ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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MONDAY, FEBRUARY 1, 2016

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, January 15, 2016.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet February 8, 2016, at 2:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **2319-2320** of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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103 KAR 3:040 & E. Income tax forms manual. ("E" expires 6/4/2016)

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Division of Policy and Operations

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Division of Community Alternatives

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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

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(As Amended at ARRS, January 11, 2016)

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

RELATES TO: KRS 311.530-311.620, ***311.621 - 311.643,*** 311.990
STATUTORY AUTHORITY: KRS 311.565(1)(a), 311.6225(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 311.6225(2) ***requires[~~authorizes~~]*** the board to promulgate administrative regulations to develop the format for a standardized medical order for scope of treatment form to be approved by the board. This administrative regulation establishes the format of the standardized medical order for scope of treatment form approved by the board and authorized for use by board licensees practicing within the Commonwealth of Kentucky.

Section 1. Definition. "MOST form" means the medical order for scope of treatment form defined in KRS 311.621(12).

Section 2. Format of the MOST form. ***(1)*** The MOST form ***maintained in the patient's medical chart*** shall have the title "MOST, Medical Orders for Scope of Treatment," shall be printed on a single double-sided eight and a half (8.5) x eleven (11) inch piece of pink paper***,*** and shall be in a typed font of a size and style sufficient to include the***[~~following~~]*** information***[~~:~~***
~~(1) An advisory that completing the medical order for scope of treatment form is voluntary and not required for treatment;~~
~~(2) Identification of the person who discussed and agreed to the options for medical intervention that are selected;~~
~~(3) The effective date of the form;~~
~~(4) The expiration or review date of the form, which shall be no more than one (1) calendar year from the effective date of the form;~~
~~(5) Indication of whether the patient has a living will directive or health care power of attorney, a copy of which shall be attached to the form if available;~~
~~(6) An advisory that the medical order for scope of treatment may be revoked by the patient, the surrogate, or a responsible party at any time;~~
~~(7) A statement written in boldface type directly above the signature line for the patient that states "You are not required to sign this form to receive treatment"; and~~
~~(8) All other information~~] mandated by KRS 311.6225(1) ***and (3).***
(2) The acceptable and prevailing medical practice shall be for a licensee to use the standardized MOST form developed and adopted by the board.

Section 3. ***Incorporation by Reference.***
(1) "MOST, Medical Orders for Scope of Treatment", December 2015, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site at http://kbml.ky.gov[~~Availability of the MOST form. The MOST form shall be available for board licensees to download and print directly from the board's Web site~~].

PRESTON P. NUNNELLEY, M.D., President
APPROVED BY AGENCY: October 9, 2015
FILED WITH LRC: October 12, 2015 at 4 p.m.
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.

GENERAL GOVERNMENT CABINET
Board of Licensure and Certification for Dietitians and Nutritionists
(As Amended at ARRS, January 11, 2016)

201 KAR 33:020. Renewals.

RELATES TO: KRS 310.041
STATUTORY AUTHORITY: KRS 310.041, 310.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.050(1) requires the board to promulgate administrative regulations establishing procedures for annual renewal of licenses ***and certificates***. This administrative regulation establishes procedures for annual renewal of licenses ***and certificates***.

Section 1. Regular Renewal. (1) A licensed dietitian or certified nutritionist shall annually, before November 1, submit a completed Renewal Application and pay to the board the renewal fee established by 201 KAR 33:010, Section 2, for the renewal of the license or certificate.
(2) ***Except as provided under Section 2 of this administrative regulation,*** if a license or certificate is not renewed before November 1 of each year, it shall expire.
(3) Compliance with continuing education requirements shall be documented as provided by 201 KAR 33:030.

Section 2. Late Renewal and the Grace Period. (1) A sixty (60) day grace period shall be allowed beginning November 1, during which a licensee or certificate holder may renew his or her license or certificate upon payment of the renewal fee plus the late renewal fee established by 201 KAR 33:010, Section 2.
(2)(a) A licensee or certificate holder may continue to practice during the sixty (60) day grace period.[~~;~~]
(b) Upon request of the employer, a licensee or certificate holder practicing in accordance with paragraph (a) of this subsection shall present evidence of a valid pre-existing license or certificate.
(3) A person requesting renewal of a certification ***or licensure*** during the sixty (60) day grace period shall comply with the continuing education requirements as required by KRS 310.050(3) and as specified by 201 KAR 33:030.

Section 3. Automatic Revocation. Upon revocation as set forth by KRS 310.050(4), a licensee or certificate holder shall no longer be eligible to practice in the commonwealth.[~~:~~]

Section 4. Licensure and Certification Reinstatement. After the sixty (60) day grace period, a license or certificate, which has been automatically revoked due to failure to renew, shall be reinstated if the licensee or certificate holder has:
(1) Submitted a complete Reinstatement Application;
(2) Paid the renewal fee plus a reinstatement fee as set forth by 201 KAR 33:010; and
(3)[~~(2)~~] Documented that he or she has complied with the continuing education requirements established by 201 KAR 33:030.

Section 5. Address ***and Contact Information Changes***. (1) A

licensee ***or certificate holder*** shall submit a current address to the board office by letter within thirty (30) days of an address change.

(2) The letter shall include the licensee's[~~licensees~~] ***or certificate holder's*** name, new address, phone number, and license ***or certificate*** number.

(3) Changes to other contact information such as the licensee's or certificate holder's name, email address, or phone number shall require the licensee or certificate holder to submit the current contact information to the board office by letter within thirty (30) days of the changed contact information. The letter shall include the updated contact information and the license or certificate number.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Application", ***November[~~July~~]*** 2015; and

(b) "Reinstatement Application", ***November[~~July~~]*** 2015.

(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.

AVA EAVES, Board Chairperson

APPROVED BY AGENCY: September 15, 2015

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

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.

GENERAL GOVERNMENT CABINET
Board of Licensure and Certification for Dietitians and Nutritionists
(As Amended at ARRS, January 11, 2016)

201 KAR 33:030. Continuing education requirements for licensees and certificate holders.

RELATES TO: KRS 310.050(3)

STATUTORY AUTHORITY: KRS 310.041(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.041(1) requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for dietitians and nutritionists.

Section 1. (1)(a) The annual continuing education compliance period shall extend from November 1 of each year to October 31 of the next year.

(b) Prior to renewal of a license or certificate for the next licensure or certification period, a licensee or certificate holder shall have earned fifteen (15) hours of approved continuing education during the compliance period.

(c) A person who is either licensed as a dietitian or certified as a nutritionist, or who is both a licensed dietitian and certified nutritionist, shall have earned a total of fifteen (15) hours of approved continuing education during the compliance period, prior to renewal of a license or certificate for the next licensure period.

(2) An initial licensee or certificate holder shall be exempt from the continuing education requirements for the first license or certification renewal.

(3) No more than fifteen (15) hours of continuing education may be carried over into the next continuing education period.

(4) It shall be the responsibility of each licensee or certificate holder to finance the costs of continuing education.

(5) For purposes of the audit set forth in subsection (8)[~~(7)~~] of this section, every licensee or certificate holder shall maintain a record of all continuing education courses attended for two (2) years after the continuing education period. Appropriate documentation to be kept shall include:

(a) Certificates of attendance for the prior-approved continuing education;

(b) Transcripts for academic coursework;

(c) Reprints of journal articles published; or

(d) Proof of attendance, description of activity, and professional qualifications of the presenter for continuing education activities.

(6) Each licensee or certificate holder shall sign a statement on the Renewal Application form***, as incorporated by reference in 201 KAR 33:020,*** indicating compliance with the continuing education requirements. A license or certificate shall not be renewed without this sworn statement.

(7) A certified nutritionist shall submit a completed Continuing Education Submission Form for Certified Nutritionists Only.

(8)(a) The board shall audit at least fifteen (15) percent of licensees' or certificate holders' continuing education records each year.

(b) Licensees or certificate holders who are audited shall be chosen in a random manner or at the discretion of the board. The board's determination shall be based on:

1. Disciplinary action against the licensee ***or certificate holder***; or

2. Question of the validity of the continuing education credit.

(c) Falsifying reports, records, or other documentation relating to continuing education requirements shall result in formal disciplinary action.

(9)[~~(8)~~](a) A document that reflects a continuing valid registration with the Commission on Dietetic Registration shall constitute proof of compliance with the continuing education requirement by a person licensed as a dietitian or certified as a nutritionist.

(b) A membership card shall not constitute compliance with paragraph (a) of this subsection.

Section 2. Approved Continuing Education Activities. (1) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, interactive workshop, seminar, or lecture that[~~which~~] has been approved by the board.

(2) Criteria for subject matter.

(a) Subject matter for continuing education hours shall reflect the educational needs of the licensed dietitian or certified nutritionist and the nutritional health needs of the consumer.

(b) Subject matter shall be limited to offerings that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth.

(c) The following areas shall be appropriate subject matter for continuing education credit if they are directly related to the practice of dietetics or nutrition:

1. Sciences on which dietetic practice, dietetic education, or dietetic research is based including nutrition, biochemistry, physiology, food management, and behavioral and social sciences to achieve and maintain people's nutritional health;

2. Nutrition therapy related to assessment, counseling, teaching, or care of clients in any setting; or

3. Management or quality assurance of food and nutritional care delivery systems.

(3) Standards for approval of continuing education programs and activities. A continuing education activity shall be approved if it:

(a) Constitutes an organized program of learning, including a workshop or symposium, which contributes directly to the professional competency of the licensee or certificate holder;

(b) Pertains to subject matters that relate integrally to the practice of dietetics or nutrition; and

(c) Is conducted by individuals who have education, training, and experience in the subject matter of the program.

(4) Academic coursework.

(a) Coursework shall be eligible for credit if it:

1. Has been completed at a U.S. regionally accredited college or university; and

2. Is beyond entry-level dietetics.[;]

(b) One (1) academic semester credit shall equal fifteen (15) continuing education hours.

(c) One (1) academic quarter credit shall equal ten (10) continuing education hours.

(d) An audited class shall equal eight (8) continuing education hours for a semester or five (5) continuing education hours for a quarter.

(5) Scholarly publications.

(a) A publication shall be approved if it:

1. Is published in a ***recognized[~~refereed~~]*** professional journal or other publication; and

2. Relates to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research.

(b) Continuing education credit hours for authorship of a scholarly publication shall be reported using the ***requirements established in this paragraph.[~~following guidelines:~~]***

1. Authorship.

a. ***A single author shall be reported if the author is the sole author listed.***

b. A senior author shall be reported if the author is the first of two (2) or more authors listed.

c.[~~b.~~] A co-author shall be reported if the author is the second of two (2) authors listed.

d.[~~c.~~] A contributing author shall be reported for all but the senior of three (3) or more authors.

2. For the publication of a research paper, a licensee ***or a certificate holder*** shall receive continuing education credit of:

a. Ten (10) hours if he or she is the single author;

b. Eight (8) hours if he or she is the senior author;

c. Five (5) hours if he or she is a co-author; or

d. Three (3) hours if he or she is a contributing author.

3. For the publication of a technical article, a licensee ***or a certificate holder*** shall receive continuing education of:

a. Five (5) hours if he or she is the single author;

b. Four (4) hours if he or she is the senior author;

c. Three (3) hours if he or she is a co-author; or

d. Two (2) hours if he or she is a contributing author.

4. For the publication of an information-sharing article, a licensee ***or a certificate holder*** shall receive one (1) hour of continuing education credit.

5. For the publication of an abstract, a licensee ***or a certificate holder*** shall receive continuing education of:

a. Two (2) hours if he or she is the ***single author or the*** senior author; or

b. One (1) hour if he or she is a co-author.

(6) Poster sessions.

(a) Continuing education credit shall be approved for attending juried poster sessions that meet the criteria for appropriate subject matter established in subsection (3) of this section upon submission of the documentation required in paragraph (c) of this subsection.

(b) One (1) hour of continuing education credit shall be allowed for each hour of posters reviewed not to exceed three (3) hours in a continuing education year.

(c) The following documentation shall be submitted for approval of continuing education credit for attending juried poster sessions:[~~:~~]

1. Certificate of attendance or completion indicating:

a. The date of the session;

b. The number of hours requested;

c. The objectives of the session; and

d. The session provider;

2. An agenda or outline of the session;

3. A program, flyer, or brochure describing the poster session; or

4. Handouts from the poster session.

(7) Continuing education hours for presenters.

(a) Credit shall not be given for presentations to the lay public.[~~;~~]

(b) Credit shall be allowed only once for the same presentation.[~~;~~]

(c) The presenter shall receive twice the number of hours approved for the activity.[~~;~~]

(d) Two (2) hours per topic shall be allowed for presenters of juried poster sessions that meet the criteria for appropriate subject matter established in subsection (3) of this section.

(e) A copy of the presentation or poster, abstract or manuscript, and documentation of the peer review process shall be included in the licensee's or certificate holder's documentation list.

(8) Exhibits.

(a) Continuing education credits may be obtained for attending exhibits that meet the criteria for appropriate subject matter established in subsection (3) of this section ***upon submission of the documentation required in paragraph (c) of this subsection***.

(b) One (1) hour of continuing education credit shall be allowed for each hour of exhibits reviewed not to exceed three (3) hours in a continuing education year.

(c) Documentation of attendance or completion of review of exhibits shall be submitted showing:

1. Date;

2. Provider;

3. Timeline; and

4. Content of the exhibits.

(9) Residency and fellowship programs.

(a) Fifteen (15) hours of continuing education credit shall be granted for completion of a residency or fellowship program, if the program is:

1. At the postbaccalaureate level;

2. Dietetics-related;

3. Formalized or structured experiences; and

4. Sponsored by a U.S. regionally accredited college or university of an institution accredited or approved by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the National Committee for Quality Assurance (NCQA).

(b) Documentation of ***compliance with paragraph (a) of this subsection[~~the above~~]*** shall be submitted and shall include:

1. Certificate of completion; and

2. Name, address, phone number, e-mail address, and fax number of the provider.

(10) Certification program.

(a) Fifteen (15) hours of continuing education credit shall be granted for completion of a certification approved by the board that:

1. Is dietetics-related;

2. Requires that candidates meet eligibility requirements; and

3. Requires that a candidate or certificate holder pass an examination to become certified initially, and to be recertified.

(b) Up to fifteen (15) hours of continuing education credit, for the exam only, may be carried over to the following year.

(c) Documentation. A document verifying the date of issue; duration of certification; and name, address, phone number, e-mail address, and fax number of the provider shall be submitted.

(11) Self study courses.

(a) Fifteen (15) hours of continuing education credit shall be granted for completion of a Commission on Dietetic Registration preapproved self-study program that meets the following criteria:

1. The program shall address a single specific subject in depth;

2. Test items shall accompany the program and be based on its content; and

3. The program may be audio-based; computer based; printed; video-, DVD-, or CD-based; or Web-based.

(b) The following documentation shall be submitted:

1. A certificate of attendance or completion;

2. An agenda or outline of the program; and

3. Description of the objectives, date, timeline, and provider of the program.

Section 3. Procedures for Prior Approval of Continuing Education Activities. (1) A person seeking prior approval of a course, program, or other continuing education activity shall apply to the board for approval at least sixty (60) days in advance of the commencement of the activity.

(2) The application shall state the:

(a) Dates;

(b) Subjects offered;

(c) Objectives for the activity;

(d) Total hours of instruction; and

(e) Names and qualifications of speakers.

(3) The board shall approve or deny timely and complete

applications before the commencement of the activity.

(4) Review of programs.

(a) The board may monitor and review any continuing education program already approved by the board.

(b) Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

(5) Programs pertaining to the following subject areas shall require preapproval by the board:

(a) Experiential skill development, which shall be limited to fifteen (15) hours;

(b) Independent learning programs that are sponsored and related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research, which shall be limited to ten (10) hours;

(c) Study groups involving nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research, which shall be limited to ten (10) hours; and

(d) Professional reading of journal articles related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research, which shall be limited to three (3) hours.

Section 4. Subsequent Approval of Continuing Education Activities. (1)(a) Individual or group educational activities for which program providers or sponsors have not requested continuing education hour approval prior to the date of the activity may be approved by the board for continuing education credit.

(b) An activity that has received prior approval shall not be submitted on a subsequent approval basis.

(2) The person seeking subsequent approval of continuing education activities shall submit the following information regarding the program attended:

(a) Dates;

(b) Subjects offered;

(c) Learner educational objectives for the activity and anticipated outcomes;

(d) Total hours of instruction;

(e) Names and qualifications of speakers;

(f) A timing outline, including time spent for registration, introductions, welcomes, and coffee and meal breaks; and

(g) The number of continuing education hours requested.

(3) A request for approval of a continuing education program based on:

(a) A program that does not require preapproval shall be submitted within sixty (60) days of completion;

(b) Authorship of a publication shall be submitted within six (6) months of the date of publication; and

(c) Academic coursework shall be submitted within the licensure or certification year of the course completion date.

(4) Documentation of attendance at a workshop, seminar, or lecture related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research that has not been approved by the Commission on Dietetic Registration shall be submitted within sixty (60) days of attendance.

(5) An activity that has not received prior approval may be submitted by individuals on a subsequent approval basis with rationale demonstrating continuing education value.

Section 5. Provider Preapproval. (1) A provider of a continuing education program seeking to obtain prior approval from the board for continuing education certification shall provide the following documentation to the board not less than sixty (60) days prior to the event:

(a) Dates;

(b) Subjects offered;

(c) Objectives for the activity;

(d) Total hours of instruction; and

(e) Names and qualifications of speakers.

