmComments	1273				
As Amended	1544				

SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

KRS INDEX

KRS SECTION	REGULATION
2.015	922 KAR 1:310
	922 KAR 1:340
	922 KAR 1:350
13B	201 KAR 20:162
	503 KAR 1:140
	900 KAR 7:030
	908 KAR 3:060
	910 KAR 1:240
	921 KAR 2:055
15A.065	505 KAR 1:100
	505 KAR 1:110
	505 KAR 1:130
15A.067	505 KAR 1:100
	505 KAR 1:110
	505 KAR 1:130
15A.0652	505 KAR 1:100
	505 KAR 1:110
	505 KAR 1:130
15.330	503 KAR 1:140
15.380	503 KAR 1:140
15.382	503 KAR 1:140
15.384	503 KAR 1:140
15.392	503 KAR 1:140
15.394	503 KAR 1:140
15.396	503 KAR 1:140
15.3971	503 KAR 1:140
15.400	503 KAR 1:140
15.540	503 KAR 1:140
15.565	503 KAR 1:140
15.580	503 KAR 1:140
16.576	105 KAR 1:200
16.577	105 KAR 1:200
16.645	105 KAR 1:200
17.165	907 KAR 3:210
	910 KAR 1:240
	922 KAR 1:310
17.500	501 KAR 6:241
	601 KAR 1:113
	922 KAR 1:310
17.550	501 KAR 6:241
18A.005	101 KAR 1:325
	101 KAR 2:020
	101 KAR 2:056
18A.030	101 KAR 2:020
	101 KAR 2:034
	101 KAR 2:046
	101 KAR 2:066
	101 KAR 2:210
18A.032	101 KAR 2:020
	101 KAR 2:046
18A.110	101 KAR 2:020
	101 KAR 2:034
	101 KAR 2:046
	101 KAR 2:056
	101 KAR 2:066
	101 KAR 3:045
	803 KAR 2:317
	803 KAR 4:402
	803 KAR 2:421
	803 KAR 2:505
	803 KAR 2:200
	803 KAR 2:305
18A.111	101 KAR 1:325
18A.120	101 KAR 2:046
	101 KAR 2:056
18A.150	101 KAR 2:046
18A.155	101 KAR 3:045
18A.165	101 KAR 2:034
	101 KAR 2:066
18A.202	101 KAR 2:120
	101 KAR 3:045
18A.225	101 KAR 2:210
18A.0751	101 KAR 1:325
18A.2254	101 KAR 2:210
43.070	501 KAR 3:030
	501 KAR 7:030
45.237	921 KAR 2:055
45.237-241	921 KAR 2:017
	921 KAR 2:510
45A	200 KAR 5:021
	601 KAR 2:030
45A.030	200 KAR 5:365
45A.085	200 KAR 5:365
45A.180	200 KAR 5:365
45A.183	200 KAR 5:365
45A.340	900 KAR 6:090
45A.690-45A.725	200 KAR 5:365
61.590	105 KAR 1:200
61.595	105 KAR 1:200
61.623	105 KAR 1:200
61.637	105 KAR 1:200
61.680	105 KAR 1:200
61.705	105 KAR 1:200
61.805-61.850	702 KAR 7:065
61.870	922 KAR 1:495
61.870-61.884	922 KAR 1:350
61.878	601 KAR 1:113
61.930	601 KAR 1:113
61.931	601 KAR 1:113
	702 KAR 1:170
61.932	702 KAR 1:170
61.933	702 KAR 1:170
67.750	30 KAR 7:010
67.767	30 KAR 7:010
67.900	501 KAR 7:010
	501 KAR 13:010
67A.028	501 KAR 3:010
	501 KAR 7:010
67B.020	501 KAR 3:010
	501 KAR 7:010
68.020	501 KAR 3:030
69.210	501 KAR 3:020
72.020	501 KAR 6:050
72.025	501 KAR 3:090
	501 KAR 6:050
78.545	105 KAR 1:200
136	401 KAR 10:029
146.200-146.360	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
146.410-146.535	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
146.550-146.570	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
146.600-146.619	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
146.990	401 KAR 10:026
	401 KAR 10:029.
	401 KAR 10:030
	401 KAR 10:031
148.853	804 KAR 4:370
150.010	301 KAR 1:146
	301 KAR 1:161
	301 KAR 1:201
	301 KAR 1:410

KRS SECTION	REGULATION
	301 KAR 2:083
	301 KAR 2:221
	301 KAR 2:222
150.025	301 KAR 1:146
	301 KAR 2:221
150.090	301 KAR 1:015
150.120	301 KAR 1:146
150.160	704 KAR 3:303
150.170	301 KAR 1:146
	301 KAR 1:201
	301 KAR 1:410
	301 KAR 2:030
150.175	301 KAR 1:146
	301 KAR 1:201
	301 KAR 1:410
	301 KAR 2:142
150.235	301 KAR 1:410
150.290	301 KAR 2:083
150.305	301 KAR 2:142
	301 KAR 2:221
	301 KAR 2:222
150.330	301 KAR 2:221
	301 KAR 2:222
150.340	301 KAR 1:201
	301 KAR 2:122
	301 KAR 2:221
	301 KAR 2:222
150.360	301 KAR 2:122
150.370	301 KAR 2:122
150.412	301 KAR 2:030
150.445	301 KAR 1:146
	301 KAR 1:410
150.450	301 KAR 1:146
150.620	301 KAR 1:201
	301 KAR 1:410
150.625	301 KAR 1:015
150.725	301 KAR 2:083
150.740	301 KAR 2:083
150.990	301 KAR 1:015
	301 KAR 1:146
	301 KAR 1:201
	301 KAR 1:410
	301 KAR 2:122
	301 KAR 2:142
	301 KAR 2:221
	301 KAR 2:222
151B.190	781 KAR 1:030
154.12-100	307 KAR 1:005
154.20-234 - 154.20-236	307 KAR 1:005
154.20-255 - 154.20-256	307 KAR 1:005
154.26-080	307 KAR 1:005
154.27-020 - 154.27-030	307 KAR 1:005
154.30-030 - 154.30-060	307 KAR 1:005
154.31-020 - 154.31-030	307 KAR 1:005
154.32-020 - 154.32-030	307 KAR 1:005
154.34-070	307 KAR 1:005
154.60-020	307 KAR 1:005
154A.130	11 KAR 15:090
156.029	705 KAR 4:041
156.070	702 KAR 7:065
	704 KAR 3:303
156.095	16 KAR 2:020
156.802	705 KAR 4:041
157.250	16 KAR 3:040
157.3175	16 KAR 2:140
158.135	922 KAR 1:310
	922 KAR 1:495
158.810	705 KAR 4:041
158.6451	704 KAR 3:303
158.6453	704 KAR 3:303
159.080	16 KAR 3:030
160.290	704 KAR 3:303
160.380	702 KAR 7:065
160.445	702 KAR 7:065
161.010	16 KAR 2:100
161.020	16 KAR 2:020
	16 KAR 2:100
	16 KAR 2:110
	16 KAR 2:140.
	16 KAR 2:150
	16 KAR 2:160
	16 KAR 2:170
	16 KAR 2:200
	16 KAR 3:030
	16 KAR 3:040
	16 KAR 4:030
	16 KAR 9:030
	16 KAR 9:040
161.028	16 KAR 2:020
	16 KAR 2:100
	16 KAR 2:110
	16 KAR 2:150
	16 KAR 2:160
	16 KAR 2:170
	16 KAR 2:200
	16 KAR 3:030
	16 KAR 4:030
	16 KAR 9:030
	16 KAR 9:040
161.030	16 KAR 2:020
	16 KAR 2:100
	16 KAR 2:110
	16 KAR 2:140
	16 KAR 2:150
	16 KAR 2:160
	16 KAR 2:170
	16 KAR 2:200
	16 KAR 3:030
	16 KAR 3:040
	16 KAR 4:030
	16 KAR 9:030
	16 KAR 9:040
161.046	16 KAR 9:040
161.048	16 KAR 9:030
	16 KAR 9:040
161.052	16 KAR 2:110
161.120	16 KAR 9:040
161.124	16 KAR 4:030
161.126	16 KAR 4:030
164.298	201 KAR 20:064
164.516	106 KAR 3:010
164.5161	106 KAR 3:010
164.5165	106 KAR 3:010
164.5169	106 KAR 3:010
164.518	11 KAR 16:060
164.772	201 KAR 20:225
	201 KAR 22:020
	201 KAR 22:040
	804 KAR 4:400
164.7871	11 KAR 15:090
	11 KAR 15:100
164.7874	11 KAR 15:090
	11 KAR 15:100
164.7877	11 KAR 15:090
	11 KAR 15:100
164.7879	11 KAR 15:090
164.7881	11 KAR 15:090
164.7882	11 KAR 15:100
164.7885	11 KAR 15:090
164.7889	11 KAR 15:090
164A.575	775 KAR 1:070
164A.580	775 KAR 1:070
164A.585	775 KAR 1:070
164A.590	775 KAR 1:070

KRS SECTION	REGULATION
164A.595	775 KAR 1:070
164A.600	775 KAR 1:070
176.050	603 KAR 5:155
176.430	401 KAR 10:030
177.106	603 KAR 5:155
177.572-177.576	603 KAR 10:002
	603 KAR 10:010
	603 KAR 10:021
177.830	603 KAR 5:155
177.830-177.890	603 KAR 10:002
	603 KAR 10:010
	603 KAR 10:021
177.990	603 KAR 5:155
	603 KAR 10:010
	603 KAR 10:021
186.010	601 KAR 2:030
186.050	601 KAR 1:113
186.281	601 KAR 1:113
186.440	601 KAR 2:030
186.442	601 KAR 2:030
186.480	601 KAR 2:030
186.531	601 KAR 2:030
186.560	601 KAR 2:030
186.570	601 KAR 2:030
189.125	922 KAR 1:310
189.290	601 KAR 1:113
189A.005	601 KAR 2:030
189A.010	601 KAR 1:113
	601 KAR 2:030
189.040	601 KAR 2:030
189A.070	601 KAR 2:030
189A.085	601 KAR 2:030
189A.090	601 KAR 2:030
189A.103	601 KAR 2:030
189A.105	601 KAR 2:030
189A.107	601 KAR 2:030
189A.200	601 KAR 2:030
189A.240	601 KAR 2:030
189A.250	601 KAR 2:030
189A.345	601 KAR 2:030
189A.400	601 KAR 2:030
189A.410	601 KAR 2:030
189A.420	601 KAR 2:030
189A.440	601 KAR 2:030
189A.500	601 KAR 2:030
194A.005	902 KAR 100:037
	922 KAR 1:495
194A.050	900 KAR 10:010
	922 KAR 1:340
194A.060	910 KAR 1:240
	910 KAR 1:270
	922 KAR 1:310
	922 KAR 1:340
	922 KAR 1:350
194A.540	201 KAR 20:070
	201 KAR 20:110
	201 KAR 20:225
194A.700-729	910 KAR 1:240
194.540	201 KAR 32:060
196	501 KAR 6:050
	501 KAR 6:060
196.030	501 KAR 6:241
196.035	501 KAR 2:060
	501 KAR 3:100
	501 KAR 6:241
197	501 KAR 6:050
	501 KAR 6:060
197.020	501 KAR 2:060
	501 KAR 3:100
	501 KAR 6:241
197.045	501 KAR 2:060
197.170	501 KAR 6:241

KRS SECTION	REGULATION
198B.040	815 KAR 20:100
198B.050	815 KAR 20:100
	815 KAR 35:020
198B.650-198B.689	501 KAR 13:010
199.011	922 KAR 1:310
	922 KAR 1:340
	922 KAR 1:350
	922 KAR 1:495
199.430	922 KAR 1:310
	922 KAR 1:340
199.464	922 KAR 1:495
199.470	922 KAR 1:310
199.492	922 KAR 1:310
199.493	922 KAR 1:310
199.510	922 KAR 1:310
199.520	922 KAR 1:310
199.555	101 KAR 2:120
	101 KAR 3:045
199.570	922 KAR 1:310
199.572	922 KAR 1:310
199.590	922 KAR 1:310
199.640	922 KAR 1:310
	922 KAR 1:340
	922 KAR 1:495
199.645	922 KAR 1:310
199.650-199.670	922 KAR 1:310
	922 KAR 1:340
199.892	921 KAR 2:055
200.080-200.120	505 KAR 1:100
	505 KAR 1:110
	505 KAR 1:130
202A.011	907 KAR 3:210
	922 KAR 1:350
202A.091	501 KAR 3:020
202A.241	902 KAR 20:160
205.010	921 KAR 2:006
	921 KAR 2:046
205.170	921 KAR 2:060
205.200	921 KAR 2:016
	921 KAR 2:017
	921 KAR 2:370
	921 KAR 2:500
	921 KAR 2:520
205.210	921 KAR 2:016
205.211	921 KAR 2:016
	921 KAR 2:017
	921 KAR 2:055
	921 KAR 2:500
	921 KAR 2:510
	921 KAR 2:520
205.220	921 KAR 2:050
205.231	921 KAR 2:055
205.237	921 KAR 2:055
205.245	921 KAR 2:046
	921 KAR 2:050
205.520	907 KAR 1:026
	907 KAR 1:626
	907 KAR 9:005
	907 KAR 9:015
	907 KAR 10:014
	907 KAR 10:016
	907 KAR 10:020
	907 KAR 12:010
	907 KAR 15:080
205.560	907 KAR 1:055
205.5605	907 KAR 3:090
	907 KAR 3:210
	907 KAR 12:010
205.5606	907 KAR 3:090
	907 KAR 12:010
205.5607	907 KAR 3:090
	907 KAR 3:210