(2) The board shall approve or deny timely and complete applications before the commencement of the activity.

(3) Review of programs.

(a) The board may monitor and review any continuing education program already approved by the board.

(b) Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

Section 6. Appeals Procedure. (1) A licensee or certificate holder may appeal decisions regarding continuing education by filing a written appeal.

(2) An appeal shall be sent to the board within thirty (30) calendar days after notification of denial and shall be considered by the board at its next scheduled meeting.

Section 7. Waiver of Continuing Education. (1) A licensee or certificate holder who is medically disabled or ill ***based upon the verification document signed by a licensed physician*** shall be granted:

(a) A waiver of the continuing education requirements; or

(b) An extension of time within which to complete continuing education requirements or make required reports.

(2) A written request for waiver or extension of time shall be:

(a) Submitted by the licensee or certificate holder; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of the minimum continuing education requirements or extensions of time to complete them shall not be granted for more than one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or certificate holder shall reapply for further waiver or extension.

Section 8. Continuing Education Requirements for Retired or Inactive Licensees ***or Certificate Holders***. (1)(a) A licensee ***or certificate holder*** who holds an inactive license ***or certificate shall[~~is~~]*** not ***be*** required to obtain continuing education.

(b) Upon application to return to active status, the licensee ***or certificate holder*** shall present evidence that the licensee ***or certificate holder*** has fulfilled the continuing education requirements for the two (2) year period immediately prior to the application for reinstatement.

(2)(a) A retired licensee ***or certificate holder shall[~~is~~]*** not ***be*** required to obtain continuing education.

(b) Upon application to return to active status, the licensee ***or certificate holder*** shall present evidence that the licensee ***or certificate holder*** has fulfilled all past-due continuing education requirements ***from the date of retirement***.

Section 9. Incorporation by Reference. (1) "Continuing Education Submission Form for Certified Nutritionists Only", July 2015[~~"Renewal Application", January 2010~~], 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.

AVA EAVES, Board Chairperson

APPROVED BY AGENCY: September 15, 2015

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

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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Pastoral Counselors
(As Amended at ARRS, January 11, 2016)

201 KAR 38:070. Renewal of licenses and continuing education.

RELATES TO: KRS 210.366, 335.625***, 335.640, 335.650***
STATUTORY AUTHORITY: KRS 210.366, 335.615(6), 335.625
NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 335.615(6) requires the board to promulgate administrative regulations to implement the purposes of KRS 335.600 to 335.699. KRS 335.625(1) requires the board to establish the renewal fee in an administrative regulation. KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management at least once every six (6) years.*** This administrative regulation ***establishes[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 ***establishes[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 ***as required by KRS 335.625*** on or before a date that is three (3) years from the date of his or her original license***[or certification]*** or last renewal ***by submitting to the board a completed[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 ***of[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 ***Licensure[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 ***at least once*** every six (6) years thereafter as required by KRS 210.366. A person holding a license shall be ***exempt[exempted]*** from the requirement to complete a continuing education course in suicide assessment, treatment, and management ***at least once every six (6) years[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 ***2[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
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.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, January 11, 2016)

401 KAR 59:174. Stage II controls at gasoline dispensing facilities.

RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, ***40 C.F.R. 51.126,*** 42 U.S.C. 7511a(b)(1)(A)***[, 40 C.F.R. 51.126]***
STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7409, 7410, 7511a(b)(3), 7521(a)(5), 7624, 7625***, 40 C.F.R. 51.126***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Energy and Environment[Environmental and

~~Public Protection~~] Cabinet to promulgate[~~prescribe~~] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation ***establishes requirements[provides]*** for the control of emissions from gasoline dispensing facilities and the decommissioning of existing controls at gasoline dispensing facilities that are no longer environmentally beneficial.

Section 1. Definitions. Terms not defined in this section shall have the meaning ***established[given them]*** in 401 KAR 59:001. (1) "Average monthly throughput" means[~~:~~

~~(a) For an existing facility,~~] the total gallons of gasoline dispensed during the months of operation in the previous twelve (12) months, divided by the number of months of operation during those twelve (12) months[~~, or~~

~~(b) For a facility which commenced construction on or after the effective date of this administrative regulation, an estimate provided by the owner or operator and approved by the cabinet, of the total gallons of gasoline that will be dispensed during the first twelve (12) months of operation divided by twelve (12)~~].

(2) "Balance system" means a Stage II vapor recovery system ***that[which]*** uses direct displacement to force vapor out of the receiving container and back into the space of the container from where the liquid product was withdrawn.

(3) "Boot" means an accordion-like tubular cover used over the spout of a gasoline nozzle to provide a return-path for gasoline vapors displaced during refueling.

(4) "CARB" means the California Air Resources Board.

(5) "CARB certification" means a document such as an executive order or approval letter provided by CARB or by an equivalent authority ***that[which]*** certifies that a vapor recovery system or system components achieve at least a ninety-five (95) percent reduction in the VOC emissions during refueling, and ***that[which]*** identifies the performance standards required for the system or system components. An executive order may also identify the range of permissible components, permissible construction configurations, and the required tests for compliance.

(6)[~~"Classification date" means the date on which this administrative regulation becomes applicable in a county or portion of a county.~~

~~(7)~~] "Coaxial hose" means a hose-within-a-hose ***that[which]*** provides separate passages for the flow of gasoline and vapor return.

(7) "Decommission" means to render inoperable a stage II vapor recovery system.

(8) "Dry break" means a spring-loaded valve that prevents vapor from escaping through the vapor recovery riser pipe opening of a storage tank.

(9) "Equivalent authority" means an authority recognized by the cabinet and by the U.S. EPA as having a program for certification of vapor recovery systems equivalent to that of CARB.

(10) "Existing gasoline dispensing facility" means a facility that commenced dispensing gasoline prior to January 1, 2016.

(11) "Faceplate" means a soft, donut-shaped device attached to the boot of a balance nozzle ***that[which]*** forms a tight seal with the vehicle fill pipe during refueling.

(12)[~~(11)~~]"Facility" or "gasoline dispensing facility" means a site, except a farm not engaged in the sale of gasoline, where gasoline is transferred from a stationary storage tank to a motor vehicle fuel tank.

(13)[~~(12)~~] "Facility representative" means a facility employee who has been trained to serve at that facility as prescribed in Section 5 of this administrative regulation.

(14)[~~(13)~~] "Flexible cone" means a cone-shaped device attached to the boot of a vacuum-assist nozzle that prevents too low a vacuum from forming in the vehicle fuel tank.

(15)[~~(14)~~]"Leak" means liquid or vapor loss from the gasoline dispensing system or vapor recovery system as determined by visual inspection or operation of the equipment.

(16)[~~(15)~~]"Modification" or "modify" means:

(a) The repair, replacement, or upgrade of a facility's Stage II equipment at a cost equal to seventy-five (75) percent or more of the cost of a total system replacement at***[the time of]*** modification; or

(b) A change, such as the removal of a CARB certified component and the addition or removal of piping or fittings, which may cause the vapor recovery system to be incapable of maintaining an overall control efficiency of at least a ninety-five (95) percent reduction in the VOC emissions.

(17)[~~(16)~~] "Month" means calendar month.

(18)[~~(17)~~] "Month of operation" means a month during which a facility is not closed for the purpose of dispensing gasoline for more than four (4) consecutive days.

(19)[~~(18)~~] "Motor vehicle" means a vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways.

(20) "New gasoline dispensing facility" means a facility that commenced dispensing gasoline on or after January 1, 2016.

(21)[~~(19)~~] "Stage I vapor recovery system" means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs by ninety-five (95) percent or more during the transfer of gasoline to a stationary storage tank at a facility.

(22)[~~(20)~~] "Stage II vapor recovery system" means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs during the refueling of a motor vehicle at a facility by ninety-five (95) percent or more.

(23)[~~(21)~~] "Storage tank" means a tank at a gasoline dispensing facility ***that[which]*** is used for the storage of gasoline.

(24)[~~(22)~~] "Vacuum assist system" means a Stage II vapor recovery system ***that[which]*** uses a vacuum inducing device to collect vapor from the receiving container and direct it back into the space of the container from where the liquid product was withdrawn.

Section 2. Applicability. (1) This administrative regulation shall apply to the owner or operator of a gasoline dispensing facility located in a county in which the entire county, as of January 12, 1998[~~the effective date of this administrative regulation~~], was[~~is~~] designated severe, serious, or moderate nonattainment for ozone pursuant to 401 KAR 51:010, Attainment status designations, except as exempted in Section 9 of this administrative regulation.

(2) Subject to the compliance timetable[~~After the date~~] specified in Section 8 of this administrative regulation, an owner or operator of an existing gasoline dispensing[~~a~~] facility shall not transfer or allow the transfer of gasoline from a storage tank at that facility into a motor vehicle fuel tank unless the displaced vapors are collected by a Stage II vapor recovery system and the requirements of this administrative regulation are met.

(3) A new gasoline dispensing facility, and an existing gasoline dispensing facility after decommissioning has been completed, shall not be subject to the requirements of Sections 3 through 10 of this administrative regulation.

Section 3. Registration and Notification Requirements. The owner or operator shall submit registration and notification forms to the Division for Air Quality as specified in this section.***[These forms are incorporated by reference in Section 11]***[10]***[of this administrative regulation.]*** (1) Registration of facilities. DEP 7105, Gasoline Dispensing Facility Registration Form, shall be submitted at least thirty (30) days prior to installing or modifying a Stage II vapor recovery system.

(2) Compliance test notification. DEP 7105A, Compliance Test Notification Form, shall be submitted at least thirty (30) days prior to the performance of the compliance tests required in Section 6 of this administrative regulation.

(3) Stage II post inspection report. DEP 7105B, Stage II Post Inspection Form, shall be submitted within ten (10) work days after the applicable compliance tests have been performed.

(4) Notice of Intent to Decommission Stage II Controls and Decommission Plan Form. A completed DEP 7105C, Notice of Intent to Decommission Stage II Controls and Decommission Plan Form shall be filed at least thirty (30) calendar days prior to commencing any decommissioning activity. If a change occurs to the submitted plan, a revision shall be filed at least ten (10)

calendar days prior to commencing any decommissioning activities.

(5) Notice of Status of Decommissioning of Stage II Control Form. A completed DEP 7105D, Notice of Status of Decommissioning of Stage II Controls Form, shall be filed within ten (10) days after commencing decommissioning. If decommissioning is not completed within ten (10) days after commencing, an additional DEP 7105D form shall be submitted.

Section 4. Control Measures and Operating Requirements. (1) The Stage II vapor recovery system shall:

(a) Be designed and operated to be at least ninety-five (95) percent effective in recovering displaced vapors;

(b) Be certified by CARB or an equivalent authority;

(c) Employ only coaxial hoses at the dispensers;

(d) Contain no components that would impede the performance of the functional or compliance tests of the system;

(e) Be integrated with a Stage I vapor recovery system; and

(f) Meet the testing requirements contained in Section 6 of this administrative regulation.

(2) The owner or operator shall comply with the***[following]*** operational restrictions ***established in paragraphs (a) through (d) of this subsection*** for the Stage II vapor recovery system***.[:]***

(a) The system shall be installed, operated, and maintained in accordance with the manufacturer's specifications and the applicable certification granted by CARB.

(b) The system shall be free of defects listed in this subsection. The facility representative shall inspect the equipment daily for these defects. If a defect is discovered, through this inspection or otherwise, an "Out of Order" sign shall be posted**,** and the defective equipment shall be rendered inoperable. Defects ***shall*** include:

1. The absence or disconnection of any component that is part of the Stage II vapor recovery system;

2. The use of equipment not in accord with the system certification;

3. A vapor hose that is crimped or flattened so that:

a. The vapor passage is completely blocked; or

b. The pressure drop through the vapor hose is greater than two (2) times the certification requirements;

4. A boot that is torn in one (1) or more of the following ways:

a. A triangular shaped or similar tear more than one-half (1/2) inch on a side;[~~or~~]

b. A hole more than one-half (1/2) inch in diameter; or

c. A slit more than one (1) inch in length;

5. A faceplate or flexible cone on a boot that is damaged so that the ability to achieve a seal with a fill pipe interface is impaired for at least one-quarter (1/4) of the total circumference of the faceplate or flexible cone;

6. A malfunctioning nozzle shutoff mechanism;

7. Vapor return lines, including components such as swivels, antirecirculation valves, and underground piping, that malfunction or are blocked, or are restricted so that the pressure drop through the line is greater than two (2) times the certification requirement;

8. An inoperative vapor processing unit;

9. An inoperative vacuum producing device;

10. An inoperative pressure/vacuum relief valve, vapor check valve, or dry break;

11. Leaks; and

12. An equipment defect ***that[which]*** substantially impairs the control efficiency of the system.

(c) A defect in a component of the Stage II vapor recovery system ***that[which]*** is not listed in paragraph (b) of this ***subsection[section]*** shall not prevent operation but shall be repaired or replaced within fifteen (15) days after being identified as defective.

(d) If the cabinet identifies a defect specified in paragraph (b) of this subsection, the cabinet shall affix a tag to the defective equipment stating that the equipment is out of order. The tag shall not be removed until the cabinet has been notified that the defect has been corrected, and the tagged equipment has been approved for use by the cabinet ***pursuant to paragraph (b) of this subsection***.

(3) The owner or operator shall ensure that safe access to the system components and monitoring equipment is maintained for inspection and compliance determination by the cabinet.

(4) The owner or operator shall display instructions for dispensing gasoline on or near each dispenser, in a print type and size that is easily readable, which include at a minimum:

(a) A description of how to use the equipment;

(b) A warning not to dispense fuel after automatic shutoff; and

(c) A telephone number established by the cabinet to report problems with equipment.

(5) At least one (1) person at the facility shall be trained pursuant to Section 5 of this administrative regulation.

Section 5. Training of Facility Representative. (1) The owner or operator shall ensure that at least one (1) person at the facility is trained to operate the vapor recovery system. The facility representative shall not be required to be present at the facility at all times, but shall perform or oversee the daily inspection of vapor recovery equipment for the defects listed in Section 4(1)(b) of this administrative regulation.

(2) Training may be provided by the vapor recovery equipment manufacturer or distributor, by the person constructing or modifying the Stage II vapor recovery system, by a trained facility representative, or by training manuals provided by the manufacturer, distributor, or the person constructing or modifying the Stage II vapor recovery system. If training manuals are used, they shall be kept at the facility and made available to the cabinet upon request.

(3) Training shall include the following topics:

(a) Purposes of the Stage II vapor recovery program;

(b) Operation of the vapor recovery system at that facility;

(c) Daily equipment inspections;

(d) How to repair or replace faulty equipment without voiding the equipment warranties;

(e) Procedures for posting and removing "Out of Service" signs;

(f) The executive orders of CARB (or the equivalent authority certifying the system), the range of components certified for use in the system, and the requirements placed on the owner or operator;

(g) Maintenance schedules and requirements for the system and its components; and

(h) Equipment warranties.

(4) The training shall include a practical demonstration on how to operate and inspect the equipment and how to perform a start-up and shut-down of the facility.

(a) This demonstration may be performed at another facility with a similar vapor recovery system.

(b) The cabinet may require that this demonstration be witnessed by the cabinet as a condition for compliance.

(5) The owner or operator shall maintain a record for each facility representative ***that[which]*** includes***[the following]***:

(a) The name of the facility representative and the date training was received;

(b) Proof of attendance and successful completion of training; and

(c) If applicable, the date the facility representative left the employ of the owner or operator.

(6) The owner or operator shall not operate the facility for more than thirty (30) consecutive days without a facility representative.

Section 6. Compliance Demonstration Test. (1) Within sixty (60) days after the installation or modification of a Stage II vapor recovery system, the owner or operator shall comply with the applicable test procedures specified in this subsection. The methods by which the tests specified in this subsection are to be conducted are set forth in Stationary Source Test Methods, Volume 2, Certification and Test Procedures for Vapor Recovery Systems, April 12, 1996***[,]***[These tests are]***[incorporated by reference in Section 11]***[10]***[of this administrative regulation]***.

(a) A leak test shall be performed in accordance with the applicable procedure specified in this paragraph. The vapor recovery system shall comply with the leak rate criteria specified in the applicable test procedure.

1. Vapor Recovery Test Procedure TP-201.3, Determination of

Two (2) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities;

2. Vapor Recovery Test Procedure TP-201.3A, Determination of Five (5) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities; or

3. Vapor Recovery Test Procedure TP-201.3B, Determination of Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities with Above-ground Storage Tanks.

(b) A dynamic back pressure test shall be performed in accordance with Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.

1. The cabinet may require that this test be conducted simultaneously on all the nozzles of a dispenser for which gasoline can be dispensed simultaneously.

2. The vapor recovery system shall comply with the maximum allowable average dynamic pressures given in the test procedure.

(c) Vapor Recovery Test procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ration of Vapor Recovery Systems of Dispensing Facilities, shall be performed for a system if required by the applicable CARB certification. The vapor recovery system shall comply with the criteria specified in the test procedure.

(d) Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, shall be performed for a system if required by the applicable CARB certification. The vapor recovery system shall comply with the criteria specified in the test procedure.

(2) At intervals not to exceed five (5) years, the owner or operator shall demonstrate compliance with the requirements of the applicable test procedure specified in subsection (1)(a) of this section. The notification requirements of Section 3(2) of this administrative regulation shall apply for these tests.

(3) The cabinet may require the owner or operator to perform other tests if necessary to demonstrate the adequacy of a vapor recovery system.