KRS SECTION	REGULATION
	907 KAR 12:010
205.703	921 KAR 2:006
205.710-205.800	921 KAR 1:400
205.712	601 KAR 2:030
205.720	921 KAR 2:006
205.8451	907 KAR 3:090
	907 KAR 3:210
205.8477	907 KAR 3:090
	907 KAR 3:210
205.990	921 KAR 1:400
205.2001	921 KAR 2:016
205.2003	921 KAR 2:017
	921 KAR 2:370
	921 KAR 2:500
	921 KAR 2:520
205.2005	921 KAR 2:006
205.520	907 KAR 1:026
	907 KAR 1:160
	907 KAR 1:626
	907 KAR 1:835
	907 KAR 7:010
	907 KAR 12:020
205.5605	907 KAR 1:160
	907 KAR 1:835
	907 KAR 7:010
205.5606	907 KAR 1:160
	907 KAR 1:835
	907 KAR 7:010
205.5607	907 KAR 1:160
	907 KAR 1:835
	907 KAR 7:010
205.635	907 KAR 1:160
	907 KAR 1:835
	907 KAR 7:010
205.8451	907 KAR 1:026
209.030	910 KAR 1:240
210.005	902 KAR 20:160
210.336	201 KAR 32:060
210.366	201 KAR 36:030
	201 KAR 38:070
210.710	908 KAR 3:050
	908 KAR 3:060
210.720	908 KAR 3:050
	908 KAR 3:060
210.730	908 KAR 3:050
	908 KAR 3:060
210.770-210.795	910 KAR 1:270
211	902 KAR 115:010
211.180	902 KAR 4:030
	902 KAR 45:120
	902 KAR 100:037
211.842-211.852	902 KAR 100:037
211.990	902 KAR 100:037
213.046	921 KAR 1:400
214.610	201 KAR 9:305
	201 KAR 9:310
214.615	201 KAR 20:070.
	201 KAR 9:310
214.620	201 KAR 9:310
	201 KAR 20:110
215.520-215.600	902 KAR 20:200
	902 KAR 20:205
216.300	910 KAR 1:240
216.595	910 KAR 1:240
216.789	910 KAR 1:240
216.793	910 KAR 1:240
216.2920-216.2929	900 KAR 7:030
216A.090	201 KAR 6:070
216B.010	900 KAR 6:075
	902 KAR 20:160
	907 KAR 1:055
216B.010-216B.131	900 KAR 5:020
	902 KAR 20:200
	902 KAR 20:205
	902 KAR 20:260
	902 KAR 20:420
216B.015	900 KAR 6:055
	900 KAR 6:070
	900 KAR 6:075
	900 KAR 6:090
	900 KAR 6:100
	902 KAR 20:160
216B.020	900 KAR 6:090
216B.040	900 KAR 6:090
216B.062	900 KAR 6:070
	900 KAR 6:090
216B.090	900 KAR 6:070
	900 KAR 6:075
216B.095	900 KAR 6:090
216B.105	907 KAR 1:055
216B.130	907 KAR 1:055
216B.445	900 KAR 6:075
216B.450	907 KAR 9:005
216B.455	907 KAR 9:005
216B.459	907 KAR 9:005
216B.990	900 KAR 6:075
	900 KAR 6:090
	900 KAR 10:010
	902 KAR 20:200
	902 KAR 20:205
	902 KAR 20:420
	907 KAR 1:055
216B.105	902 KAR 20:160
217.280-217.390	501 KAR 3:100
	501 KAR 13:010
217B	302 KAR 29:010
	302 KAR 29:020
	302 KAR 29:040
	302 KAR 29:060
217B.190	302 KAR 29:050
217B.515	302 KAR 29:050
217B.520	302 KAR 29:050
217B.525	302 KAR 29:050
217B.545	302 KAR 29:050
218A.010-218A.030	902 KAR 55:020
	902 KAR 55:025
	902 KAR 55:030
	902 KAR 55:035
218A.010-218A.050	902 KAR 55:015
218A.060-218A.070	902 KAR 55:020
218A.080	902 KAR 55:025
218A.090	902 KAR 55:025
218A.100	902 KAR 55:030
218A.110	902 KAR 55:030
218A.120	902 KAR 55:035
218A.130	902 KAR 55:035
218A.175	902 KAR 20:260
	902 KAR 20:420
218A.205	201 KAR 5:030
	201 KAR 9:310
	201 KAR 20:056
	201 KAR 20:057
	201 KAR 20:215
219.021	902 KAR 45:120
219.041	902 KAR 45:120
219.340	902 KAR 45:120
219.350	902 KAR 45:120
219.390	902 KAR 45:120
224.01-010	401 KAR 59:174
224.1-010	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
224.1-400	401 KAR 10:026

KRS SECTION	REGULATION
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
224.10	401 KAR 42:045
224.60	401 KAR 42:045
224.10-100	401 KAR 59:174
224.20-100	401 KAR 59:174
224.20-110	401 KAR 59:174
224.20-120	401 KAR 59:174
226.16-050	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
224.16-070	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
224.70-100	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
224.70-140	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
224.71-100	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
224.71-145	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
224.73-100	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
224.73-120	401 KAR 10:026
	401 KAR 10:029
	401 KAR 10:030
	401 KAR 10:031
227.460	815 KAR 35:020
227.480	815 KAR 35:020
227.487	815 KAR 35:020
227.491	815 KAR 35:020
230.215	810 KAR 1:018
	810 KAR 1:028
	810 KAR 1:040
	811 KAR 1:090
	811 KAR 1:093
	811 KAR 1:095
	811 KAR 2:093
	811 KAR 2:096
	811 KAR 2:100
230.225	810 KAR 1:018
	810 KAR 1:028
	810 KAR 1:040
	811 KAR 1:090
	811 KAR 1:093
	811 KAR 1:095
	811 KAR 2:093
	811 KAR 2:096
	811 KAR 2:100
230.240	810 KAR 1:018
	810 KAR 1:040
	811 KAR 1:090
	811 KAR 1:093
	811 KAR 2:093
	811 KAR 2:096
230.260	810 KAR 1:018
	810 KAR 1:028
	810 KAR 1:040
	811 KAR 1:090
	811 KAR 1:093
	811 KAR 1:095
	811 KAR 2:093
	811 KAR 2:096
	811 KAR 2:100
230.265	810 KAR 1:018
	810 KAR 1:028
	810 KAR 1:040
	811 KAR 1:090
	811 KAR 1:093
	811 KAR 1:095
	811 KAR 2:093
	811 KAR 2:096
	811 KAR 2:100
230.290	810 KAR 1:018
	810 KAR 1:028
	810 KAR 1:040
	811 KAR 1:090
	811 KAR 1:093
	811 KAR 1:095
	811 KAR 2:093
	811 KAR 2:096
	811 KAR 2:100
230.300	810 KAR 1:028
	811 KAR 1:095
	811 KAR 2:100
230.310	810 KAR 1:028
	811 KAR 1:095
	811 KAR 2:100
230.320	810 KAR 1:018
	810 KAR 1:028
	810 KAR 1:040
	811 KAR 1:090
	811 KAR 1:093
	811 KAR 1:095
	811 KAR 2:093
	811 KAR 2:096
	811 KAR 2:100
230.330	810 KAR 1:070
230.361	810 KAR 1:028
	811 KAR 1:095
	811 KAR 2:100
230.370	810 KAR 1:018
	810 KAR 1:040
	811 KAR 1:090
	811 KAR 1:093
	811 KAR 2:093
	811 KAR 2:096
230.800	810 KAR 1:070
235.010	301 KAR 1:015
235.990	301 KAR 1:015
236	815 KAR 15:010
	815 KAR 15:025
	815 KAR 15:027
	815 KAR 15:060
236.010	815 KAR 15:026
236.030	815 KAR 15:026
	815 KAR 15:040
	815 KAR 15:051
236.097	815 KAR 15:080
236.110	815 KAR 15:026
236.210	815 KAR 15:080
236.240	815 KAR 15:026
236.250	815 KAR 15:026
236.990	815 KAR 15:026
238.500-238.995	820 KAR 1:001
238.505	820 KAR 1:032
	820 KAR 1:033
	820 KAR 1:034
	820 KAR 1:036
	820 KAR 1:055
	820 KAR 1:056

KRS SECTION	REGULATION
238.510	820 KAR 1:130
238.515	820 KAR 1:015
	820 KAR 1:044
	820 KAR 1:055
	820 KAR 1:056
	820 KAR 1:125
	820 KAR 1:130
238.525	820 KAR 1:015
	820 KAR 1:016
238.530	820 KAR 1:017
	820 KAR 1:027
	820 KAR 1:029
	820 KAR 1:044
	820 KAR 1:130
238.535	820 KAR 1:005
	820 KAR 1:015
	820 KAR 1:016
	820 KAR 1:017
	820 KAR 1:055
238.536	820 KAR 1:120
238.540	820 KAR 1:015
238.545	820 KAR 1:032
	820 KAR 1:033
	820 KAR 1:034
	820 KAR 1:036
	820 KAR 1:044
	820 KAR 1:046
	820 KAR 1:050
	820 KAR 1:055
	820 KAR 1:056
238.547	820 KAR 1:055
	820 KAR 1:056
238.550	820 KAR 1:025
	820 KAR 1:050
	820 KAR 1:057
	820 KAR 1:058
	820 KAR 1:057
238.555	820 KAR 1:016
	820 KAR 1:017
	820 KAR 1:029
	820 KAR 1:130
238.560	820 KAR 1:027
	820 KAR 1:057
	820 KAR 1:125
	820 KAR 1:130
238.570	820 KAR 1:025
238.995	820 KAR 1:130
241.060	804 KAR 4:370
	804 KAR 4:400
	804 KAR 4:410
	804 KAR 9:040
	804 KAR 9:050
241.065	804 KAR 9:040
	804 KAR 9:050
242.125	804 KAR 9:040
	804 KAR 9:050
242.127	804 KAR 9:050
242.129	804 KAR 9:050
243.030	804 KAR 4:015
	804 KAR 4:370
	804 KAR 9:040
	804 KAR 9:050
243.040	804 KAR 4:015
	804 KAR 4:370
243.050	804 KAR 4:370
243.075	804 KAR 10:031
243.090	804 KAR 4:390
	804 KAR 4:400
243.110	804 KAR 4:015
243.230	804 KAR 9:050
243.380	804 KAR 4:400
243.390	804 KAR 4:390
	804 KAR 4:400
244.240	804 KAR 4:015
244.590	804 KAR 4:015
258.015	922 KAR 1:310
258.035	922 KAR 1:310
273.15	921 KAR 3:060
273.17	921 KAR 3:060
273.161	922 KAR 1:310
281.600	601 KAR 1:113
281.630	601 KAR 1:113
281.631	601 KAR 1:113
281.640	601 KAR 1:113
281.650	601 KAR 1:113
281.655	601 KAR 1:113
281.656	601 KAR 1:113
281.912	601 KAR 1:113
281.990	601 KAR 1:113
281.6301	601 KAR 1:113
292.330	808 KAR 10:500
292.411	808 KAR 10:500
292.412	808 KAR 10:500
304.3-070	601 KAR 1:113
304.10-304.070	601 KAR 1:113
304.39-020	601 KAR 1:113
304.39-040	601 KAR 1:113
304.39-320	601 KAR 1:113
309.080	201 KAR 35:010
	902 KAR 20:160
309.081	201 KAR 35:010
	201 KAR 35:030
309.083	201 KAR 35:020
	201 KAR 35:050
	201 KAR 35:055
	201 KAR 35:070
	201 KAR 35:075
309.084	201 KAR 35:010
	201 KAR 35:015
	201 KAR 35:020
309.085	201 KAR 35:010
	201 KAR 35:020
	201 KAR 35:040
	201 KAR 35:090
309.086	201 KAR 35:010
	201 KAR 35:060
	201 KAR 35:090
309.087	201 KAR 35:010
	201 KAR 35:090
309.089	201 KAR 35:010
309.130	902 KAR 20:160
309.304	201 KAR 39:030
309.312	201 KAR 39:030
	201 KAR 39:070
309.331	201 KAR 45:110
309.337	201 KAR 45:130
309.351	201 KAR 42:050
309.352	201 KAR 42:080
309.355	201 KAR 42:050
	201 KAR 42:080
	201 KAR 42:110
309.357	201 KAR 42:020
	201 KAR 42:040
309.358	201 KAR 42:035
	201 KAR 42:080
309.359	201 KAR 42:035
309.361	201 KAR 42:040
	201 KAR 42:110
309.362	201 KAR 42:020
	201 KAR 42:035
	201 KAR 42:040
	201 KAR 42:050
309.363	201 KAR 42:035
	201 KAR 42:080

KRS SECTION	REGULATION
309.0805	201 KAR 35:010
309.0813	201 KAR 35:010
	201 KAR 35:060
	201 KAR 35:080
309.0831	201 KAR 35:020
	201 KAR 35:055
	201 KAR 35:070
	201 KAR 35:075
309.0832	201 KAR 35:020
	201 KAR 35:070
	201 KAR 35:075
309.0833	201 KAR 35:020
	201 KAR 35:070
	201 KAR 35:075
309.3631	201 KAR 42:080
310.021	201 KAR 33:015
310.031	201 KAR 33:015
310.041	201 KAR 33:020
310.050	201 KAR 33:030
310.200	815 KAR 20:130
311.530-311.620	201 KAR 9:270
	201 KAR 9:470
311.560	902 KAR 20:160
311.565	201 KAR 9:310
311.571	902 KAR 20:160
311.620	201 KAR 9:310
311.720	922 KAR 1:310
	922 KAR 1:350
311.840	922 KAR 1:310
	922 KAR 1:350
	922 KAR 1:495
311.840-311.862	902 KAR 20:160
311.901	201 KAR 9:305
311.905	201 KAR 9:305
311.990	201 KAR 9:270
	201 KAR 9:470
311B.020	201 KAR 46:010
311B.050	201 KAR 46:040
	201 KAR 46:045
311B.100	201 KAR 46:030
	201 KAR 46:040
	201 KAR 46:045
311B.120	201 KAR 46:040
	201 KAR 46:045
311B.180	201 KAR 46:040
	201 KAR 46:045
311B.190	201 KAR 46:040
	201 KAR 46:045
313.909	201 KAR 9:305
312.019	201 KAR 21:015
314.011	201 KAR 20:056
	201 KAR 20:057
	201 KAR 20:062
	201 KAR 20:162
	201 KAR 20:215
	201 KAR 20:390
	902 KAR 20:160
	907 KAR 1:595
	907 KAR 3:210
	922 KAR 1:310
	922 KAR 1:350
	922 KAR 1:495
314.025	201 KAR 20:390
314.026	201 KAR 20:390
314.027	201 KAR 20:390
314.031	201 KAR 20:162
	201 KAR 20:110
314.041	201 KAR 20:070
	201 KAR 20:110
	201 KAR 20:225
	201 KAR 20:230
	201 KAR 20:370
314.042	201 KAR 20:056
	201 KAR 20:057
	201 KAR 20:225
	201 KAR 20:370
	902 KAR 20:160
314.051	201 KAR 20:070
	201 KAR 20:110
	201 KAR 20:225
	201 KAR 20:370
	201 KAR 20:230
314.071	201 KAR 20:162
	201 KAR 20:225
	201 KAR 20:230
	201 KAR 20:370
314.073	201 KAR 20:215
	201 KAR 20:225
	201 KAR 20:230
314.075	201 KAR 20:225
314.085	201 KAR 20:225
314.091	201 KAR 20:056
	201 KAR 20:110
	201 KAR 20:162
	201 KAR 20:225
	201 KAR 20:370
314.103	201 KAR 20:056
	201 KAR 20:110
	201 KAR 20:370
314.111	201 KAR 20:062
314.131	201 KAR 20:062
314.161	201 KAR 20:056
	201 KAR 20:162
314.193	201 KAR 20:057
314.196	201 KAR 20:057
314.470	201 KAR 20:056
	201 KAR 20:070
	201 KAR 20:110
	201 KAR 20:370
314.991	201 KAR 20:110
	201 KAR 20:162
	201 KAR 20:215
315.010	201 KAR 2:220
	201 KAR 2:370
315.020	201 KAR 2:370
315.030	201 KAR 2:370
315.040	201 KAR 2:220
315.121	201 KAR 2:370
315.191	201 KAR 2:220
317A.060	201 KAR 12:110
317A.090	201 KAR 12:110
318.010	815 KAR 20:130
318.015	815 KAR 20:130
318.130	815 KAR 20:060
	815 KAR 20:100
	815 KAR 20:130
318.150	815 KAR 20:060
	815 KAR 20:100
	815 KAR 20:130
319.010	201 KAR 26:115
	907 KAR 3:210
319.032	201 KAR 26:121
	201 KAR 26:175
319.050	201 KAR 26:121
	201 KAR 26:175
	201 KAR 26:200
	902 KAR 20:160
319.053	201 KAR 26:175
319.056	902 KAR 20:160
	907 KAR 3:210
319.064	201 KAR 26:175
	902 KAR 20:160
319.071	201 KAR 26:175