Section 7. Recordkeeping Requirements. (1) The owner or operator shall maintain the following documents:

(a) Current CARB certification for the Stage II vapor recovery system installed at the facility;

(b) Proof of training for the current facility representative; and

(c) Test results ***that[which]*** verify that the vapor recovery system meets or exceeds the requirements of the compliance tests required in Section 6 of this administrative regulation.

(2) The following records shall be maintained for a period not less than three (3) years:

(a) A log of the quantity of gasoline delivered to the facility during each month;

(b) A log of maintenance records including any repaired or replacement parts and description of the problem;

(c) Inspection reports issued by the cabinet, kept in chronological order;

(d) Compliance records including warnings or notices of violation issued by the cabinet, kept in chronological order; and

(e) The facility representative record specified in Section 5(3) of this administrative regulation.

(3) Records shall be kept current and made available to the cabinet upon request.

Section 8. Compliance Timetable. The owner or operator of an existing gasoline dispensing facility that is not exempt from this administrative regulation pursuant to Section 9 of this administrative regulation shall comply with this administrative regulation as established in this section. (1) The owner or operator shall commence decommissioning of the facility's Stage II vapor recovery system pursuant to Section 10 of this administrative regulation on or after January 1, 2016.

(2) The owner or operator shall complete decommissioning of the facility's Stage II vapor recovery system on or before December 31, 2018.

(3) The owner or operator shall comply with all sections of this administrative regulation unless and until the decommissioning of the facility's Stage II vapor recovery system is complete[~~in the following manner:~~

~~(1) Facilities with an average monthly throughput of 100,000 gallons or more, which commenced construction on or before the classification date, shall comply within one (1) year of the classification date.~~

~~(2) Facilities with an average monthly throughput between 25,000 and 100,000 gallons, which commenced construction on or before the classification date, shall comply within two (2) years of the classification date.~~

~~(3) Facilities commencing construction after the effective date shall comply before beginning to dispense gasoline~~].

Section 9. Exemptions. (1) The fuels and facilities specified in this subsection shall be exempt from this administrative regulation.

(a) Diesel fuel and kerosene. These fuels shall not be used in calculating the average monthly throughput to determine the applicability of this administrative regulation.

(b) A facility with an average monthly throughput of 25,000 gallons or less. This exemption shall cease to apply if the average monthly throughput exceeds 25,000 gallons prior to January 1, 2016, at which time facilities that were exempt before January 1, 2016, based on their average monthly throughput, shall continue to be exempt from this administrative regulation, and the throughput limitation shall no longer apply.

(c) A facility located in an air quality control region which has implemented a Stage II program that has been approved by the U.S. EPA.

(2) Recordkeeping for exempted facilities. An exempted facility shall maintain records for a period not less than two (2) years ***that[which]*** demonstrate that the facility's average monthly throughput has not exceeded the applicable throughput limit until January 1, 2016, after which time exempted facilities shall no longer be required to maintain records ***that[which]*** demonstrate that the facility's average monthly throughput has not exceeded the applicable throughput limit.

Section 10. Decommissioning. (1) The decommissioning procedure for a Stage II vapor recovery system shall be consistent with the procedure as described in Chapter 14 of the Petroleum Equipment Institutes Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Refueling Sites, PEI/RP300-09***[~~, which is incorporated by reference in Section 11 of this administrative regulation~~]***.

(2) The decommissioning procedure shall include***[~~the following~~]***:

(a) Initiating safety procedures;

(b) Relieving pressure in the tank ullage;

(c) Draining all liquid collection points;

(d) Protecting against electrical hazards by disconnecting all Stage II electrical components;

(e) Reprogramming the electronics in the dispenser to indicate that Stage II vapor recovery is not in service;

(f) Sealing off vapor piping located below grade and below the level of the dispenser base in a secure manner;

(g) Sealing off vapor piping located below grade at the tank end, if reasonably accessible, in a secure manner;

(h) Sealing of vapor piping located inside the dispenser cabinet in a secure manner;

(i) Replacing Stage II vapor recovery-type hanging hardware with conventional-type hanging hardware;

(j) Installing pressure and vacuum vent valves as appropriate;

(k) Removing all Stage II instructions from all dispenser cabinets;

(l) Conducting appropriate testing, including pressure decay and tie-tank tests;

(m) Verifying that all visible storage system components will not release any vapors or liquids; and

(n) Restoring the gasoline dispensing facility back to operational status.

(3)[(2)] Decommissioning, including all required testing, shall be completed within sixty (60) days of commencement of decommissioning.

(a) If decommissioning, including all required testing, is not completed within sixty (60) days of commencing decommissioning, lock-outs and "Out of Service" tags shall be installed on all gasoline dispensers that have not been decommissioned until decommissioning is completed[~~(3) Loss of exemption status. If a monthly record documents an average monthly throughput equal to or greater than the applicable throughput limit, the owner or operator shall notify the division by phone or fax within thirty (30) days. If the exemption ceases to apply, the owner or operator shall comply with this administrative regulation within one (1) year of notification by the cabinet~~].

Section 11.[~~10.~~] Incorporation[~~Material Incorporated~~] by Reference. (1) The following material is[~~forms are~~] incorporated by reference:

(a) "DEP 7105, Gasoline Dispensing Facility Registration", August 1997[~~"~~];

(b) "DEP 7105A, Compliance ***Test[Demonstration]*** Notification", August 1997[~~"~~];[~~and~~]

(c) "DEP 7105B, Stage II Post Inspection Form", August 1997[~~"~~];

(d) "DEP 7105C, Notice of Intent to Decommission Stage II Controls and Decommission Plan Form", May 2015;

(e) "DEP 7105D, Notice of Status of Decommissioning of Stage II Controls Form", May 2015;

(f) "Petroleum Equipment Institute's Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Refueling Sites, PEI/RP300-09", 2009; and

(g)[~~(2) The test methods specified in this subsection, as published by California Environmental Protection Agency, Air Resources Board, in the~~] "Stationary Source Test Methods, Volume 2, Certification and Test Procedures for Vapor Recovery Systems", April 12, 1996[~~", is incorporated by reference~~]. This document is also available from the California Air Resources Board, P.O. Box 2815, 2020 L St., Sacramento, California 95812, Phone: (916) 322-2990.

[~~(a) Vapor Recovery Test Procedure TP-201.3, Determination of Two (2) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.~~

~~(b) Vapor Recovery Test Procedure TP-201.3A, Determination of Five (5) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.~~

~~(c) Vapor Recovery Test Procedure TP-201.3B, Determination of Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities with Above-ground Storage Tanks.~~

~~(d) Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.~~

~~(e) Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities.~~

~~(f) Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities.~~]

(2) This[~~(3) The~~] material[~~incorporated by reference~~] may be[~~obtained,~~] inspected,[~~or~~] copied, or obtained, subject to applicable copyright law, at the[~~following offices of the~~] Division for Air Quality, 200 Fair Oaks Lane, First Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~:~~

~~(a) Division for Air Quality, 200 Fair Oaks Lane, First Floor, Frankfort, Kentucky 40601, (502) 564-3999;~~

~~(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;~~

~~(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;~~

~~(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;~~

~~(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;~~

~~(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;~~

~~(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and~~

~~(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 14, 2015

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

CONTACT PERSON: William Gooch, Division for Air Quality, 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666, email William.Gooch@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***by[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 ***by[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 ***by[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 ***by[in]*** KRS 67B.020(1); or

(c) A correctional services division as described ***by[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 ***that[~~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
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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***in accordance with Section 13 of this administrative regulation***;

(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***:***

(a) Participate in community service work or any program offered inside ***or[~~and~~]*** outside the secure perimeter of the jail***; and***

(b)[~~.~~

~~(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 ***in accordance with this subsection.[~~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 ***CPP 19.3[~~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 ***in accordance with this section[~~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
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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***in accordance with 815 KAR 7:120***.

(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 ***by[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 ***by[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" ***means a jail as defined by KRS 441.005(1) or a regional jail as defined by KRS 441.005(7)[~~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 ***by[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 ***by[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~~)] ***"PREA" means the Prison Rape Elimination Act, 42 U.S.C. 15601-15609.***

(22) "Prisoner" is defined ***by[in]*** KRS 441.005(3).

(23)[(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.

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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***establishes[~~sets forth~~]*** procedures for the administration and management of ***full-service[~~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 within thirty (30) days of employment.

(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 ***by[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 or jail administrator 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 ***established[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 or jail administrator 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 ***at a minimum[, 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) Assault[Battery], whether by jail personnel or prisoner;

(h) Sexually abusive conduct;

(i) Occurrence of contagious or infectious disease, or illness within the facility; ***and***

(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, ***if there is[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 ***at a minimum[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 ***if a prisoner dies[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.

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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***by[~~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***(3)[~~(2)~~]***.

(4) "Local correctional facility" is defined ***by[~~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***(3)[~~(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 ***that[~~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***(1)(b)[~~(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***; and[.]***

(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***, renovation, or expansion*** 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 ***temporary waiver of a physical plant standard in Section 12 of this administrative regulation for an existing jail that can no longer meet a standard[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 ***the[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. ***It shall include design features as established in this subsection.[~~Design features shall include:~~]***

(a) ***There shall be*** a minimum of fifty (50) square feet per prisoner***.[~~;~~]***

(b) ***There shall be*** a minimum of eight (8) feet deck height including soffits***.[~~;~~]***

(c) ***There shall be*** one (1) concrete slab thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each prisoner***.[~~;~~]***

(d) ***There shall be*** a penal commode, lavatory, and a flush floor drain controlled from outside the cell***.[~~;~~]***

(e) ***There shall be*** 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 ***ten (10)[~~eight (8)~~]*** or less; two (2) bathrooms for a rated capacity of ***eleven (11) to twenty (20); and three (3) bathrooms for a rated capacity of twenty-one (21)[~~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 ***square feet***;

(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. ***It shall include design features as established in this subsection.[~~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 ***a minimum of:***

1. For a Category I jail, one (1) 250 square foot room;

2. For a Category II jail, two (2) 250 square foot rooms;

3. For a Category III jail, four (4) 250 square foot rooms;

4. For a Category IV jail, six (6) 250 square foot rooms; or

5. For a Category V jail, eight (8) 250 square foot rooms[~~:~~

~~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) ***It shall include design features as established in this paragraph.[~~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 ***Kentucky[~~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. ***It shall include design features as established in this subsection.[~~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 ***established in this paragraph.[~~:~~]***

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 ***if[~~so long as~~]*** the commodes ***are[~~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 ***if[~~so long as~~]*** the commodes ***are[~~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 ***if[~~so long as~~]*** the commodes ***are[~~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 ***established[~~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", ***January*** 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.

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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***as established in this subsection.[which shall include:]***
(a) A key control center ***shall be[that is]*** secure and inaccessible to an unauthorized person at all times***.[;]***
(b) ***There shall be*** an accounting procedure for issuing and returning keys***.[;]***
(c) ***There shall be*** a procedure for immediate reporting and repairing of a broken or malfunctioning key or lock;
(d) A set of duplicate keys ***shall[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***, including:[:]***
(a) Fire;
(b) Assault;
(c) Suicide or attempted suicide; and
(d) Escape or attempted escape;
(6) Inmate vandalism***, including:[:]***
(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
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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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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) ***Being a tobacco-free facility[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
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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***establishes[~~sets forth~~]*** procedures to provide proper sanitation and hygiene in full-service jails.

Section 1. Procedures. (1) The jailer or jail administrator shall provide for the control of vermin and pests.
(2) The jail shall provide for both solid and liquid waste disposal.
(3) The jailer or jail administrator 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 ***established in this subsection.[:]***

(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

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***establishes[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 ***provided by this subsection.[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 ***that[~~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

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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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***establishes[~~sets forth~~]*** procedures for proper food services for ***full-service*** 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
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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***established in this paragraph***:

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 ***the requirements established in this subsection.[:]***

(a) ***There shall be*** 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

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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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***in full-service jails***.

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; ***and***

(c) Communicable disease training[~~Human immunodeficiency virus infection training and acquired immunodeficiency syndrome training approved by the Cabinet for Health and Family Services~~]***.[;]***

(3)[(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]***

(4)[(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

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***in accordance with 815 KAR 7:120***.

(2) "Department" is defined ***by[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 ***by[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 ***by[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 ***by[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

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***that[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 ***established[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, ***if there is[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
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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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***by[~~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***(3)[~~(2)~~]***.

(5)[~~(4)~~] "Local correctional facility" is defined ***by[~~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***(3)[~~(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***(1)(b)[~~(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***; and[.]***

(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***, renovation, or expansion*** 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 ***temporary waiver of a physical plant standard in Section 12 of this administrative regulation for an existing center that can no longer meet a standard[~~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 ***the[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 ***as established in this subsection.[~~:~~]***

(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***, which is incorporated by reference in 815 KAR 10:060***.

(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.

(g)[~~(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 ***Kentucky[~~Retail~~]*** Food Code, 902 KAR 45:005. If food is not prepared in the center, a food distribution area shall be substituted.

(h)[~~(g)~~] Laundry facilities. Laundry facilities shall be available.

(i)[~~(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.

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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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) ***Being a tobacco-free facility[~~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

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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***established in this subsection.[~~:~~]***

(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

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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 11, 2016)

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 ***by[~~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 ***by[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 ***by[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, ***if there is[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 ***Kentucky[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

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, January 11, 2016)

902 KAR 20:200. Tuberculosis (TB) testing for residents in long-term care settings[~~facilities~~].

RELATES TO: KRS 215.520-215.600, 216B.010-216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042(1)[~~, 216B.105~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 215.590 requires a health service or health facility licensed pursuant to KRS Chapter 216B or KRS Chapter 333 to report knowledge of a person who has active tuberculosis to the local health department. This administrative regulation establishes requirements for tuberculosis (TB) testing of residents in the following long-term care settings: nursing facilities, intermediate care facilities, nursing homes, Alzheimer's nursing homes, personal care homes, and intermediate care facilities for individuals with an intellectual disability (ICF/IID). These procedures are necessary to minimize the transmission of infectious tuberculosis among the staff and residents in long-term care settings.

Section 1. Definitions. (1) "Air changes per hour" or "ACH" means the air change rate expressed as the number of air exchange units per hour.

(2) "Airborne Infection Isolation (AII) room" means a room, formerly called a negative pressure isolation room, which is designed to maintain AII and is a single-occupancy patient-care room used to isolate persons with suspected or confirmed infectious TB disease.

(3) "BAMT conversion" means a change in the BAMT test result, on serial testing, from negative to positive over a two (2) year period.

(4) "Blood Assay for Mycobacterium tuberculosis" or "BAMT" means a diagnostic blood test that:

(a) Assesses for the presence of infection with M. tuberculosis;***[and]***

(b) Reports results as positive, negative, indeterminate, or borderline***; and***

(c)[. This test] Includes interferon-gamma (IFN- γ) release assays (IGRA).

(5) "Boosting" or the "booster phenomenon" means if nonspecific or remote sensitivity to tuberculin purified protein derivative (PPD) in the skin test wanes or disappears over time, subsequent tuberculin skin tests (TSTs) may restore the sensitivity.

(6) "Directly observed preventive therapy" or "DOPT" means the DOT for treatment of LTBI.

(7) "Directly observed therapy" or "DOT" means an adherence-enhancing strategy:

(a) In which a health care worker or other trained person watches a patient swallow each dose of medication; and

(b) That is the standard care for all patients with TB disease and is a preferred option for patients treated for latent TB infection (LTBI).

(8) "Extrapulmonary tuberculosis" means TB disease in any part of the body other than the lungs (e.g., kidney, spine, or lymph nodes), and may include the presence of pulmonary TB or other infectious TB diseases.

(9) "Health care workers" or "HCWs" means all paid and unpaid persons working in health care settings who have the potential for exposure to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air, and shall include:

(a) Physicians;

(b) Physician assistants;

(c) Nurses;

(d) Medical assistants;

(e) Nursing assistants or nurse aides;

(f) Therapists;

(g) Technicians;

(h) Emergency medical service personnel;

(i) Dental personnel;

(j) Pharmacists;

(k) Laboratory personnel;

(l) Autopsy personnel;

(m) Students and trainees;

(n) Contractual and community-based physicians and other healthcare professionals and staff not employed by the health care facility; and

(o) Persons (e.g., clerical, dietary, housekeeping, laundry, security, maintenance, billing, and volunteers) not directly involved in patient care but potentially exposed to infectious agents that may be transmitted to and from health care workers and patients or residents.

(10) "Induration" means a firm area in the skin that develops as a reaction to injected tuberculin antigen if a person has tuberculosis infection and that is measured in accordance with Section 2(2) of this administrative regulation.

(11) "Infectious tuberculosis" means pulmonary, laryngeal, endobroncheal, or tracheal TB disease or a draining TB skin lesion that has the potential to cause transmission of tuberculosis to other persons.

(12) "Latent TB infection" or "LTBI" means infection with M. tuberculosis without symptoms or signs of disease having been manifested.

(13) "Long-term care setting" means a nursing facility, intermediate care facility, nursing home, Alzheimer's nursing home, personal care home, or intermediate care facility for individuals with an intellectual disability.

(14) "Multidrug-resistant tuberculosis" or "MDR TB" means TB disease caused by M. tuberculosis organisms that are resistant to at least isoniazid (INH) and rifampin.

(15) "Nucleic Acid Amplification" or "NAA" means a laboratory method used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence usually for detecting and identifying a microorganism.

(16) "Polymerase chain reaction" or "PCR" means a system for in vitro amplification of DNA or RNA that can be used for diagnosis of infections.

(17) "Staggered tuberculosis testing" means the testing of a resident in or before the same month as the anniversary date of the resident's admission, or testing in or before the birth month of the resident so that all residents do not have tuberculosis testing in the same month.