KRS SECTION	REGULATION
319A.010	907 KAR 3:210
319C.010	902 KAR 20:160
319C.050	201 KAR 43:050
	201 KAR 43:080
319C.060	201 KAR 43:050
	201 KAR 43:080
319C.070	201 KAR 43:070
319C.080	201 KAR 43:070
	201 KAR 43:020
320.210	201 KAR 5:110
	902 KAR 20:160
320.240	201 KAR 5:110
320.280	201 KAR 5:030
322.180	201 KAR 18:142
322.290	201 KAR 18:104
	201 KAR 18:142
322.340	201 KAR 18:104
323.050	201 KAR 19:035
323.060	201 KAR 19:035
323.110	201 KAR 19:087
323.120	201 KAR 19:035
	201 KAR 19:087
323.210	201 KAR 19:087
324.010	201 KAR 11:170
	201 KAR 11:175
	201 KAR 11:210
	201 KAR 11:230
	201 KAR 11:232
	201 KAR 11:235
324.040	201 KAR 11:210
324.045	201 KAR 11:210
324.046	201 KAR 11:170
	201 KAR 11:210
	201 KAR 11:230
	201 KAR 11:232
	201 KAR 11:235
	201 KAR 11:240
324.085	201 KAR 11:170
	201 KAR 11:230
	201 KAR 11:232
	201 KAR 11:240
	201 KAR 11:460
324.090	201 KAR 11:230
	201 KAR 11:232
	201 KAR 11:235
324.160	201 KAR 11:195
	201 KAR 11:230
	201 KAR 11:232
	201 KAR 11:235
324.170	201 KAR 11:195
324.281	201 KAR 11:195
	201 KAR 11:230
	201 KAR 11:232
	201 KAR 11:240
324A.010	201 KAR 30:050
324A.020	201 KAR 30:380
324A.035	201 KAR 30:050
	201 KAR 30:380
324A.040	201 KAR 30:050
324A.045	201 KAR 30:380
324A.065	201 KAR 30:380
325.220	201 KAR 1:081
325.261	201 KAR 1:050
	201 KAR 1:071
	201 KAR 1:063
325.280	201 KAR 1:050
325.301	201 KAR 1:081
325.330	201 KAR 1:050
	201 KAR 1:140
325.360	201 KAR 1:150
325.370	201 KAR 1:140
325.380	201 KAR 1:081
327.010	201 KAR 22:020
	907 KAR 3:210
327.050	201 KAR 22:020
	201 KAR 22:040
	201 KAR 22:070
327.060	201 KAR 22:020
	201 KAR 22:070
327.070	201 KAR 22:040
327.075	201 KAR 22:020
327.080	201 KAR 22:020
334A.020	907 KAR 3:210
335.080	902 KAR 20:160
335.100	902 KAR 20:160
335.300	201 KAR 32:035
	902 KAR 20:160
	907 KAR 3:210
335.320	201 KAR 32:035
	201 KAR 32:045
335.330	201 KAR 32:035
335.332	201 KAR 32:025
	201 KAR 32:035
	201 KAR 32:045
335.340	201 KAR 32:060
335.500	902 KAR 20:160
	907 KAR 3:210
335.515	201 KAR 36:030
335.535	201 KAR 36:030
335.625	201 KAR 38:070
338	803 KAR 2:421
338.015	803 KAR 2:505
338.051	803 KAR 2:305
	803 KAR 2:317
338.061	803 KAR 2:305
	803 KAR 2:317
338.121	803 KAR 2:180
	803 KAR 2:250
338.161	803 KAR 2:180
342	803 KAR 25:013
342.125	803 KAR 25:008
342.260	803 KAR 25:008
	803 KAR 25:185
342.265	803 KAR 25:008
342.270	803 KAR 25:008
342.300	803 KAR 25:008
342.310	803 KAR 25:008
342.315	803 KAR 25:008
342.340	803 KAR 25:185
342.710	803 KAR 25:008
342.715	803 KAR 25:008
342.732	803 KAR 25:008
342.760	803 KAR 25:008
342.0011	803 KAR 25:008
351.070	805 KAR 3:100
403.160	921 KAR 1:400
403.210-403.240	921 KAR 1:400
405.430	921 KAR 1:400
405.440	921 KAR 1:400
405.991	921 KAR 1:400
406.021	921 KAR 1:400
406.025	921 KAR 1:400
413	907 KAR 1:055
431.215	501 KAR 2:060
438.60	907 KAR 1:055
439	501 KAR 6:050
	501 KAR 6:060
439.330	501 KAR 6:241
439.346	501 KAR 6:241
439.348	501 KAR 6:241
439.470	501 KAR 6:241
440.010	501 KAR 6:241
440.70	907 KAR 1:595
440.100	907 KAR 1:626