(18) "TST conversion" means a change in the result of a test for M. tuberculosis infection in which the condition is interpreted as having progressed from uninfected to infected in accordance with Section 2(4) of this administrative regulation.

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

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

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

(20) "Tuberculosis (TB) disease" means a condition caused by infection with a member of the M. tuberculosis complex that meets the descriptions established in Section 2(3) of this administrative regulation.

(21) "Tuberculosis risk assessment" means an initial and ongoing evaluation of the risk for LTBI or active TB disease in a particular resident and is performed in accordance with the provisions established in Sections 3, 7, 8, and 11 of this administrative regulation.

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

Section 2. Tuberculosis Testing Requirements for TSTs. (1) Two-step testing shall be used to distinguish new infections from boosted reactions in infection-control surveillance programs.

(2)(a) A TST shall be performed by:

1. A physician;

2. An advanced practice registered nurse;

3. A physician assistant;

4. A registered nurse; or

5. A pharmacist.

(b) A licensed practical nurse under the supervision of a registered nurse may perform a TST.

(3) Induration Measurements.

(a) The diameter of the firm area shall be measured transversely (i.e., perpendicularly) to the long axis of the forearm to the nearest millimeter to gauge the degree of reaction, and the result shall be recorded in millimeters.

(b) The diameter of the firm area shall not be measured along the long axis of the forearm.

(c) A reaction of ten (10) millimeters or more of induration, if the TST result is interpreted as positive, shall be considered highly indicative of tuberculosis infection in a health care setting.

(d) A reaction of five (5) millimeters to nine (9) millimeters of induration may be significant in certain individuals with risk factors described in Section 3(3) of this administrative regulation for rapid progression to active tuberculosis disease if infected.

(4) Tuberculosis (TB) disease.

(a) A person shall be diagnosed as having tuberculosis (TB) disease if the infection has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present but other indications of disease activity are present, including radiographic abnormalities) illness.

1. Tuberculosis that is found in the lungs ***shall be[~~is~~]*** called pulmonary TB and may be infectious.

2. Extrapulmonary disease (occurring at a body site outside the lungs) may be infectious in rare circumstances.

(b) If the only clinical finding is specific chest radiographic abnormalities, the condition is termed "inactive TB" and shall be differentiated from active TB disease, which is accompanied by symptoms or other indications of disease activity, including the ability to culture reproducing TB organisms from respiratory secretions or specific chest radiographic finding.

(5)(a) A TST conversion shall have occurred if the size of the measured TST induration increases by ten (10) millimeters or more during a two (2) year period in a resident with a:

1. Documented baseline two-step TST result measured as zero (0); or

2. Previous follow-up screening TST result with induration measured as one (1) millimeter to nine (9) millimeters and interpreted as negative during serial testing.

(b) A TST conversion shall be presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.

Section 3. TB Risk Assessment and Tuberculin Skin Tests or BAMTs for Residents. (1) Risk Assessment.

(a) To perform a risk assessment, a questionnaire shall be used and the following factors shall be assessed:

1. The clinical symptoms of active TB disease;

2. Events and behaviors that increase the risk for exposure to M. tuberculosis and the risk of acquiring LTBI; and

3. Medical risk factors that increase the risk for a resident with LTBI to develop active TB disease.

(b) A TB Risk Assessment questionnaire may be obtained from the Kentucky Department for Public Health (published online at: http://chfs.ky.gov/dph/epi/tb.htm) or from a national medical or public health organization, including the American Academy of Pediatrics or the Centers for Disease Control and Prevention.

(c) TB Risk Assessment questions shall be on a facility-approved form or incorporated into the long-term care setting's medical forms or into forms or other features of the long-term care setting's electronic medical record systems.

(2) Exclusion of Residents from Tuberculin Skin Tests or BAMTs on Admission. A TST or BAMT shall not be required on admission if the resident, resident's guardian, resident's health care surrogate, or resident's responsible party provided medical documentation for one (1) of the following as part of a TB Risk Assessment:

(a) A prior TST of ten (10) or more millimeters of induration if the TST result was interpreted as positive;

(b) A prior TST of five (5) millimeters to nine (9) millimeters of induration if the resident has a medical reason as described in subsection (3) of this section for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion;

(e) A BAMT conversion;

(f) The resident is currently receiving or has completed treatment for LTBI with one (1) of the treatment regimens recommended by the Centers for Disease Control and Prevention;

(g) The resident has completed a course of multiple-drug therapy for active TB disease recommended by the Centers for Disease Control and Prevention; or

(h) The resident has had a TST or BAMT within three (3) months prior to admission and has previously been in a serial testing program at another medical facility, long-term care setting, or other health care setting.

(3) A medical reason for a resident's TST result of five (5) millimeters to nine (9) millimeters of induration to be interpreted as positive may include:

(a) HIV-infection;

(b) Immunosuppression from disease or medications;

(c) Fibrotic changes on a chest radiograph consistent with previous TB disease: or

(d) Recent contact with a person who has active TB disease.

(4) TB Risk Assessments and Tuberculin Skin Tests or BAMTs on Admission.

(a) A baseline TB Risk Assessment and a TST or BAMT, if not excluded pursuant to subsection (2) of this section, shall be initiated on each new resident before or during the first week of admission. The results shall be documented in the resident's medical record or electronic medical record within the first two (2) weeks of admission.

(b) A TB Risk Assessment required by paragraph (a) of this

subsection and other sections of this administrative regulation shall be performed by:

1. A physician;

2. An advanced practice registered nurse;

3. A physician assistant;

4. A registered nurse; or

5. A pharmacist.

(c) A licensed practical nurse under the supervision of a registered nurse may perform the TB Risk Assessment.

(d) An initial or first-step TST result of ten (10) millimeters or more of induration may be interpreted as positive for a new resident.

(e) An initial or first-step TST result on admission of five (5) to nine (9) millimeters of induration may be interpreted as positive for a resident who has a medical reason as described in subsection (3) of this section for the TST result to be interpreted as positive.

(5)(a) A two-step baseline TST shall be required on admission for each resident aged fourteen (14) years and older whose initial or first-step TST on admission is interpreted as negative.

(b) The second-step test shall be initiated seven (7) to twenty-one (21) days after the first test.

1. A TST result of five (5) millimeters to nine (9) millimeters of induration may be interpreted as positive on the second step TST for a resident who has a medical reason as described in subsection (3) of this section for the TST result to be interpreted as positive.

2. If a resident aged fourteen (14) years and older does not have a medical reason as identified in subsection (3) of this section and the resident's initial or first-step TST performed in accordance with subsection (4)(a) of this section shows less than ten (10) millimeters of induration and a second step TST shows more than ten (10) millimeters of induration, the TST shall be interpreted as positive.

3. The initial TST shall count as the second-step TST if the resident aged fourteen (14) years and older provided medical documentation that he or she has had a one-step TST interpreted as negative within one (1) year prior to initial testing upon admission to the long-term care setting.

(6) A BAMT may be used in place of, but not in addition to, a TST and:

(a) If a BAMT is performed before or during the first week of admission and the result is positive or negative, only one (1) BAMT test result shall be required; and

(b) A second BAMT shall be performed if the BAMT result is borderline, indeterminate, or invalid.

Section 4. Admission of Patients under Treatment for Pulmonary Tuberculosis Disease or Other Infectious Tuberculosis Diseases. (1) A long-term care setting as described in Section 1(13) of this administrative regulation shall not admit a person under medical treatment for suspected or confirmed pulmonary tuberculosis disease or other suspected or confirmed infectious tuberculosis diseases caused by either non-MDR TB or MDR-TB unless the person is declared noninfectious by a licensed physician, advanced practice registered nurse, or physician assistant in conjunction with the local and state health departments.

(2)(a) A long-term care setting as described in Section 1(13) of this administrative regulation shall not admit a person under medical treatment for suspected or confirmed extrapulmonary tuberculosis disease caused by non-MDR TB or MDR TB, unless the person is declared noninfectious by a licensed physician, advanced practice registered nurse, or physician assistant in conjunction with the local and state health departments.

(b) Documentation of noninfectious status shall include clinical, radiographic, and laboratory evidence that concurrent pulmonary TB disease or other infectious TB disease has been excluded.

Section 5. Medical Record or Electronic Medical Record Documentation for Residents. (1) The TB Risk Assessment shall be documented in the resident's medical record or electronic medical record by recording the date of the assessment and the results.

(2) The TST result of each resident shall be documented in the resident's medical record or electronic medical record by recording the date of measurement, millimeters of induration, and interpretation of the results of all TSTs.

(3) The medical record shall be labeled inside or the electronic medical record shall be labeled with the notation "TST Positive" for each resident with a reaction of:

(a) Ten (10) millimeters or more of induration if the TST result was interpreted as positive; or

(b) Five (5) millimeters to nine (9) millimeters of induration if the resident has a medical reason as described in Section 3(3) of this administrative regulation for the TST result to be interpreted as positive.

(4)(a) If performed, the BAMT result of each resident shall be documented in the resident's medical record or electronic medical record by recording the date and result as positive, negative, borderline, or indeterminate.

(b) If a resident has a positive BAMT, his or her medical record shall be labeled inside or electronic medical record shall be labeled with the notation "BAMT Positive."

Section 6. Medical Evaluations, Chest X-rays, and Monitoring of Residents with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) At the time of admission or annual testing, a resident shall have a medical evaluation, including an HIV test unless the resident, resident's guardian, resident's health care surrogate, or resident's responsible party opts out of HIV testing, if the resident is found to have a:

(a) TST result of ten (10) millimeters or more induration if the TST result is interpreted as positive;

(b) TST result of five (5) millimeters to nine (9) millimeters of induration if the resident has a medical reason as described in Section 3(3) of this administrative regulation for the TST result to be interpreted as positive;

(c) Positive BAMT;

(d) TST conversion; or

(e) BAMT conversion.

(2) A chest x-ray shall be performed as part of the medical evaluation required by subsection (1) of this section unless a chest x-ray performed within the previous two (2) months showed no evidence of tuberculosis disease.

(3)(a) A resident with no clinical evidence of active TB disease upon evaluation by a licensed physician, advanced practice registered nurse, or physician assistant, and a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A resident who refuses treatment for LTBI, or a resident whose guardian, health care surrogate, or responsible party refuses on behalf of the resident treatment for LTBI, or a resident who has a medical contraindication shall be monitored according to the requirements in Section 7 of this administrative regulation.

(4) A resident with symptoms or an abnormal chest x-ray consistent with TB disease shall be:

(a) Isolated in an AII room or transferred within eight (8) hours of facility staff being aware of a suspected TB diagnosis to a facility with an AII room; and

(b) Evaluated for active tuberculosis disease as established in this paragraph.

1. Three (3) sputum specimens collected eight (8) to twenty-four (24) hours apart with at least one (1) being an early morning specimen shall be submitted to a hospital laboratory or a state or national reference laboratory for tuberculosis culture, AFB smear, and NAA or PCR tests.

2. Multi-drug antituberculosis treatment shall be administered by DOT for suspected or active tuberculosis disease.

(5) Individuals under treatment for suspected or confirmed pulmonary tuberculosis disease or other suspected or confirmed infectious tuberculosis diseases may be readmitted to the long-term care setting in accordance with the requirements of Section 4 of this administrative regulation.

Section 7. Monitoring of Residents with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) A

resident shall be monitored for development of pulmonary symptoms, including cough, sputum production, and chest pain, if the resident has:

(a) A TST result with ten (10) or more millimeters of induration;

(b) A TST result of five (5) millimeters to nine (9) millimeters of induration if the resident has a medical reason as described in Section 3(3) of this administrative regulation for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion; or

(e) A BAMT conversion.

(2) If pulmonary symptoms, including cough, sputum production, and chest pain develop and persist for three (3) weeks or longer:

(a) The resident shall have a medical evaluation; and

(b) A chest x-ray shall be taken.

(3) A resident with symptoms or an abnormal chest x-ray consistent with TB disease shall be:

(a) Isolated in an AII room; or

(b) Transferred within eight (8) hours of facility staff being aware of a suspected TB diagnosis to a facility with an AII room.

(4) Three (3) sputum specimens collected eight (8) to twenty-four (24) hours apart with at least one (1) being an early morning specimen shall be submitted to a hospital laboratory or national reference laboratory for tuberculosis culture, AFB smear, and NAA or PCR tests.

(5) Multi-drug antituberculosis treatment shall be administered by DOT for suspected or active tuberculosis disease.

(6) Individuals under treatment for suspected or confirmed pulmonary tuberculosis disease or other suspected or confirmed infectious tuberculosis diseases may be readmitted to the long-term setting in accordance with the requirements of Section 3 of this administrative regulation.

(7)(a) A resident with a positive TST or a positive BAMT on admission who stays eleven (11) months or longer in the long-term care setting shall have an annual TB Risk Assessment in or before the same month as the anniversary date of his or her last TB Risk Assessment.

(b) The resident shall not be required to submit to an annual TST or BAMT.

(8) A resident with a TST conversion or a BAMT conversion shall:

(a) Be educated about and advised of the clinical symptoms of active TB disease;

(b) Have an interval medical history for clinical symptoms of active TB disease every six (6) months during the first two (2) years following TST conversion or BAMT conversion followed thereafter by an annual TB Risk Assessment in or before the same month as the anniversary date of his or her last TB Risk Assessment; and

(c) Not be required to submit to an annual TST or BAMT.

Section 8. Monitoring of Residents with a Negative TST or a Negative BAMT who are Residents for Eleven (11) Months or Longer. (1) A long-term care setting shall use staggered tuberculosis testing to assure that all residents are not tested in the same month. Staggered testing shall be performed monthly, quarterly, or semiannually.

(2) An annual TB Risk Assessment and a TST or BAMT shall be required in or before the same month as the anniversary date of the resident's last TB Risk Assessment and TST or BAMT.

(3)(a) If pulmonary symptoms, including cough, sputum production, and chest pain, develop and persist for three (3) weeks or longer:

1. The resident shall have a medical evaluation;

2. The TST or BAMT shall be repeated; and

3. A chest x-ray shall be taken.

(b) A resident with signs or symptoms or an abnormal chest x-ray, consistent with TB disease, shall be:

1.a. Isolated in an AII room; or

b. Transferred within eight (8) hours of facility staff being aware of a suspected TB diagnosis to a facility with an AII room; and

2. Evaluated for active tuberculosis disease as provided in this subparagraph.

a. Three (3) sputum specimens, collected eight (8) to twenty-four (24) hours apart with at least one (1) being an early morning specimen, shall be submitted to a hospital laboratory or a state or national reference laboratory for tuberculosis culture, AFB smear, and NAA tests or PCR tests.

b. Multi-drug antituberculosis treatment shall be administered by DOT for suspected or active tuberculosis disease.

(4) Individuals under treatment for suspected or confirmed pulmonary tuberculosis disease or other suspected or confirmed infectious tuberculosis diseases may be readmitted to the long-term care setting in accordance with the requirements of Section 4 of this administrative regulation.

(5) Individuals evaluated for suspected infectious TB disease of the lungs, airways, or larynx in which active TB disease is considered unlikely after medical evaluation and TB laboratory testing may be readmitted to the long-term care setting if the individual is declared noninfectious for TB by a licensed physician, advanced practice registered nurse, or physician assistant in conjunction with the local and state health departments.

Section 9. Responsibility for Screening and Monitoring Requirements: Residents. (1) A long-term care setting's administrator or administrator's designee shall be responsible for ensuring that all TB Risk Assessments, TSTs, BAMTs, chest x-rays, and sputum specimen submissions for residents comply with Section 2 through Section 8 of this administrative regulation.

(2) If a long-term care setting does not employ licensed professional staff with the technical training to carry out the screening and monitoring requirements for residents, the administrator shall arrange for training or professional assistance from the local health department or from a licensed medical provider.

(3) TSTs with the date of measurement and millimeters of induration, interpretation of the results, date performed, and reported results of all BAMTs, chest x-rays, sputum specimen AFB smears, TB cultures, TB-related NAA tests, and TB-related PCR tests for a resident shall be:

(a) Recorded as a permanent part of the resident's medical record or electronic medical record; and

(b) Summarized on the resident's transfer form if an inter-facility transfer occurs.

Section 10. Reporting to Local Health Departments. (1) A long-term care setting's administrator or the administrator's designee shall report a resident identified with one (1) of the following to the local health department having jurisdiction within one (1) business day upon becoming known:

(a) A TST conversion or BAMT conversion on serial testing or identified in a contact investigation;

(b) A chest x-ray which is suspicious for TB disease;

(c) A sputum smear positive for acid-fast bacilli;

(d) A rapid laboratory test positive for Mycobacterium tuberculosis DNA or RNA, such as Mycobacterium tuberculosis positive NAA tests or PCR tests;

(e) Sputum cultures positive for Mycobacterium tuberculosis; or

(f) The initiation of multi-drug antituberculosis treatment for a resident.

(2) A long-term care setting's administrator or the administrator's designee shall report a resident identified with one (1) of the following to the local health department having jurisdiction within five (5) business days upon becoming known:

(a) A TST of ten (10) millimeters or more induration at the time of admission if the TST result was interpreted as positive;

(b) A TST result of five (5) millimeters to nine (9) millimeters of induration at the time of admission for a resident who has a medical reason as described in Section 3(3) of this administrative regulation for his or her TST result to be interpreted as positive; or

(c) A positive BAMT at the time of admission.

Section 11. Treatment for LTBI in Residents. (1) A resident with a TST conversion or a BAMT conversion with no clinical evidence of active TB disease upon evaluation by a licensed

physician, advanced practice registered nurse, or physician assistant and a negative chest x-ray shall be considered to be recently infected with Mycobacterium tuberculosis.

(2) A recently infected person as described in subsection (1) of this section shall have:

(a) A medical evaluation;

(b) An HIV test unless the resident, resident's guardian, resident's health care surrogate, or resident's responsible party opts out of HIV testing; and

(c) A chest x-ray.

(3)(a) A resident who meets the criteria in subsection (1) of this section and who has no signs or symptoms of tuberculosis disease by medical evaluation or on chest x-ray shall be offered treatment for LTBI, in collaboration with the local health department, unless medically contraindicated as determined by a licensed physician, advanced practice registered nurse, or physician assistant.

(b) Medications shall be:

1. Administered to residents upon the written order of a physician or other licensed medical provider acting within his or her statutory scope of practice; and

2. Given by DOPT.

(4) If a resident, resident's guardian, resident's health care surrogate, or resident's responsible party refuses treatment of the resident for LTBI after a TST conversion or a BAMT conversion or has a medical contraindication:

(a) The individual shall be educated about and advised of the clinical symptoms of active TB disease;

(b) The resident shall have a TB Risk Assessment which includes an interval medical history for clinical symptoms of active TB disease every six (6) months during the first two (2) years following TST conversion or BAMT conversion, followed thereafter by an annual TB Risk Assessment in or before the same month as the anniversary date of the resident's last TB Risk Assessment;

(c) The resident shall not be required to submit to an annual TST or BAMT; and

(d) Documentation that the resident, resident's guardian, resident's heath care surrogate, or resident's responsible party was educated and advised of the clinical symptoms of active TB shall be documented in the resident's medical record or electronic medical record.

(5) A resident who has a TST result of ten (10) millimeters or more induration, if the TST result is interpreted as positive, or has a positive BAMT at the time of admission shall be offered treatment for LTBI, unless medically contraindicated.

(6) A resident who has a TST result of five (5) millimeters to nine (9) millimeters of induration at the time of admission and who has a medical reason as described in Section 3(3) in this administrative regulation for his or her TST result to be interpreted as positive shall be offered treatment for LTBI, unless medically contraindicated.

(7) If a resident, resident's guardian, resident's health care surrogate, or resident's responsible party refuses treatment on behalf of the resident for LTBI detected upon admission:

(a) The individual shall be educated about and advised of the clinical symptoms of active TB disease;

(b) The resident shall have a TB Risk Assessment that includes an interval medical history for clinical symptoms of active TB disease every six (6) months during the first two (2) years following admission, followed thereafter by an annual TB Risk Assessment in or before the same month as the anniversary date of the resident's last TB Risk Assessment; and

(c) The resident shall not be required to submit to an annual TST or BAMT.

(8) Documentation that the resident, resident's guardian, resident's health care surrogate, or resident's responsible party was educated about and advised of the clinical symptoms of active TB shall be documented in the resident's medical record or electronic medical record.

(9)(a) A resident who stays eleven (11) months or longer in the long-term care setting and who provided medical documentation for completion of treatment for LTBI with one (1) of the treatment regimens recommended by the Centers for Disease Control and Prevention shall not be required to submit to an annual TST or BAMT.

(b) The resident, resident's guardian, resident's health care surrogate, or resident's responsible party shall receive education on the clinical symptoms of active TB disease during a TB Risk Assessment annually in or before the same month as the anniversary date of the resident's last TB Risk Assessment and any other monitoring in accordance with Section 6 through Section 9 of this administrative regulation.

Section 12. Compliance Date. All health care settings or health facilities subject to the tuberculosis testing requirements of this administrative regulation shall demonstrate compliance no later than ***180[~~ninety (90)~~]*** days after the effective date of this administrative regulation.

Section 13. Supersede. If any requirement stated in another administrative regulation within 902 KAR Chapter 20 contradicts a requirement stated in this administrative regulation, the requirement stated in this administrative regulation shall supersede the requirement stated elsewhere within 902 KAR Chapter 20.

[~~Section 14. Incorporation by Reference. (1) The "TB-4, Kentucky Department for Public Health Tuberculosis (TB) Risk Assessment", March 2014, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~][~~KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. KRS 215.520 to 215.590 mandates that nursing homes report cases of tuberculosis. The purpose of this administrative regulation is to establish licensure requirements concerning uniform procedures for the identification and control of tuberculosis in nursing facilities, skilled nursing facilities, intermediate care facilities, nursing homes, and personal care homes. These procedures are necessary to minimize the transmission of tuberculosis infection among the staff and residents of such facilities.~~

~~Section 1. Definitions. (1) "Induration" means a firm area in the skin which develops as a reaction to injection tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.~~

~~(2) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.~~

~~(3) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.~~

~~Section 2. Admission of Patients under Treatment for Pulmonary Tuberculosis Disease. No licensee shall admit a person under medical treatment for pulmonary tuberculosis disease unless there is documentation of three (3) consecutive sputum smears negative for acid-fast bacilli within the month prior to admission and the patient is considered noninfectious by a licensed physician.~~

~~Section 3. Tuberculin Skin Testing of Residents. (1) For residents entering a facility, no skin testing is required if one of the following can be documented:~~

~~(a) A previous documented skin test has shown ten (10) or more millimeters of induration; or~~

~~(b) The resident is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis; or~~

~~(c) The resident can document that he/she has had a tuberculin skin test within three (3) months prior to admission.~~

~~(2) For all other residents, however, skin testing is required upon admission to the facility. For such residents whose initial skin~~

~~test shows less than ten (10) millimeters of induration, two (2) step skin testing is required, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their initial testing upon admission to the facility. The skin test status of all residents must be documented through recording of the date and millimeters of induration of the most recent skin test in the medical record. The front cover of the medical record shall be labeled in a conspicuous manner with the notation "PPD+" for all residents with a reaction of ten (10) or more millimeters of induration.~~

~~Section 4. X-raying of Residents. All residents found on admission testing to have a skin test of ten (10) or more millimeters of induration shall receive a chest x-ray, unless a chest x-ray done within two (2) months prior to admission showed no evidence of tuberculosis disease or the resident can document the previous completion of a course of prophylactic treatment with isoniazid.~~

~~Section 5. Monitoring of Residents with a Skin Test of Ten (10) or More Millimeters of Induration. Residents with a skin test of ten (10) or more millimeters of induration shall be monitored for development of pulmonary symptoms such as cough, sputum production or chest pain. If such symptoms develop and persist of three (3) weeks or longer, a chest x-ray shall be taken and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky, for tuberculosis culture and smear.~~

~~Section 6. Monitoring of Residents with a Skin Test of Less than Ten (10) Millimeters of Induration. Annual skin testing is required. In addition, if pulmonary symptoms develop and persist for three (3) weeks or more, the tuberculin skin test shall be repeated, three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky for tuberculosis culture and smear, and a chest x-ray shall be taken.~~

~~Section 7. Tuberculin Skin Testing of Staff. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.~~

~~Section 8. X-raying and Monitoring of Staff with a Skin Test of Ten (10) or more Millimeters of Induration. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis or, the individual can document the previous completion of a course of prophylactic treatment with isoniazid. They shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly, if symptoms persist.~~

~~Section 9. Responsibility for Screening and Monitoring Requirements. The administrator of each long-term care facility is responsible for ensuring that all skin-tests, chest x-rays and sputum sample submissions are done in accordance with Sections 1 through 8 of this administrative regulation. In those facilities not employing professional staff with the technical training to carry out the screening and monitoring requirements, the administrator shall arrange for professional assistance from either the local health department or private medical practitioners. Irrespective of who carries out the screening and monitoring requirements, all skin testing dates and results, all chest x-ray reports and all sputum sample culture and smear results shall be recorded as a permanent part of the medical record and be summarized on the individual's transfer form when an interfacility transfer occurs.~~

~~Section 10. Reporting to Local Health Departments. The following shall be reported to the local health department having jurisdiction by the administrator of the long-term care facility immediately upon becoming known: chest x-rays which are suspicious for tuberculosis; sputum smears positive for acid-fast bacilli; sputum cultures positive for mycobacterium tuberculosis; residents or staff who converts from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; and all residents and staff who have a skin test of ten (10) millimeters or more induration at the time of admission or employment, respectively.~~

~~Section 11. Prophylaxis of Persons with Recent Infection but no Disease. Any resident or staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated as determined by a licensed physician. Medications shall be administered to patients only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis infection every six (6) months during the two (2) years following conversion.~~

~~Section 12. Any staff or resident who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements except in accordance with Section 5 of this administrative regulation.~~]

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: September 9, 2015
FILED WITH LRC: September 11, 2015 at 3 p.m.
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, January 11, 2016)

902 KAR 20:205. Tuberculosis (TB) testing for health care workers.

RELATES TO: KRS 215.520-215.600, 216B.010-216B.131, 216B.990
STATUTORY AUTHORITY: KRS 216B.042(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 215.590 requires a health service or health facility licensed pursuant to KRS Chapter 216B or KRS Chapter 333 to report knowledge of a person who has active tuberculosis to the local health department. This administrative regulation establishes requirements for tuberculosis (TB) testing of health care workers in health facilities or settings licensed under KRS Chapter 216B or KRS Chapter 333. These procedures are necessary to minimize the transmission of infectious tuberculosis disease among staff and patients or residents of health facilities.

Section 1. Definitions. (1) "Air changes per hour" or "ACH" means the air change rate expressed as the number of air exchange units per hour.

(2) "Airborne Infection Isolation (AII) room" means a room, formerly called a negative pressure isolation room, which is designed to maintain AII and is a single-occupancy patient-care room used to isolate persons with suspected or confirmed infectious TB disease.

(3) "BAMT conversion" means a change in the BAMT test result, on serial testing, from negative to positive over a two (2) year period.

(4) "Blood Assay for Mycobacterium tuberculosis" or "BAMT" means a diagnostic blood test that:

(a) Assesses for the presence of infection with M. tuberculosis;***[~~and~~]***

(b) Reports results as positive, negative, indeterminate, or borderline***; and***

(c)[~~. This test~~] Includes interferon-gamma (IFN-ɣ) release assays (IGRA).

(5) "Boosting" or the "booster phenomenon" means if nonspecific or remote sensitivity to tuberculin purified protein derivative (PPD) in the skin test wanes or disappears over time, subsequent tuberculin skin tests (TSTs) may restore the sensitivity.

(6) "Extrapulmonary tuberculosis" means TB disease in any part of the body other than the lungs (e.g., kidney, spine, or lymph nodes), and may include the presence of pulmonary TB or other infectious TB diseases.

(7) "Health care setting" or "health facility" means the following settings:

(a) Abortion facility;
(b) Adult day health program;
(c) Alzheimer's nursing home;
(d) Ambulatory care clinic;
(e) Ambulatory surgical center;
(f) Blood establishment;
(g) Chemical dependency treatment service;
(h) Community mental health center;
(i) Comprehensive physical rehabilitation hospital;
(j) Critical access hospital;
(k) Family care home;
(l) Freestanding birth center;
(m) Group home;
(n) Home health agency;
(o) Hospice program;
(p) Hospital;
(q) Intermediate care facility;
(r) Intermediate care facility for individuals with an intellectual disability (ICF/IID);
(s) Limited services clinic;
(t) Medical laboratory;
(u) Mobile health service;
(v) Network;
(w) Nursing facility;
(x) Nursing home;
(y) Nursing pool;
(z) Outpatient health care center;
(aa) Pain management facility;
(bb) Personal care home;
(cc) Prescribed pediatric extended care facility;
(dd) Psychiatric hospital;
(ee) Primary care center;
(ff) Private duty nursing agency;
(gg) Level I or Level II psychiatric residential treatment facility;
(hh) Rehabilitation agency;
(ii) Renal dialysis facility;
(jj) Residential hospice facility;
(kk) Rural health clinic;
(ll) Special health clinic;
(mm) Specialty intermediate care clinic;
(nn) Specialized medical technology service; or
(oo) Behavioral health services organization.

(8) "Health care workers" or "HCWs" means all paid and unpaid persons working in health care settings who have the potential for exposure to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air, and shall include:

(a) Physicians;
(b) Physician assistants;
(c) Nurses;
(d) Medical assistants;
(e) Nursing assistants or nurse aides;
(f) Therapists;
(g) Technicians;
(h) Emergency medical service personnel;
(i) Dental personnel;
(j) Pharmacists;
(k) Laboratory personnel;
(l) Autopsy personnel;
(m) Students and trainees;
(n) Contractual and community-based physicians and other healthcare professionals and staff not employed by the health care facility; and
(o) Persons (e.g., clerical, dietary, housekeeping, laundry, security, maintenance, billing, and volunteers) not directly involved in patient care but potentially exposed to infectious agents that may be transmitted to and from health care workers and patients or residents.

(9) "Induration" means a firm area in the skin that develops as a reaction to injected tuberculin antigen if a person has tuberculosis infection and that is measured in accordance with Section 3(2) of this administrative regulation.

(10) "Infectious tuberculosis" means pulmonary, laryngeal, endobroncheal, or tracheal TB disease or a draining TB skin lesion that has the potential to cause transmission of tuberculosis to other persons.

(11) "Latent TB infection" or "LTBI" means infection with M. tuberculosis without symptoms or signs of disease having been manifested.

(12) "Multidrug-resistant tuberculosis" or "MDR TB" means TB disease caused by M. tuberculosis organisms that are resistant to at least isoniazid (INH) and rifampin.

(13) "Nucleic Acid Amplification" or "NAA" means a laboratory method used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence usually for detecting and identifying a microorganism.

(14) "Polymerase chain reaction" or "PCR" means a system for in vitro amplification of DNA or RNA that can be used for diagnosis of infections.

(15) "Staggered tuberculosis testing" means the testing of a health care worker in or before the same month as the anniversary date of his or her date of initial employment, or testing in or before the worker's birth month so that all health care workers do not have tuberculosis testing in the same month.

(16) "TST conversion" means a change in the result of a test for M. tuberculosis infection in which the condition is interpreted as having progressed from uninfected to infected in accordance with Section 3(4) of this administrative regulation.

(17) "Tuberculin Skin Test" or "TST" means a diagnostic aid for finding M. tuberculosis infection that:

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

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

(18) "Tuberculosis (TB) disease" means a condition caused by infection with a member of the M. tuberculosis complex that meets the descriptions established in Section 3(3) of this administrative regulation.

(19) "Tuberculosis Risk Assessment" means an initial and ongoing evaluation of the risk for LTBI or active TB disease in a particular health care worker and is performed in accordance with the provisions established in Sections 4, 5, 7, and 11 of this administrative regulation.

(20) "Two-step TST" or "two-step testing" means a series of two (2) TSTs administered seven (7) to twenty one (21) days apart

and used for the baseline skin testing of persons who will receive serial TSTs, including health care workers and residents of long-term care settings, to reduce the likelihood of mistaking a boosted reaction for a new infection.

Section 2. TB Infection Control Program. (1) Each health facility shall have a written TB infection control plan that is part of an overall infection control program.

(2) The TB infection control plan shall be designed to control M. tuberculosis transmission through early detection, isolation, diagnosis, and treatment of persons with active TB disease.

(3) A hierarchy of control measures shall be used, including:

(a) Administrative controls;

(b) Environmental controls***;[,]*** and

(c) Respiratory protection.

(4) A TB infection control plan shall include a listing of the job series of health care workers or another standardized method to describe which health care workers shall be included in the facility TB screening program.

(5) At a minimum, a health care worker shall be included in the TB screening program if the worker:

(a) Has duties that involve face-to-face contact with patients with suspected or confirmed active TB disease, including transport staff;

(b) Has the potential for exposure to M. tuberculosis through air space shared with persons with suspected or confirmed active TB disease of the respiratory system;

(c) Has duties that involve the processing of laboratory specimens for TB testing or TB cultures;

(d) Has duties that have the potential for exposure to the environment of care of persons with suspected or confirmed active TB disease; or

(e) Performs other tasks or procedures which may generate infectious aerosol droplet nuclei in which the worker has or may have exposure to TB disease.

(6) A facility may voluntarily include additional or all health care workers in the TB screening program based upon:

(a) TB incidence (local or regional);

(b) Other TB risk factors;

(c) Changes in the epidemiology of TB (local or regional);

(d) Patient safety strategies;

(e) Risk management strategies; or

(f) ***Any*** other factors.

Section 3. Tuberculosis Testing Requirements for TSTs. (1) Two-step testing shall be used to distinguish new infections from boosted reactions in infection-control surveillance programs.

(2)(a) A TST shall be performed by:

1. A physician;

2. An advanced practice registered nurse;

3. A physician assistant;

4. A registered nurse***;[,]*** or

5. A pharmacist.

(b) A licensed practical nurse under the supervision of a registered nurse may perform a TST.

(3) Induration Measurements.

(a) The diameter of the firm area shall be measured transversely (i.e., perpendicularly) to the long axis of the forearm to the nearest millimeter to gauge the degree of reaction, and the result shall be recorded in millimeters.

(b) The diameter of the firm area shall not be measured along the long axis of the forearm.

(c) A reaction of ten (10) millimeters or more of induration, if the TST result is interpreted as positive, shall be considered highly indicative of tuberculosis infection in a health care setting.

(d) A reaction of five (5) millimeters to nine (9) millimeters of induration may be significant in certain individuals with risk factors described in Section 4(3) of this administrative regulation for rapid progression to active tuberculosis disease if infected.

(4) Tuberculosis (TB) disease.