KRS SECTION	REGULATION
440.130	907 KAR 1:055
440.180	907 KAR 1:835
440.185	907 KAR 1:595
440.230	907 KAR 1:055
441.005	501 KAR 3:010
	501 KAR 3:100
	501 KAR 13:010
441.045	501 KAR 2:060
	501 KAR 3:010
	501 KAR 3:040
	501 KAR 3:050
	501 KAR 3:060
	501 KAR 3:070
	501 KAR 3:140
	501 KAR 3:160
	501 KAR 7:010
	501 KAR 7:050
	501 KAR 7:070
	501 KAR 7:080
	501 KAR 3:090
	501 KAR 13:010
441.047	501 KAR 3:090
	501 KAR 3:140
441.055	501 KAR 3:010
	501 KAR 3:020
	501 KAR 3:030
	501 KAR 3:040
	501 KAR 3:050
	501 KAR 3:060
	501 KAR 3:070
	501 KAR 3:080
	501 KAR 3:090
	501 KAR 3:140
	501 KAR 3:160
	501 KAR 7:010
	501 KAR 7:020
	501 KAR 7:030
	501 KAR 7:050
	501 KAR 7:070
	501 KAR 7:080
	501 KAR 13:010
441.064	501 KAR 3:050
	501 KAR 7:050
441.075	501 KAR 2:060
	501 KAR 3:050
	501 KAR 7:050
441.115	501 KAR 3:040
	501 KAR 3:160
441.135	501 KAR 3:030
	501 KAR 7:030
441.215	501 KAR 3:030
441.235	501 KAR 3:030
441.415-441.450	501 KAR 3:050
	501 KAR 7:050
441.510	501 KAR 2:060
441.560	501 KAR 3:090
	501 KAR 13:010
447.200-205	907 KAR 1:626
447.3251	907 KAR 1:055
447.272	907 KAR 12:020
454.220	921 KAR 1:400
491	907 KAR 1:055
503.110	922 KAR 1:310
520.010	501 KAR 6:241
527.100	922 KAR 1:310
527.110	922 KAR 1:310
532.060	501 KAR 2:020
	601 KAR 1:113
532.100	501 KAR 2:020
	501 KAR 2:060
	501 KAR 13:010
532.200	501 KAR 6:241
532.210	501 KAR 6:241
532.220	501 KAR 6:241
532.230	501 KAR 6:241
532.240	501 KAR 6:241
532.250	501 KAR 6:241
532.260	501 KAR 6:241
532.262	501 KAR 6:241
533.020	501 KAR 6:241
533.030	501 KAR 6:241
Chapters 600-645	505 KAR 1:100
	505 KAR 1:110
	505 KAR 1:130
600.020	922 KAR 1:310
	922 KAR 1:340
	922 KAR 1:350
	922 KAR 1:495
605.090	922 KAR 1:310
	922 KAR 1:340
	922 KAR 1:350
610.110	922 KAR 1:310
	922 KAR 1:340
	922 KAR 1:350
605.120	921 KAR 2:046
610.125	922 KAR 1:310
615.010-615.990	922 KAR 1:310
620.020	201 KAR 9:310
620.030	907 KAR 3:210
	922 KAR 1:310
	922 KAR 1:350
620.050	922 KAR 1:350
620.090	922 KAR 1:310
620.140	922 KAR 1:310
	922 KAR 1:340
	922 KAR 1:350
620.230	922 KAR 1:310
620.360	922 KAR 1:350
	922 KAR 1:495
625	922 KAR 1:310
	922 KAR 1:350
7 C.F.R.	921 KAR 3:035
	921 KAR 3:042
	921 KAR 3:050
	921 KAR 3:060
	921 KAR 3:090
10 C.F.R.	902 KAR 100:037
16 C.F.R.	922 KAR 1:310
	922 KAR 1:350
21 C.F.R.	902 KAR 55:015
	902 KAR 55:020
	902 KAR 55:025
	902 KAR 55:030
	902 KAR 55:035
23 C.F.R.	603 KAR 10:002
	603 KAR 10:010
26 C.F.R.	921 KAR 3:050
29 C.F.R.	803 KAR 2:180
34 C.F.R.	781 KAR 1:030
40 C.F.R.	401 KAR 10:029
	401 KAR 42:045
	401 KAR 59:174
42 C.F.R.	902 KAR 20:160
	907 KAR 1:055
	907 KAR 1:160
	907 KAR 1:170
	907 KAR 1:595
	907 KAR 1:626
	907 KAR 1:835
	907 KAR 3:090
	907 KAR 3:210
	907 KAR 7:010
	907 KAR 7:015
	907 KAR 10:014

KRS SECTION	REGULATION
	907 KAR 12:010
	907 KAR 12:020
45 C.F.R.	900 KAR 10:010
	902 KAR 20:160
	907 KAR 1:055
	910 KAR 1:270
	921 KAR 1:400
	921 KAR 2:006
	921 KAR 2:016
	921 KAR 2:017
	921 KAR 2:055
	921 KAR 2:370
	921 KAR 2:520
	922 KAR 1:310
	922 KAR 1:350
	922 KAR 1:495
7 U.S.C.	302 KAR 29:020
	302 KAR 29:060
	921 KAR 2:006
	921 KAR 3:035
	921 KAR 3:042
	921 KAR 3:060
8 U.S.C.	921 KAR 2:006
	921 KAR 2:016
	922 KAR 1:310
	922 KAR 1:350
12 U.S.C.	201 KAR 30:050
18 U.S.C.	601 KAR 2:030
20 U.S.C.	702 KAR 7:065
	921 KAR 2:016
21 U.S.C.	902 KAR 55:025
	902 KAR 55:030
	902 KAR 55:035
	921 KAR 2:006
22 U.S.C.	921 KAR 2:006
23 U.S.C.	603 KAR 10:002
	603 KAR 10:010
25 U.S.C.	921 KAR 2:016
26 U.S.C.	921 KAR 2:016
29 U.S.C.	781 KAR 1:030
	921 KAR 2:016
	921 KAR 2:370
30 U.S.C.	401 KAR 10:030
	921 KAR 2:055
33 U.S.C.	401 KAR 10:029
38 U.S.C.	921 KAR 2:006
	921 KAR 2:016
	921 KAR 2:055
42 U.S.C.	401 KAR 42:045
	401 KAR 59:174
	501 KAR 3:010
	815 KAR 20:060
	900 KAR 10:010
	902 KAR 20:160
	907 KAR 1:026
	907 KAR 1:170
	907 KAR 1:595
	907 KAR 1:626
	907 KAR 3:090
	907 KAR 3:210
	907 KAR 7:015
	907 KAR 9:015
	907 KAR 10:020
	907 KAR 12:010
	907 KAR 12:020
	907 KAR 15:080
	921 KAR 1:400
	921 KAR 2:006
	921 KAR 2:016
	921 KAR 2:017
	921 KAR 2:046
	921 KAR 2:050
	921 KAR 2:055
	921 KAR 2:060
	921 KAR 2:370
	921 KAR 2:500
	921 KAR 2:510
	921 KAR 2:520
	921 KAR 3:035
	922 KAR 1:310
	922 KAR 1:340
	922 KAR 1:350
	922 KAR 1:495
45 U.S.C.	921 KAR 2:055
49 U.S.C.	302 KAR 29:020
Pub.L. 111-118	921 KAR 2:006
Ky. Const. Sec. 99	501 KAR 3:010
	501 KAR 7:010
Ky. Const. Sec. 152	501 KAR 3:010
	501 KAR 7:010

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2014 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

‡ - Pursuant to KRS 13A.320(e), this indicates a technical change was made to this administrative regulation during the promulgation process.