(a) A person shall be diagnosed as having tuberculosis (TB) disease if the infection has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present, including radiographic abnormalities) illness.

1. Tuberculosis that is found in the lungs ***shall be[is]*** called pulmonary TB and may be infectious.

2. Extrapulmonary disease (occurring at a body site outside the lungs) may be infectious in rare circumstances.

(b) If the only clinical finding is specific chest radiographic abnormalities, the condition is termed "inactive TB" and shall be differentiated from active TB disease, which is accompanied by symptoms or other indications of disease activity, including the ability to culture reproducing TB organisms from respiratory secretions or a specific chest radiographic finding.

(5)(a) A TST conversion shall have occurred if the size of the measured TST induration increases by ten (10) millimeters or more during a two (2) year period in a health care worker with a:

1. Documented baseline two-step TST result measured as zero (0); or

2. Previous follow-up screening TST result with induration measured as one (1) millimeter to nine (9) millimeters and interpreted as negative during serial testing.

(b) A TST conversion shall be presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.

Section 4. TB Risk Assessment and Tuberculin Skin Tests or BAMTs for Health Care Workers on Initial Employment. (1) Risk Assessment.

(a) To perform a TB Risk Assessment, a questionnaire shall be used and the following factors shall be assessed:

1. The clinical symptoms of active TB disease;

2. Events and behaviors that increase the risk for exposure to M. tuberculosis and the risk of acquiring LTBI; and

3. Medical risk factors that increase the risk for a health care worker with LTBI to develop active TB disease.

(b) A TB Risk Assessment questionnaire may be obtained from the Kentucky Department for Public Health (published online at http://chfs.ky.gov/dph/epi/tb.htm) or from a national medical or public health organization, including the American Academy of Pediatrics or the Centers for Disease Control and Prevention.

(c) TB Risk Assessment questions shall be on a facility-approved form or incorporated into the facility's medical history forms or into forms or other features of the facility's electronic medical record systems.

(2) Exclusion of Health Care Workers from Tuberculin Skin Tests or BAMTs Upon Initial Employment in a Health Facility. A TST or BAMT shall not be required at the time of initial employment if the health care worker provided medical documentation for one (1) of the following as part of a TB Risk Assessment:

(a) A prior TST of ten (10) millimeters or more of induration if the TST result was interpreted as positive;

(b) A prior TST of five (5) millimeters to nine (9) millimeters of induration if the health care worker has a medical reason as described in subsection (3) of this section for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion;

(e) A BAMT conversion;

(f) ***Current receipt or completion of[The health care worker is currently receiving or has completed]*** treatment for LTBI with one (1) of the treatment regimens recommended by the Centers for Disease Control and Prevention;

(g) ***Completion of[The health care worker has completed]*** a course of multiple-drug therapy for active TB disease recommended by the Centers for Disease Control and Prevention; or

(h)***[The health care worker provided medical documentation that he or she has had]*** A TST or BAMT within three (3) months prior to initial employment at the facility and ***previous participation[has previously been]*** in a serial testing program at another medical facility or health care setting.

(3) A medical reason for a health care worker's TST result of

five (5) millimeters to nine (9) millimeters of induration to be interpreted as positive may include:

(a) HIV-infection;

(b) Immunosuppression from disease or medications;

(c) Fibrotic changes on a chest radiograph consistent with previous TB disease; or

(d) Recent contact with a person who has active TB disease.

(4) TB Risk Assessments and Tuberculin Skin Tests or BAMTs for Health Care Workers upon Initial Employment in a Health Facility.

(a) A baseline TB Risk Assessment, and a TST or BAMT if not excluded pursuant to subsection (2) of this section, shall be initiated on each new health care worker before or during the first week of employment. The results shall be documented in the health care worker's medical record or electronic medical record within the first month of employment.

(b)1. A TB Risk Assessment required by paragraph (a) of this subsection and other sections shall be performed by:

a. A physician;

b. An advanced practice registered nurse;

c. A physician assistant;

d. A registered nurse, or

e. A pharmacist.

2. A licensed practical nurse under the supervision of a registered nurse may perform the TB Risk Assessment.

(c) An initial or first-step TST result of ten (10) millimeters or more of induration may be interpreted as positive for a new health care worker.

(d) An initial or first-step TST result of five (5) millimeters to nine (9) millimeters of induration may be interpreted as positive for a new health care worker who has a medical reason as described in subsection (3) of this section for the TST result to be interpreted as positive.

(5)(a) A two-step baseline TST shall be required for a health care worker aged fourteen (14) years and older whose initial or first-step TST, initiated before or during the first week of employment pursuant to subsection (4)(a) of this section, is interpreted as negative.

(b) The second step-test shall be initiated seven (7) to twenty-one (21) days after the first test.

1. A TST result of five (5) millimeters to nine (9) millimeters of induration may be interpreted as positive on the second step TST for a health care worker who has a medical reason as described in subsection (3) of this section for the TST result to be interpreted as positive.

2. If a health care worker aged fourteen (14) years and older does not have a medical reason as identified in subsection (3) of this section and the worker's initial or first-step TST shows less than ten (10) millimeters of induration and a second-step TST shows ten (10) millimeters or more of induration, the TST shall be interpreted as positive.

3. The initial TST shall count as the second-step TST if the health care worker aged fourteen (14) years and older provided medical documentation that he or she has had a one-step TST interpreted as negative within one (1) year prior to initial testing at the time of initial employment.

(6) A BAMT may be used in place of, but not in addition to, a TST, and:

(a) If a BAMT is performed before or during the first week of employment and the result is positive or negative, only one (1) BAMT test result shall be required; and

(b) A second BAMT shall be performed if the BAMT result is borderline, indeterminate, or invalid.

Section 5. Annual TB Risk Assessments and Annual Tuberculin Skin Tests or BAMTs for Health Care Workers. (1) A health care worker shall have an annual TB risk assessment and annual education about the signs and symptoms of active TB disease.

(2) A health care worker included in the TB screening program, as determined by the health facility's TB infection control plan, shall also have annual TB testing.

(3) The requirements established in this subsection shall apply during annual TB testing.

(a) A health care setting shall use staggered tuberculosis testing to assure that all health care workers are not tested in the same month. Staggered testing shall be performed monthly, quarterly, or semiannually.

(b) A health care worker who has worked eleven (11) months or more in the facility and who has never had a TST interpreted as positive, or has never had a positive BAMT, shall have a TB Risk Assessment and a TST or BAMT annually in or before the same month as the anniversary date of his or her last TB Risk Assessment and TST or BAMT.

(c) A health care worker who has worked eleven (11) months or more in the facility and who has had a previous TST interpreted as positive, or a previously positive BAMT, shall:

1. Have an annual TB Risk Assessment in or before the same month as the anniversary date of his or her last TB Risk Assessment; and

2. Not be required to submit to an annual TST or BAMT.

Section 6. Medical Record or Electronic Medical Record Documentation for Health Care Workers. (1) The TB Risk Assessment shall be documented in each health care worker's medical record or electronic medical record by recording the date of the assessment and the results.

(2) The TST result of each health care worker shall be documented in the worker's medical record or electronic medical record by recording the date of measurement, millimeters of induration, and interpretation of the results for each TST performed.

(3) The medical record shall be labeled inside or the electronic medical record shall be labeled with the notation "TST Positive" for each health care worker with a reaction of:

(a) Ten (10) millimeters or more of induration if the TST result was interpreted as positive; or

(b) Five (5) millimeters to nine (9) millimeters of induration if the health care worker has a medical reason as described in Section 4(3) of this administrative regulation for the TST result to be interpreted as positive.

(4)(a) If performed, the BAMT result for each health care worker shall be documented in the worker's medical record or electronic medical record by recording the date and result as positive, negative, borderline, or indeterminate.

(b) If a health care worker has a positive BAMT, the worker's medical record shall be labeled inside or the electronic medical record shall be labeled with the notation "BAMT Positive."

Section 7. Medical Evaluations, Chest X-rays, and Monitoring of Health Care Workers with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) At the time of initial employment testing or annual testing, a health care worker shall have a medical evaluation, including an HIV test unless the health care worker opts out of HIV testing, if the health care worker is found to have a:

(a) TST result of ten (10) millimeters or more induration if the TST result is interpreted as positive;

(b) TST result of five (5) millimeters to nine (9) millimeters of induration if the health care worker has a medical reason as described in Section 4(3) of this administrative regulation for the TST result to be interpreted as positive;

(c) Positive BAMT***;[:]***

(d) TST conversion***;[:]*** or

(e) BAMT conversion.

(2) A chest x-ray shall be performed as part of the medical evaluation required by subsection (1) of this section unless a chest x-ray performed within the previous two (2) months showed no evidence of tuberculosis disease.

(3)(a) A health care worker with no clinical evidence of active TB disease, upon evaluation by a licensed physician, advanced practice registered nurse, or physician assistant and a negative chest x-ray, shall be offered treatment for LTBI unless medically contraindicated.

(b) A health care worker who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the

requirements established in this paragraph.

1. A health care worker who has a positive TST or a positive BAMT at the time of initial employment and works eleven (11) months or longer in the health facility shall:

a. Have an annual TB Risk Assessment in or before the same month as the anniversary date of his or her last TB Risk Assessment; and

b. Not be subject to an annual TST or BAMT.

2. A health care worker with a documented TST conversion or a BAMT conversion shall:

a. Be educated about and advised of the clinical symptoms of active TB disease;

b. Have an interval medical history for clinical symptoms of active TB disease every six (6) months during the first two (2) years after conversion, followed by an annual TB Risk Assessment in or before the same month as the anniversary date of the worker's last TB Risk Assessment; and

c. Not be subject to an annual TST or BAMT.

3. A health care worker with a positive TST, a positive BAMT, a TST conversion, or a BAMT Conversion shall be:

a. Educated about and advised of the clinical symptoms of active TB disease; and

b. Instructed to report to his or her facility supervisor and seek medical attention promptly if symptoms persist for three (3) weeks or longer.

(4) Documentation that the health care worker was educated and advised of the clinical symptoms of active TB disease shall be included in the health care worker's medical record or electronic medical record.

Section 8. Medical Evaluations, Chest X-rays, Laboratory Tests, Treatment, and Monitoring of Health Care Workers with Suspected TB Disease or Active TB Disease. (1) A health care worker with signs or symptoms or an abnormal chest x-ray, consistent with TB disease, shall:

(a) Be immediately excluded from work;

(b) Be isolated in an AII room, referred to a facility with an AII room, or placed in home isolation in collaboration with the local health department;

(c) Be evaluated for active tuberculosis disease and, if needed, treated with multi-drug TB therapy as recommended by the Centers for Disease Control and Prevention; and

(d) Remain off work until cleared as being noninfectious for TB by a licensed physician, advanced practice registered nurse, or physician assistant in conjunction with the local and state health departments.

(2) A health care worker under treatment for suspected or confirmed pulmonary tuberculosis disease, suspected or confirmed extrapulmonary tuberculosis disease, or other suspected or confirmed infectious tuberculosis diseases caused by either non-MDR TB or MDR-TB may return to work in the facility, as recommended by the Centers for Disease Control and Prevention, after being declared noninfectious by a licensed physician, advanced practice registered nurse, or physician assistant in conjunction with the local and state health departments.

Section 9. Responsibility for Screening and Monitoring Requirements: Health Care Workers. (1) A facility's administrator or administrator's designee shall be responsible for ensuring that all TB Risk Assessments, TSTs, BAMTs, chest x-rays, and sputum specimen submissions for health care workers comply with the requirements of Section 3 through Section 8 of this administrative regulation.

(2) If a facility does not employ licensed professional staff with the technical training to carry out the screening and monitoring requirements, the administrator shall arrange for training or professional assistance from the local health department or from a licensed medical provider.

(3)(a) A TST with the date of measurement and millimeters of induration, interpretation of the results, the date performed, reported results of all BAMTs, chest x-rays, sputum specimen AFB smears, TB cultures, TB-related NAA tests, and TB-related PCR tests for a health care worker shall be recorded as a permanent part of the worker's medical record or electronic medical record.

(b) Copies of the health care worker's medical record or electronic medical record shall be provided to the worker upon request if the worker transfers to another health facility.

Section 10. Reporting to Local Health Departments. (1) A health facility's administrator or the administrator's designee shall report a health care worker identified with one (1) of the following to the local health department having jurisdiction within one (1) business day of becoming known:

(a) A TST conversion or BAMT conversion on serial testing or identified in a contact investigation;

(b) A chest x-ray which is suspicious for TB disease;

(c) A sputum smear positive for acid-fast bacilli;

(d) A rapid laboratory test positive for Mycobacterium tuberculosis DNA or RNA, such as Mycobacterium tuberculosis positive NAA tests or PCR tests;

(e) A sputum culture positive for Mycobacterium tuberculosis; or

(f) The initiation of multi-drug antituberculosis treatment for active TB disease in a health care worker.

(2) A health facility's administrator or the administrator's designee shall report a health care worker identified with one (1) of the following to the local health department having jurisdiction within five (5) business days of becoming known:

(a) A TST of ten (10) millimeters or more induration at the time of initial employment at the facility if the TST result was interpreted as positive;

(b) A TST result of five (5) or more millimeters of induration for a health care worker at the time of initial employment who has a medical reason as described in Section 4(3) of this administrative regulation for the TST result to be interpreted as positive; or

(c) A positive BAMT at the time of initial employment.

Section 11. Treatment for LTBI. (1) A health care worker with a TST conversion or a BAMT conversion with no clinical evidence of active TB disease upon evaluation by a licensed physician, advanced practice registered nurse, or physician assistant and a negative chest x-ray shall be considered to be recently infected with Mycobacterium tuberculosis.

(2) A recently infected person as described in subsection (1) of this section shall have:

(a) A medical evaluation;

(b) An HIV test unless the individual opts out of HIV testing; and

(c) A chest x-ray.

(3) An individual who meets the criteria listed in subsection (1) of this section and who has no signs or symptoms of tuberculosis disease by medical evaluation or on chest x-ray shall be offered treatment for LTBI, in collaboration with the local health department, unless medically contraindicated as determined by a licensed physician, advanced practice registered nurse, or physician assistant.

(4)**(a)** If a health care worker refuses treatment for LTBI after a TST conversion or a BAMT conversion or has a medical contraindication, the worker shall:

1.[~~(a)~~] Be educated about, and advised of, the clinical symptoms of active TB disease;

2.[~~(b)~~] Have a TB Risk Assessment, which includes an interval medical history for clinical symptoms of active TB disease every six (6) months during the first two (2) years following TST conversion or BAMT conversion, followed thereafter by an annual TB Risk Assessment in or before the same month as the anniversary date of his or her last TB Risk Assessment; and

3.[~~(c)~~] Not be required to submit to an annual TST or BAMT.

(b) Documentation that the health care worker was educated and advised of the clinical symptoms of active TB disease shall be included in the health care worker's medical record or electronic medical record.

(5) A health care worker who has a TST result of ten (10) millimeters or more induration, if the TST result is interpreted as positive, or a positive BAMT at the time of initial employment shall be offered treatment for LTBI, unless medically contraindicated.

(6) A health care worker who has a TST result of five (5) millimeters to nine (9) millimeters of induration upon initial employment and who has a medical reason as described in Section 4(3) of this administrative regulation for the TST result to be interpreted as positive shall be offered treatment for LTBI, unless medically contraindicated.

(7) If a health care worker refuses treatment for LTBI detected at the time of initial employment in the facility or has a medical contraindication, the worker shall:

(a) Be educated about and advised of the clinical symptoms of active TB disease;

(b) Have a TB Risk Assessment that includes an interval medical history for clinical symptoms of active TB disease every six (6) months during the first two (2) years after the date of initial employment in the facility, followed thereafter by an annual TB Risk Assessment in or before the same month as the anniversary date of the worker's last TB Risk Assessment; and

(c) Not be required to submit to an annual TST or BAMT.

(8) Documentation that the health care worker was educated about and advised of the clinical symptoms of active TB disease shall be included in the health care worker's medical record or electronic medical record.

(9) A health care worker who works eleven (11) months or longer in the facility and who provided medical documentation that he or she has completed treatment for LTBI with one (1) of the treatment regimens recommended by the Centers for Disease Control and Prevention shall:

(a) Not be required to submit to an annual TST or BAMT; and

(b) Receive education on the clinical symptoms of active TB disease during a TB Risk Assessment annually in or before the same month as the anniversary date of his or her last TB Risk Assessment.

Section 12. Compliance Date. All health care settings or health facilities subject to the tuberculosis testing requirements of this administrative regulation shall demonstrate compliance no later than **180**[~~ninety (90)~~] days after the effective date of this administrative regulation.

Section 13. Supersede. If any requirement stated in another administrative regulation within 902 KAR Chapter 20 contradicts a requirement stated in this administrative regulation, the requirement stated in this administrative regulation shall supersede the requirement stated elsewhere within 902 KAR Chapter 20.

[~~**Section 14. Incorporation by Reference. (1) The "TB-4, Kentucky Department for Public Health Tuberculosis (TB) Risk Assessment", March 2014, is incorporated by reference.**~~

~~**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.**~~]

MARYELLEN B. MYNEAR, Inspector General
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: December 15, 2015
FILED WITH LRC: December 15, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(As Amended at ARRS, January 11, 2016)

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 ***194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of the individual citizens of the commonwealth, to operate programs and fulfill the cabinet's responsibilities, or to implement federal law. KRS 218A.250 requires the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 218A. KRS*** 218A.020 authorizes the Cabinet for Health and Family Services to ***promulgate administrative regulations in order to*** add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. ***This administrative regulation establishes Schedule I drugs.*** [~~***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 ***that***[~~***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-phenylcy-clohexylamine, 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

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CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(As Amended at ARRS, January 11, 2016)

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.020(1), (3)[~~218A.060~~]***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to ***promulgate administrative regulations in order 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 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 ***that[~~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 ***that[~~which~~]*** is chemically equivalent or identical with any of the substances referred to in subsection (1) of this section, ***except for[~~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 ***that[~~which~~]*** is chemically equivalent or identical with any of these substances***, except for[~~but not including~~]*** decocainized coca leaves or extractions of coca leaves ***that[~~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 ***that[~~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 ***the[~~such~~]*** isomers, esters, ethers, or salts is possible within the specific chemical designation, ***excluding*** 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 ***that[~~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 ***that[~~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 ***that[~~, 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 ***that[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 ***that[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

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CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(As Amended at ARRS, January 11, 2016)

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 ***promulgate administrative regulations in order 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 ***shall[~~does~~]*** not include an anabolic steroid:
(a) That is expressly intended for administration through implants to cattle or other nonhuman species; and
(b) ***That[~~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
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CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(As Amended at ARRS, January 11, 2016)

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 ***isomers, if[~~such isomers, whenever~~]*** the existence of ***these[~~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 ***that[~~which~~]*** contains any quantity of lorcaserin, including its salts, isomers, and salts of isomers, ***if[~~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
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CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(As Amended at ARRS, January 11, 2016)

902 KAR 55:035. Schedule V substances.

RELATES TO: KRS ***217.005 - 217.215,*** 218A.010-218A.030, 218A.120, 218A.130, 21 C.F.R. 1308.15, ***21 U.S.C. 301 - 399f,*** 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***; and[~~.~~]***

(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, ***21 U.S.C. 301 to 399f,*** 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 ***KRS 217.005 to 217.215, 21 U.S.C. 301 to 399f,[~~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, ***that[~~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

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CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amended After Comments)

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 **all KASPER report identification numbers and the date of issuance of each KASPER report[~~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 **all KASPER report identification numbers and the date of issuance of each KASPER report[~~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) **All KASPER report identification numbers and the date of issuance of each KASPER report[~~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: January 14, 2016

FILED WITH LRC: January 15, 2016 at 9 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov

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 5000.

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

(a) List 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 1:160. Home and community based waiver services version 1.

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[~~the provision of medical assistance to Kentucky's indigent citizenry. 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 waiver~~]. This administrative regulation establishes the provisions for home and community based waiver services version 1, including participant-[~~a consumer~~]directed services[~~option~~] 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) "Abuse" regarding:

(a) An adult is defined by KRS 209.020(8); or

(b) A child means abuse pursuant to KRS Chapter 600 or 620.

(3) "ADHC" means adult day health care.

(4)[~~(2)~~] "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(5)[~~(3)~~] "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant[~~an HCB recipient~~] who does not require twenty-four (24) hour care in an institutional setting.

(6)[~~(4)~~] "Advanced practice registered nurse[~~practitioner~~]" or "APRN[~~ARNP~~]" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(7)[~~(5)~~] "Assessment team" means a team that[~~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 certified 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;**[~~or~~]**

f. **A licensed social worker; or**

g. A licensed clinical social worker.

(8)[~~(6)~~] "Blended services" means a nonduplicative combination of HCB waiver services identified in Section 5 of this administrative regulation and PDS[~~CDO services~~] identified in Section 6 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(9)[~~(7)~~] "Budget allowance" is defined by KRS 205.5605(1).

(10)[~~(8)~~] "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(11) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(12) "Chemical restraint" means a drug or 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.

(13)[~~(9)~~] "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual;

(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another or a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(14)[~~(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 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.~~

~~(12)~~] "Covered services and supports" is defined by KRS 205.5605(3).

(15)[~~(13)~~] "DCBS" means the Department for Community Based Services.

(16)[~~(14)~~] "Department" means the Department for Medicaid Services or its designee.

(17)[~~(15)~~] "Electronic signature" is defined by KRS 369.102(8).

(18) "Exploitation" regarding:

(a) An adult is defined by KRS 209.020(9); or

(b) A child means exploitation pursuant to KRS Chapter 600 or 620.

(19)[~~(16) "HCB recipient" means an individual who:~~

~~(a) Is a recipient as defined by KRS 205.8451(9);~~

~~(b) Meets the NF level of care criteria established in 907 KAR 1:022; and~~

~~(c) Meets the eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation.~~

~~(17)~~] "Home and community based waiver services" or "HCB

waiver services" means home and community based waiver services:

(a) For individuals who meet the requirements of Section 4 of this administrative regulation; and

(b) Covered by the department pursuant to this administrative regulation.

(20)[(18)] "Home and community support services" means nonresidential and nonmedical home and community based services and supports that:

(a) Meet the participant's[consumer's] needs; and

(b) Constitute a cost-effective use of funds.

(21)[(19)] "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081; and

(b) Medicare and Medicaid certified.

(22) "Illicit drug" means:

(a) A drug, prescription or not prescription, used illegally or in excess of therapeutic levels; or

(b) A prohibited drug.

(23) "Licensed clinical social worker" means an individual who meets the requirements established in KRS 335.100.

(24)[(20)] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(25)[(21)] "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition established by[in] KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(26)[(22)] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3)

(27) **"Licensed social worker" means an individual who meets the requirements established in KRS 335.090.**

(28) "Neglect" regarding:

(a) An adult is defined by KRS 209.020(16); or

(b) A child means neglect pursuant to KRS Chapter 600 or 620.

(29)[(28)][(23)] "NF" means nursing facility.

(30)[(29)][(24)] "NF level of care" means a high intensity or low intensity patient status determination made by the department in accordance with 907 KAR 1:022.

(31)[(30)][(25)] "Normal baby sitting" means general care provided to a child that[which] includes custody, control, and supervision.

(32)[(31)][(26)] "Occupational therapist" is defined by KRS 319A.010(3).

(33)[(32)][(27)] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(34)[(33)] "Participant" means a recipient who meets the:

(a) NF level of care criteria established in 907 KAR 1:022; and

(b) Eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation.

(35)[(34)][(28)] "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(36)[(35)] "PDS" means participant-directed services.

(37)[(36)] "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.

(38)[(37)][(29)] "Physical therapist" is defined by KRS 327.010(2).

(39)[(38)][(30)] "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)[(39)][(31)] "Physician assistant" or "PA" is defined by KRS 311.840(3).

(41)[(40)][(32)] "Plan of care" or "POC" means a written individualized comprehensive plan that:

(a) Encompasses all HCB waiver services; and

(b) Is developed by a participant[an HCB recipient] or a participant's[an HCB recipient's] legal representative, case manager, or other individual designated by the participant[HCB recipient].

(42)[(41)][(33)] "Plan of treatment" means a care plan developed and used by an ADHC center based on the recipient's individualized ADHC service needs, goals, interventions and outcomes.

(43)[(42)] "Prohibited drug" means a drug or substance that is illegal under KRS Chapter 218A or statutes or administrative regulations of the Commonwealth of Kentucky.

(44)[(43)][(34)] "Registered nurse" or "RN" means a person who:

(a) Meets the definition established by[in] KRS 314.011(5); and

(b) Has one (1) year or more experience as a professional nurse.

(45)[(44)][(35)] "Representative" is defined by KRS 205.5605(6).

(46)[(45)][(36)] "Sex crime" is defined by KRS 17.165(1).

(47)[(46)][(37) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(38)] "Speech-language pathologist" is defined by KRS 334A.020(3).

(48)[(47)][(39)] "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 a participant[consumer]; and

(b) Assist a participant[consumer] in any other aspects of PDS [CDO].

(49)[(48)][(40)] "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.

(50)[(49)][(41)] "Violent crime" is defined by KRS 17.165(3).

(51)[(50)] "Violent offender" is defined by KRS 17.165(2).

Section 2. Provider Participation. (1) In order to provide HCB waiver services version 1, excluding participant-[consumer] directed[option] services, an HCB waiver[a] provider shall be a home health agency or ADHC center that provides services:

(a) Directly; or

(b) Indirectly through a subcontractor.

(2) An out-of-state provider shall comply with the requirements of this administrative regulation.

(3) An HCB waiver[A] provider[shall]:

(a) Shall comply with the following administrative regulations and program requirements:

1. 902 KAR 20:081[, Operations and services; home health agencies];

2. 907 KAR 1:671[, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions];

3. 907 KAR 1:672[, Provider enrollment, disclosure, and documentation for Medicaid participation];

4. 907 KAR 1:673[, Claims processing];

5. The Department for Medicaid Services Home and Community Based Waiver Services Manual; and

6. The Department for Medicaid Services Adult Day Health Care Services Manual;

(b) Shall not enroll a participant[an HCB recipient] for whom the provider cannot provide HCB waiver services;

(c) Shall be permitted to accept or not accept a participant[an HCB recipient];

(d) Shall implement a procedure to ensure that the following is reported:

1. Abuse, neglect, or exploitation of a participant[~~an HCB recipient~~] in accordance with KRS Chapters 209 or 620;

2. A slip or fall;

3. A transportation incident;

4. Improper administration of medication;

5. A medical complication; or

6. An incident caused by the recipient, including:

a. Verbal or physical abuse of staff or other recipients;

b. Destruction or damage of property; or

c. Recipient self-abuse;

(e) Shall ensure a copy of each incident reported in accordance with paragraph (d) of this subsection is maintained in a central file subject to review by the department;

(f) Shall implement a process for communicating the incident, the outcome, and the prevention plan to:

1. A participant[~~an HCB recipient~~], family member, or [~~his~~] responsible party; and

2. The attending physician, PA, or APRN[~~ARNP~~];

(g) Shall maintain documentation of any communication provided in accordance with paragraph (f) of this subsection. The documentation shall be:

1. Recorded in the participant's[~~HCB recipient's~~] case record; and

2. Signed and dated by the staff member making the entry;

(h) Shall implement a procedure that ensures the reporting of a recipient or any interested party's complaint against the provider or its personnel to the provider agency or facility;

(i) Shall ensure that a copy of each complaint reported is maintained in a central file subject to review by the department;

(j) Shall implement a process for communicating a complaint, the resulting outcome, and related prevention plan to:

1. The participant[~~HCB recipient~~], family member, or the participant's[~~HCB recipient's~~] responsible party; and

2. The attending physician, PA, or APRN[~~ARNP~~] if appropriate;

(k) Shall maintain documentation of any communication provided in accordance with paragraph (j) of this subsection. The documentation shall be:

1. Recorded in the participant's[~~HCB recipient's~~] case record; and

2. Signed and dated by the staff member making the entry;

(l) Shall inform a recipient or any interested party in writing of the provider's:

1. Hours of operation; and

2. Policies and procedures;

(m) Shall not permit a staff member who has contracted a communicable disease to provide a service to a participant[~~an HCB recipient~~] until the condition is determined to no longer be contagious;[~~and~~]

(n) Shall ensure that a staff member who provides direct services:

1. Demonstrates the ability to:

a. Read;

b. Write;

c. Understand and carry out instructions;

d. Keep simple records; and

e. Interact with a participant[~~an HCB recipient~~] when providing an HCB waiver service;

2. Is trained by an HCB waiver provider; and

3. Is supervised by an RN at least every other month;

(o) Shall ensure that each staff person:

1. Prior to independently providing a direct service, is trained regarding:

a. Abuse, neglect, fraud, and exploitation;

b. The reporting of abuse, neglect, fraud, and exploitation;

c. Person-centered planning principles;

d. Documentation requirements; and

e. HCB services definitions and requirements;

2. Receives cardio pulmonary resuscitation certification and first aid certification provided by a nationally accredited entity within six (6) months of employment;

3. Maintains current CPR certification and first aid certification for the duration of the staff person's employment;

4.a. Completes a tuberculosis (TB) risk assessment performed by a licensed medical professional within the past twelve (12) months and annually thereafter; and

b.(i) If a TB risk assessment resulted in a TB skin test being performed, have 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; and

(ii) If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work, he or she shall be administered follow-up testing by his or her physician **or physician assistant** with the testing indicating the person does not have active TB disease; and

5. Prior to the beginning of employment, has successfully passed a drug test with no indication of prohibited or illicit drug use;

(p) Prior to hiring an individual:

1. Shall obtain:

a. The result of a criminal record 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 employment;

b. The results of a Nurse Aide Abuse Registry check as described in 906 KAR 1:100 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment;

c. The results of a Caregiver Misconduct Registry check as described in 922 KAR 5:120 and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; and

d. Within thirty (30) days of the date of hire, the results of a Central Registry check as described in 922 KAR 1:470 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; or

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; and

(q) Shall not allow a staff person to provide HCB waiver services if the individual:

1. Has a prior conviction of or pled guilty to a:

a. Sex crime; or

b. Violent crime;

2. Is a violent offender;

3. Has a prior felony conviction;

4. Has a drug related conviction, felony plea bargain, or amended plea bargain conviction within the past five (5) years;

5. Has a positive drug test for an illicit or a prohibited drug;

6. Has a conviction of abuse, neglect, or exploitation;

7. Has a Cabinet for Health and Family Services finding of:

a. Child abuse or neglect pursuant to the Central Registry as described in 922 KAR 1:470; or

b. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry as described in 922 KAR 5:120;

8. Is listed on the Nurse Aide Abuse Registry pursuant to 906 KAR 1:100;

9. Within the twelve (12) months prior to employment, is listed on or has a finding indicated on another state's equivalent of the:

a. Nurse Aide Abuse Registry as described in 906 KAR 1:100 if the other state has an equivalent;

b. Caregiver Misconduct Registry as described in 922 KAR 5:120 if the other state has an equivalent; or

c. Central Registry as described in 922 KAR 1:470 if the other state has an equivalent; or

10. Has been convicted of Medicaid or Medicare fraud.

Section 3. Maintenance of Records. (1) An HCB waiver provider shall maintain:

(a) A clinical record for each participant[~~HCB recipient~~]. The clinical record 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 completed MAP 109, Plan of Care/Prior Authorization for Waiver Services;

4. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the recipient or recipient's[~~his~~] 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[~~an HCB recipient~~];

9. Documentation that the participant[~~HCB recipient~~] receiving ADHC services was provided a copy of the ADHC center's posted hours of operation;[~~and~~]

10. Documentation that the participant[~~recipient~~] or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided that shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's[~~HCB recipient's~~] home;

d. Itemization of each personal care or homemaking service delivered;

e. The participant's[~~HCB recipient's~~] arrival and departure time, excluding travel time, if the service was provided at the ADHC center;

f. Progress notes, which shall include documentation of changes, responses, and treatments utilized to evaluate the participant's[~~HCB recipient's~~] needs; and

g. The name, title, and signature of the service provider; and

(b) Fiscal reports, service records, and incident reports regarding services provided. These reports shall be retained:

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 recipient reaches the age of majority under state law, whichever is longest.

(2) Upon request, an HCB waiver provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) Department for Health and Human Services or its designee;

(d) General Accounting Office or its designee;

(e) Office of the Auditor of Public Accounts or its designee; or

(f) Office of the Attorney General or its designee.

Section 4. Participant[~~HCB Recipient~~] Eligibility Determinations and Redeterminations. (1) An HCB waiver service shall be provided to a Medicaid eligible participant[~~HCB recipient~~] who:

(a) Is determined by the department to meet NF level of care requirements; and

(b) Would, without waiver services, be admitted by a physician's order to an NF.

(2) The department shall perform an NF level of care determination for each participant[~~HCB recipient~~] at least once every twelve (12) months or more often if necessary.

(3) An HCB waiver service shall not be provided to an individual who:

(a) Does not require a service other than:

1. A minor home adaptation;

2. Case management; or

3. A minor home adaptation and case management;

(b) Is an inpatient of:

1. A hospital;

2. An NF; or

3. An intermediate care facility for individuals with an intellectual disability[~~an individual with mental retardation or a developmental disability~~];

(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 program.

(4) An HCB waiver provider shall:

(a) Inform a participant[~~an HCB recipient~~] or the participant's[~~his~~] legal representative of the choice to receive:

1. HCB waiver services; or

2. Institutional services; and

(b) Require a participant[~~an HCB recipient~~] 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 HCB waiver or institutional services.

(5) An eligible participant[~~HCB recipient~~] or the participant's[~~recipient's~~] legal representative shall select a participating HCB waiver provider from which the participant[~~recipient~~] wishes to receive HCB waiver services.

(6)**[~~The department may exclude from the HCB waiver program an individual for whom the aggregate cost of HCB waiver services would reasonably be expected to exceed the cost of NF services.~~**

~~(7)~~] An HCB waiver provider shall use a MAP-24, Memorandum to notify the local DCBS office and the department of a participant's[~~an HCB recipient's~~]:

(a) Termination from the HCB waiver program; or

(b)1. Admission to an NF for less than sixty (60) consecutive days; and

2. Return to the HCB waiver program from an NF within sixty (60) consecutive days.

Section 5. Covered Services. (1) An HCB waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service already meets the needs of the participant[~~HCB recipient~~];

(b) Be provided pursuant to a plan of care or, for a PDS[~~CDO service~~], pursuant to a plan of care and support spending plan;

(c) Except for a PDS[~~CDO service~~], not be provided by a member of the participant's[~~HCB recipient's~~] family. A PDS[~~CDO service~~] may be provided by a participant's[~~an HCB 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 a completed MAP 10, MAP 109, Plan of Care/Prior Authorization for Waiver Services, and MAP 351, Medicaid Waiver Assessment to the department.