Regulation Number	Amendment Date
13 KAR 2:025	7/15/2015
101 KAR 3:015	9/21/2015
805 KAR 1:100	8/20/2015

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

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

AGRICULTURE, DEPARTMENT OF
Certification; 302 KAR 29:060
Commercial structural pest control and fumigation; 302 KAR 29:050
Definitions for 302 KAR Chapter 29; 302 KAR 29:010
General provisions for structural pest control; 302 KAR 29:020
Settlement proceedings; 302 KAR 29:040

ALCOHOL AND DRUG COUNSELORS, BOARD OF
Appeal from a denial of or refusal to renew or reinstate a registration certificate, or license, or denial of continuing education hours by the board; 201 KAR 35:090
Code of ethics; 201 KAR 35:030
Complaint procedure; 201 KAR 35:060
Continuing education requirements; 201 KAR 35:040
Curriculum of study; 201 KAR 35:050
Definitions for 201 KAR Chapter 35; 201 KAR 35:010
Fees; 201 KAR 35:020
Grandparenting of certification to licensure; 201 KAR 35:015
Substitution for work experience for an applicant for certification as an alcohol and drug counselor; 201 KAR 35:075
Supervision experience; 201 KAR 35:070
Temporary registration or certification; 201 KAR 35:055
Voluntary inactive status; 201 KAR 35:080

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
Renewals; 804 KAR 4:390
Special applications and registration forms incorporated by reference; 804 KAR 4:410
Local Administrators
Local government regulatory license fees; 804 KAR 10:031
Quotas
Quota retail drink licenses; 804 KAR 9:050
Quota retail package licenses; 804 KAR 9:040

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 Welfare, Department of
Child-placing agencies, standards for; 922 KAR 1:310
Family preparation: foster/adoptive parents, respite care providers; for children in cabinet's custody; 922 KAR 1:350
Independent living program standards; 922 KAR 1:340
Training requirements: foster/adoptive parents, respite care providers; for children in cabinet's custody; 922 KAR 1:495
Community Based Services, Department of
Simplified assistance for the elderly program or "SAFE"; 921 KAR 3:090
Family Support; Division of
Adverse action; conditions; 921 KAR 2:046
Certification process; 921 KAR 3:035
Claims and additional administrative provisions; 921 KAR 3:050
Delegation of power for oaths and affirmations; 921 KAR 2:060
Family Alternatives Diversion (FAD); 921 KAR 2:500
Hearings and appeals; 921 KAR 2:055
Kentucky Works Program (KWP) supportive services; 921 KAR 2:017
Relocation Assistance Program; 921 KAR 2:510
Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP); 921 KAR 2:016
Supplemental Nutrition Assistance Program Employment and Training Program; 921 KAR 3:042
Technical requirements for Kentucky Works Program (KWP); 921 KAR 2:370
Time and manner of payments; 921 KAR 2:050
Work Incentive or "WIN"; 921 KAR 2:520
Protection and Permanency, Division of
Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers; 922 KAR 1:350
Standards for child-placing agencies; 922 KAR 1:310
Standards for independent living programs; 922 KAR 1:340
Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet; 922 KAR 1:495

CORRECTIONS, DEPARTMENT OF
Class D and Class C Felons
Definitions for 501 KAR Chapter 2; 501 KAR 2:020
Procedures for housing of Class D and Class C felons; 502 KAR 2:060
Jail Standards for Life Safety Facilities
Life safety issues; 501 KAR 13:010
Jail Standards for Restricted Custody Center Facilities
Administration; management; 501 KAR 7:020
Definitions for 501 KAR Chapter 7; 501 KAR 7:010
Fiscal management; 501 KAR 7:030
Physical plant; 501 KAR 7:050
Safety; emergency procedures; 501 KAR 7:070
Sanitation; hygiene; 501 KAR 7:080
Office of the Secretary
Luther Luckett Correctional Complex; 501 KAR 6:050
Northpoint Training Center; 501 KAR 6:060
Probation and parole policies and procedures; 501 KAR 6:270
Repeal of 501 KAR 6:240; 501 KAR 6:240

Twelve (12) Hour Local Confinement Facilities
Administration; management; 501 KAR 3:020
Definitions for 501 KAR Chapter 3; 501 KAR 3:010
Fiscal management; 501 KAR 3:030
Food services; 501 KAR 3:100
Medical services; 501 KAR 3:090
Personnel; 501 KAR 3:040
Physical Plant; 501 KAR 3:050
Prisoner rights; 501 KAR 3:140
Safety; emergency procedures; 501 KAR 3:070
Sanitation; hygiene; 501 KAR 3:080
Security; control; 501 KAR 3:060
Training; 501 KAR 3:160

EASTERN KENTUCKY UNIVERSITY
Capital construction procedures; 775 KAR 1:070

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
Administrative Certificates
Professional certificate for directors and assistant directors of pupil personnel; 16 KAR 3:030
Special education, director; 16 KAR 3:040
Alternative Routes to Certification
Part-time adjunct instructor certificate; 16 KAR 9:040
College faculty, professional certificate for; 16 KAR 9:030
Certification Procedures
Out-of-state educator preparation; 16 KAR 4:030
Teaching Certificates
Birth to primary, probationary certificate for teachers; 16 KAR 2:140
Engineering and technology education, probationary certificate for teachers; 16 KAR 2:150
English as a second language, probationary endorsement for teachers; 16 KAR 2:200
Exceptional children, probationary certificate for teachers; 16 KAR 2:160
Gifted education, endorsement for teachers; 16 KAR 2:110
Junior Reserve Officers Training Corps certification; 16 KAR 2:100
Middle school teachers, probationary certificate; 16 KAR 2:170
Occupation-based career and technical education certification; 16 KAR 2:020

ENERGY AND ENVIRONMENT CABINET
Environmental Protection, Department of
Air Quality, Division of
Stage II controls at gasoline dispensing facilities; 401 KAR 59:174
Waste Management, Division of
Delivery prohibition; 401 KAR 42:045
Water, Division of; 401 KAR Chapter 10
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 capital construction; 200 KAR 5:365
Manual of policies and procedures; 200 KAR 5:021
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
Repeal of 301 KAR 1:160; 301 KAR 1:161
Taking of fish by traditional fishing methods; 301 KAR 1:201
Taking of fish by nontraditional fishing methods; 301 KAR 1:410
Game
Commercial guide license; 301 KAR 2:030
Holding and intrastate transportation of captive cervids; 301 KAR 2:083
Seasons, methods, and limits for small game; 301 KAR 2:122
Spring wild turkey hunting; 301 KAR 2:142
Waterfowl hunting requirements on public lands; 301 KAR 2:222
Waterfowl seasons and limits; 301 KAR 2:221

GENERAL GOVERNMENT CABINET
Accountancy; Board of *(See Accountancy)* 201 KAR Chapter 1
Agriculture, Department of *(See Agriculture)* KAR Title 302
Alcohol and Drug Counselors, Board of *(See Alcohol and Drug Counselors)* 201 KAR Chapter 35
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
Architects. Board of
Continuing education; 201 KAR 19:087
Qualifications for examination and licensure; 201 KAR 19:035
Chiropractic Examiners, Kentucky Board of
Code of ethical conduct and standards of practice; 201 KAR 21:015
Deaf and Hard of Hearing; Board of Interpreters for the
Application and qualifications for temporary license; 201 KAR 39:070
Application; qualifications for licensure; and certification levels; 201 KAR 39:030
Diabetes Educators, Board of Licensed
Continuing education; 201 KAR 45:130
Supervision and work experience; 201 KAR 45:110
Dietitians and Nutritionists, Board of Licensure for
Application; approved programs; 201 KAR 33:015
Continuing education requirements for licensees and certificate holders; 201 KAR 33:030
Renewals; 201 KAR 33:020
Hairdressers and Cosmetologists, Board of
School license; 201 KAR 12:110
Licensure for Pastoral Counselors, Board of
Renewal of licenses and continuing education; 201 KAR 38:070
Marriage and Family Therapists, Board of Licensure of *(See Marriage and Family Therapists)* 201 KAR Chapter 32

Massage Therapy, Board of Licensure for *(See Massage Therapy)* 201 KAR Chapter 42
Medical Imaging and Radiation Therapy, Board of *(See Medical Imaging and Radiation Therapy)* 201 KAR Chapter 46
Medical Licensure, Board of
Continued licensure of athletic trainers; 201 KAR 9:305
Continuing medical education; 201 KAR 9:310
Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone; 201 KAR 9:270
Standardized medical order for scope of treatment form; 201 KAR 9:470
Nursing, Board of *(See Nursing, Board of)* KAR Title 201
Occupations and Professions, Office of
Fees; 201 KAR 42:020
Optometric Examiners, Kentucky Board of
Annual courses of study required; 201 KAR 5:030
Expanded therapeutic procedures; 201 KAR 5:110
Pharmacy, Board of
Collaborative care agreements; 201 KAR 2:220
Pharmacy services in long-term care facility (LTCF); 201 KAR 2:370
Physical Therapy, Board of
Eligibility and credentialing procedure; 201 KAR 22:020
Renewal or reinstatement of credential; 201 KAR 22:040
Requirements for foreign-educated physical therapists; 201 KAR 22:070
Professional Counselors, Board of Licensed
Continuing education requirements; 201 KAR 36:030
Professional Engineers & Land Surveyors, Board of Licensure for
Code of professional practice and conduct; 201 KAR 18:142
Seals and signatures; 201 KAR 18:104
Psychology, Board of Examiners of; 201 KAR Chapter 26 *(See Psychology)*
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)* 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
Certificate of need; 900 KAR 6:055
Filing, hearing and show cause hearing; 900 KAR 6:090
Formal review considerations; 900 KAR 6:070
Nonsubstantive review; 900 KAR 6:075
Standards for implementation and biennial review; 900 KAR 6:100
Data Reporting and Public Use Data Sets
Data reporting by health care providers; 900 KAR 7:030

HORSE RACING COMMISSION
Harness Racing
Disciplinary measures and penalties; 811 KAR 1:095
Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 1:093
Medication; testing procedures; prohibited practices; 811 KAR 1:090
Quarter Horse, Appaloosa and Arabian Racing
Disciplinary measures and penalties; 811 KAR 2:100
Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 2:093
Medication; testing procedures; prohibited practices; 811 KAR 2:096
Thoroughbred Racing
Disciplinary measures and penalties; 810 KAR 1:028
Drug, medication, and substance classification schedule and withdrawal guidelines; 810 KAR 1:040
Kentucky thoroughbred breeders' incentive fund; 810 KAR 1:070
Medication; testing procedures; prohibited practices; 810 KAR 1:018

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
Audits and Investigations, Division of
Schedule I substances; 902 KAR 55:015
Schedule II substances; 902 KAR 55:020
Schedule III substances; 902 KAR 55:025
Schedule IV substances; 902 KAR 55:030
Schedule V substances; 902 KAR 55:035
Healthcare, Division of
Chemical dependency treatment services and facility specifications; 902 KAR 20:160
Pain management facilities; 902 KAR 20:420
Tuberculosis (TB) testing for health care workers; 902 KAR 20:205
Tuberculosis (TB) testing for residents in long-term care settings; 902 KAR 20:200

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
Law Enforcement Council
Peace 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
Procedure for e-mail notification of cancellation or removal of location of specific workers' compensation coverage; 803 KAR 25:185
Repeal of 803 KAR 25:009 and 25:010; 803 KAR 25:013

MARRIAGE AND FAMILY THERAPISTS, BOARD OF LICENSURE OF
Associate; 201 KAR 32:025
Associates, supervision of; 201 KAR 32:035
Continuing education requirements; 201 KAR 32:060
Examination; 201 KAR 32:045

MASSAGE THERAPY, BOARD OF LICENSURE FOR
Application process, exam, and curriculum requirements; 201 KAR 42:035

Complaint procedure and disciplinary action; 201 KAR 42:050
Continuing education requirements; 201 KAR 42:110
Programs of massage therapy instruction; 201 KAR 42:080
Renewal; 201 KAR 42:040

MEDICAID SERVICES, DEPARTMENT FOR
Certified Provider Requirements
Home and community based waiver services Version 2; 907 KAR 7:010
Reimbursement for home and community based waiver services Version 2; 907 KAR 7:015
Medicaid Services
Home and community based waiver services Version 1; 907 KAR 1:160
Reimbursement for home and community based waiver services Version 1; 907 KAR 1:170
Payment and Services
Acquired brain injury long-term care waiver services and reimbursement; 907 KAR 3:210
Acquired brain injury wavier services; 907 KAR 3:090
Policy and Operations
Acute care inpatient hospital reimbursement; 907 KAR 10:830
Coverage provisions and requirements; 907 KAR 1:026
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
Dental services' coverage provisions and requirements; 907 KAR 1:026
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
Reimbursement of dental services; 907 KAR 1:626

MEDICAL IMAGING AND RADIATION THERAPY, BOARD OF
Definitions; 201 KAR 46:010
Education; 201 KAR 46:030
Licenses; 201 KAR 46:040
Temporary license application; 201 KAR 46:045

MILITARY AFFAIRS, DEPARTMENT OF
National Guard Tuition Award Program
Kentucky National Guard Tuition Award Program; 106 KAR 3:010

NATURAL RESOURCES, DEPARTMENT OF
Mine Safety
Equipment use and operation; 805 KAR 3:100
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
Procedures for disciplinary hearings pursuant to KRS 314.091
Reinstatement of license; 201 KAR 20:225
Renewal of licenses; 201 KAR 20:230
Repeal of 201 KAR 20:064; 201 KAR 20:064
Scope and standards of practice of advanced practice registered nurses; 201 KAR 20:057
Standards for advanced practice registered nurse (APRN) programs of nursing; 201 KAR 20:062

PERSONNEL
Board
Probationary periods; 101 KAR 1:325
Classified
2016 Plan year handbook for the public employee health insurance program, 101 KAR 2:210
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
Boilers and Pressure Vessels
Certificates and fees for inspection; 815 KAR 15:027
Definitions; 815 KAR 15:010
Existing boilers and pressure vessels; testing, repairs, inspection, and safety factors; 815 KAR 15:026
Heating boiler supplemental requirements- steam heating, hot water heating and hot water supply boilers; 815 KAR 15:051
Licensing for contractors, owner facilities, owner's piping inspectors, and independent inspection agencies; 815 KAR 15:080
New installations, general design, construction and inspection criteria for; 815 KAR 15:025
Power boiler and pressure vessel supplemental requirements; 815 KAR 15:040
Plumbing
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
Nuclear vessel requirements; 815 KAR 15:060

PSYCHOLOGY, BOARD OF EXAMINERS OF
Continuing education; 201 KAR 26:175
Education requirements for licensure as a psychologist; 201 KAR 26:200
Psychological testing; 201 KAR 26:115
Scope of practice and dual licensure; 201 KAR 26:121

PUBLIC HEALTH, DEPARTMENT FOR
Maternal and Child Health
Newborn screening program; 902 KAR 4:030
Public Health Protection and Safety
Physical protection of category 1 and category 2 quantities of radioactive material; 902 KAR 100:037
Water Fluoridation
Dental health protection; 902 KAR 115:010

PUBLIC PROTECTION CABINET
Alcoholic Beverage Control, Department of *(See Alcoholic Beverage Control, Department of) KAR Title 804*
Charitable Gaming *(See Charitable Gaming, Department of) KAR Title 820*
Financial Institutions, Department of
Securities, Division of
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

Titles 810 and 811
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
Examination and experience requirement; 201 KAR 30:050
Grievances; 201 KAR 30:070
Individual appraiser license renewal and fee; 201 KAR 30:380
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 prelicense 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
Driver Licensing, Division of
Ignition Interlock; 601 KAR 2:030
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