(3) Covered HCB services shall include:

(a) A comprehensive assessment, which shall:

1. Identify a participant's[~~an HCB recipient's~~] needs and the services that the participant[~~HCB recipient~~] or the participant's[~~recipient's~~] family cannot manage or arrange for on the participant's[~~recipient's~~] behalf;

2. Evaluate a participant's[~~an HCB recipient's~~] physical health, mental health, social supports, and environment;

3. Be requested by an individual seeking HCB waiver services or the individual's family, legal representative, physician, physician assistant, or APRN[~~ARNP~~];

4. Be conducted by an assessment team within seven (7) calendar days of receipt of the request for assessment; and

5. Include at least one (1) face-to-face home visit by a member of the assessment team with the participant[~~HCB recipient~~] and, if appropriate, the participant's[~~recipient's~~] family;

(b) A reassessment service, which shall:

1. Determine the continuing need for HCB waiver services and, if appropriate, PDS[~~CDO services~~];

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures used in an assessment service;

4. Not be retroactive; and

5. Be initiated by an HCB waiver provider or support broker who shall:

a. Notify 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; and

b. Not be reimbursed for a service provided during a period that a participant[~~an HCB recipient~~] is not covered by a valid level of care certification;

(c) A case management service, which shall:

1. Consist of coordinating the delivery of direct and indirect services to a participant[~~an HCB recipient~~];

2. Be provided by a case manager who shall:

a. Be an RN, LPN, certified social worker, certified psychologist with autonomous functioning, licensed psychological practitioner, LMFT, licensed clinical social worker, **licensed social worker,** or an LPCC;

b. Arrange for a service but not provide a service directly;

c. Contact the participant[~~HCB recipient~~] monthly by telephone or through a face-to-face visit at the participant's[~~HCB recipient's~~] residence or in the ADHC center, with a minimum of one (1) face-to-face visit between the case manager and the participant[~~recipient~~] every other month; and

d. Assure that service delivery is in accordance with a participant's[~~an HCB recipient's~~] plan of care;

3. Not include a group conference; and

4. Include development of a plan of care that shall:

a. Be completed on the MAP 109, Plan of Care/Prior Authorization for Waiver Services;

b. Reflect the needs of the participant[~~HCB 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 assessment team, case manager, and participant[~~HCB recipient~~] or participant's[~~his~~] family; and

h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's verbal approval of NF level of care;

(d) A homemaker service, which shall consist of general household activities and shall be provided:

1. By staff pursuant to Section 2(3)(m) and (n) of this administrative regulation; and

2. To a participant[~~an HCB 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;

(e) A personal care service, which shall consist of age-appropriate medically-oriented services and be provided:

1. By staff pursuant to Section 2(3)(m) and (n) of this administrative regulation; and

2. To a participant[~~an HCB 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;

(f) An attendant care service, which shall consist of hands-on care that is:

1. Provided by staff pursuant to Section 2(3)(m) and (n) of this administrative regulation to a participant[~~an HCB 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 and not able to provide care during working hours;

2. Not of a general housekeeping nature; and

3. Not provided to a participant[~~an HCB recipient~~] who is receiving any of the following HCB waiver services:

a. Personal care;

b. Homemaker; or

c. ADHC;

(g) A respite care service, which shall be short term care based on the absence or need for relief of the primary caretaker and be:

1. Provided by staff pursuant to Section 2(3)(m) and (n) of this administrative regulation who provide services at a level that appropriately and safely meets the medical needs of the participant[~~HCB recipient~~] in the following settings:

a. A participant's[~~an HCB recipient's~~] place of residence; or

b. An ADHC center during posted hours of operation;

2. Provided to a participant[~~an HCB recipient~~] who has care needs beyond normal baby sitting;

3. Used no less than every six (6) months; and

4. Provided in accordance with 902 KAR 20:066;

(h) A 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,[~~an HCB recipient~~] and which shall:

1. Meet all applicable safety and local building codes;

2. Relate strictly to the participant's[~~HCB 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[~~HCB recipient~~]; and

4. Be submitted on form MAP-95 Request for Equipment Form for prior authorization; or

(i) An ADHC service, which shall:

1. Except for a participant[~~an HCB recipient~~] approved for an ADHC service prior to May 1, 2003, be provided to a participant[~~an HCB recipient~~] who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to participants[~~Medicaid 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. The presence of[~~Supervision by~~] an RN or LPN;

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of a participant[~~an HCB 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 HCB recipient~~];

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include ancillary services in accordance with 907 KAR 1:023, if ordered by a physician, PA, or APRN[~~ARNP~~] in a participant's[~~an HCB recipient's~~] ADHC plan of treatment. Ancillary services shall:

a. Consist of evaluations or reevaluations for the purpose of developing a plan, which shall be carried out by the participant[~~HCB recipient~~] or ADHC center staff;

b. Be reasonable and necessary for the participant's[~~HCB recipient's~~] condition;

c. Be rehabilitative in nature;

d. Include physical therapy provided by a physical therapist or physical therapist[~~therapy~~] assistant, occupational therapy provided by an occupational therapist or occupational therapy[~~therapist~~] assistant, or speech therapy provided by a speech-language pathologist; and

e. Comply with the physical, occupational, and speech therapy requirements established in Technical Criteria for Reviewing Ancillary Services for Adults;

4. Include respite care services pursuant to paragraph (g) of this subsection;

5. Be provided to a participant[~~an HCB recipient~~] by the health team in an ADHC center, which may include:

a. A physician;

b. A physician assistant;

c. An APRN[~~ARNP~~];

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 pathologist;
l. A certified social worker;
m. A licensed clinical social worker;
n. A nutritionist;
o.[~~n.~~] A health aide;
p.[~~o.~~] An LPCC;
q.[~~p.~~] An LMFT;
r.[~~q.~~] A certified psychologist with autonomous functioning;**[~~or~~]**
s.[~~r.~~] A licensed psychological practitioner; **or**
t. A licensed social worker; and

7. Be provided pursuant to a plan of treatment. The plan of treatment shall:

a.[~~(i)~~] 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.[~~(ii)~~] 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.[~~(iii)~~] Be developed annually from information on the MAP 351, Medicaid Waiver Assessment and revised as needed.

(4) Modification of an ancillary therapy service or an ADHC unit of service shall require prior authorization as established in this subsection.[~~follows:~~]

(a) Prior authorization shall:

1. Be requested by an RN or designated ADHC center staff; and

2. Require submission of a revised MAP 109, Plan of Care/Prior Authorization for Waiver Services and an order signed by a physician, physician assistant, or APRN.[~~ARNP;~~]

(b) An RN or designated ADHC center staff shall forward a copy of the documents required in paragraph (a) of this subsection to the HCB case manager or the participant's[~~consumer's~~] support broker for inclusion in the participant's[~~HCB recipient's~~] case records within ten (10) working days of the prior authorization request.[~~; and~~]

(c) Upon approval or denial of a prior authorization request, the department shall provide written notification to the HCB agency, the ADHC center, and the participant[~~HCB recipient~~].

(d) The case manager or support broker shall:

1. Inform the ADHC center of approval or denial; and

2. Document the approval or denial in the case record.

(5)(a) An ADHC center shall maintain a sign in and out log documenting the provision of services to participants.

(b) Documentation shall include:

1. The date the service was provided;

2. The duration of the service;

3. The arrival and departure time of the participant;

4. A description of the service provided; and

5. The title and signature of the staff who provided the service.

Section 6. Participant-[~~Consumer~~] Directed Services[~~Option~~]. (1) Covered services and supports provided to a participant[~~an HCB recipient~~] participating in PDS[~~CDO~~] shall include:

(a) A home and community support service, which shall:

1. Be available only under the participant-[~~consumer~~] directed services [~~option~~];

2. Be provided in the participant's[~~consumer's~~] home or in the community;

3. Be based upon therapeutic goals and not divisional in nature; and

4. Not be provided to a participant[~~an individual~~] if the same or similar service is being provided to the participant[~~individual~~] via non-PDS[~~CDO~~] HCB waiver services; or

(b) Goods and services, which shall:

1. Be individualized;

2. Meet identified needs required by the participant's[~~individual's~~] plan of care that[~~which~~] are necessary to ensure the health, welfare and safety of the participant[~~individual~~];

3. Be items or minor adaptations[~~in the~~] that are utilized to reduce the need for personal care or to enhance independence within the home or community of the participant[~~recipient~~];

4. Not include experimental goods or services; and

5. Not include chemical or physical restraints.

(2) To be covered, a PDS[~~CDO service~~] shall be specified in the 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~~] HCB setting.

(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 plan of care.

(5)(a) A participant[~~consumer~~] may designate a representative to act on the participant's[~~consumer's~~] behalf.

(b) A PDS[~~The 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;

4. Comply with the requirements for background and related checks established in Section 2(3)(p) of this administrative regulation; and

5. Not be a PDS representative if found in violation of any of the provisions established in subsection (11)(i) of this section[~~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[~~consumer's~~] plan of care indicates he or she requires more hours of service than the program can provide, which may jeopardize 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 threaten or intimidate 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 plan of care.

(9) Except as provided in subsection (7) of this section 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 HCB 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) Except if a participant[~~in a case where a consumer~~] failed to pay patient liability, inform the participant[~~consumer~~] of the right to appeal the department's decision in accordance with Section 9[~~8~~] 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 the[~~a criminal~~] background and related checks established in Section 2(3)(p) of this administrative regulation[~~check~~];

(i) Not be a PDS provider if the individual:

1. Has a prior conviction of or pled guilty to a:

a. Sex crime; or

b. Violent crime;

2. Is a violent offender;

3. Has a prior felony conviction;

4. Has a drug related conviction, felony plea bargain, or amended plea bargain conviction within the past five (5) years;

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 as described in 922 KAR 1:470; or

b. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct
Registry as described in 922 KAR 5:120;

7. Is listed on the Nurse Aide Abuse Registry pursuant to 906 KAR 1:100;

8. Within twelve (12) months prior to employment, is listed on or has a finding indicated on another state's equivalent of the:

a. Nurse Aide Abuse Registry as described in 906 KAR 1:100 if the other state has an equivalent;

b. Caregiver Misconduct Registry as described in 922 KAR 5:120 if the other state has an equivalent; or

c. Central Registry as described in 922 KAR 1:470 if the other state has an equivalent; or

9. Has been convicted of Medicaid or Medicare fraud[~~Submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100, and not be found on the registry~~];

(j) Prior to the beginning of employment,[~~Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3)~~];

[~~(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~~];

(k) Comply with the TB risk assessment and test requirements established in Section 2(3)(o)4 of this administrative regulation;

(l)1. Obtain first aid certification within six (6) months of providing PDS services; and

2. Maintain first aid certification for the duration of being a PDS provider; and

(m)1. Except as established in subparagraph 2 of this paragraph:

a. Obtain cardiopulmonary resuscitation (CPR) certification by a nationally accredited entity within six (6) months of employment; and

b. Maintain CPR certification for the duration of being a PDS provider; or

2. If the participant to whom a PDS provider provides services has a signed Do Not Resuscitate order, not be required to meet the requirements established in subparagraph 1 of this paragraph;

(n)[~~(l)~~] Be approved by the department;

(o)[~~(m)~~] Maintain and submit timesheets documenting hours worked; and

(p)[~~(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 PDS provider[~~parent, parents combined or a spouse~~] shall not provide more than forty (40) hours of PDS[~~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 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~~]. If no historical cost exists for the participant[~~consumer~~], the participant's[~~consumer's~~] budget shall equal the average per capita, per service historical costs of HCB recipients minus five (5) percent.

(b) Cost of services authorized by the department for the participant's[~~individual's~~] prior year plan of care but not utilized may be added to the budget if necessary to meet the participant's[~~individual's~~] needs.

(c) The department shall 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 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.

(f) A participant's[~~consumer's~~] budget shall not exceed the average per capital cost of services provided to individuals in an[~~a~~] NF.

(14) Unless approved by the department pursuant to subsection (13)(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.

(15) A support broker shall:

(a) Provide any 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 plan of care using the person-centered planning principles established in Person Centered Planning: Guiding Principles.

(16)(a) For a PDS[~~CDO~~] participant, a support broker may conduct an assessment or reassessment; and

(b) A PDS[~~CDO~~] assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in Section 5(3) of this administrative regulation.

Section 7. 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 home health 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[~~immediately upon request~~].

Section 8. Applicability and Transition to HCB Waiver Version 2. (1) The provisions and requirements established in this administrative regulation shall:

(a) Apply to HCB waiver services provided to an HCB waiver service recipient until the recipient transitions to the HCB waiver version 2; and

(b) Not apply to individuals receiving HCB waiver services version 2 pursuant to 907 KAR 7:010.

(2) An HCB waiver recipient receiving services pursuant to this administrative regulation shall transition to receiving services pursuant to 907 KAR 7:010 upon the recipient's next level-of-care determination provided that the determination confirms that the individual is still eligible for HCB waiver services.

(3) The provisions and requirements established in this administrative regulation shall become null and void at the time that every eligible HCB waiver recipient served in accordance with this administrative regulation has transitioned to the HCB waiver services Version 2 program pursuant to 907 KAR 7:010.

Section 9. Appeal Rights. An appeal of a department determination regarding NF level of care or services to a participant[~~an HCB recipient or a consumer~~] shall be in accordance with 907 KAR 1:563.

Section 10.[~~9.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Department for Medicaid Services Adult Day Health Care Services Manual", May 2005[~~edition~~];

(b) "Department for Medicaid Services Home and Community Based Waiver Services Manual", September 2006[~~edition~~];

(c) "Person Centered Planning: Guiding Principles", March 2005 [~~edition~~];

(d) "Technical Criteria for Reviewing Ancillary Services for Adults", November 2003[~~edition~~];

(e) "MAP-24, [~~The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services~~] Memorandum", August 2008[~~February 2001 edition~~];

(f) "MAP-95 Request for Equipment Form" June 2007[~~edition~~];

(g) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", July 2008[~~March 2007 edition~~];

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", July 2008[~~January 2000 edition~~];

(i) "MAP-351,[~~The Department for Medicaid Services,~~] Medicaid Waiver Assessment", July 2015;[~~March 2007 edition:~~]

(j) "MAP 2000, Initiation/Termination of Participant-[~~Consumer~~] Directed Services[~~Option (CDO)~~]", June 2015[~~2007, edition~~];

(k) "MAP-10, Waiver Services Physician's Recommendation", August 2014[~~March 2007 edition~~]; and

(l) Kentucky Participant-[~~Consumer~~] Directed Services[~~Option~~] Employee Provider Contract, June 2015[~~March 2008~~].

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

LISA LEE, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: January 14, 2016
FILED WITH LRC: January 14, 2016 at 4 p.m.

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 home and community based (HCB) waiver services. This program enables individuals who have nursing facility level of care needs to be able to reside in and receive services in a community setting (including their own residence) rather than have to be admitted to a nursing facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program coverage provisions and requirements regarding

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by helping enable individuals who have nursing facility level of care needs to reside in and receive services in a community setting rather than in a nursing facility.

(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 helping enable individuals who have nursing facility level of care needs to reside in and receive services in a community setting rather than in a nursing facility.

(2) If 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 including establishing that the provisions in this administrative regulation apply to individuals receiving services under the current version of this waiver program until they transition to a new version – Version 2. The Department for Medicaid Services (DMS) is concurrently promulgating administrative regulations (907 KAR 7:010 and 907 KAR 7:015) which establish provisions and requirements associated with Version 2 of this waiver program. Individuals currently receiving HCB waiver services will continue to receive services pursuant to this administrative regulation until their next "recertification." The recertification is an annual process whereby individuals are re-assessed to verify that they continue to meet the criteria to qualify for HCB waiver services. At the time individuals are recertified (provided they continue to meet the criteria) they will transition to Version 2 of this program. Until then they will receive services pursuant to this administrative regulation (Version 1 of the program.) After all individuals have transitioned to Version 2, DMS intends to repeal this administrative regulation. Additional amendments include safeguards to protect program participants such as prohibiting HCB provider staff (as well as individuals who provide participant directed services) from providing services if they've pled guilty to or been convicted of a sex crime or violent crime or have a felony conviction; requiring providers to perform background checks such as a criminal records check of the Kentucky Administrative Office of the Courts, a Nurse Aid Abuse Registry check, a Caregiver Misconduct Registry check, a Central Registry check (or allowing the checks established in the Office of Inspector General's Kentucky Applicant Registry and Employment Screening (KARES) Program satisfy the aforementioned checks); requiring providers to have staff complete training in abuse,

neglect, fraud, and exploitation; requiring provider staff to obtain cardiopulmonary resuscitation (CPR) certification and first aid certification; requiring provider staff to have been assessed for tuberculosis (TB) risk and prohibited from providing care if signs of TB are present; prohibiting providers from hiring individuals who have not successfully passed a drug test; requiring individuals chosen by participants to represent them (representatives) or to provide participant-directed services to them to meet background and related check requirements; requiring individuals who provide participant-directed services to obtain CPR and first aid certification; and other safeguards. Other amendments include defining terms for clarity; replacing the term "consumer-directed option" or "CDO" with "participant-directed services" or "PDS"; and language or formatting revisions to comply with KRS Chapter 13A standards. The amendment after comments defines "licensed social worker", adds licensed social worker to those authorized to be on an assessment team or an adult day health care team; authorizes licensed social workers to be case managers; authorizes physician assistants to perform follow-up tuberculosis testing; and also deletes the statement authorizing DMS to exclude an individual from the HCB waiver program if the individual's aggregate costs of HCB waiver services would reasonably be expected to exceed the cost of NF services.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to enable DMS to transition individuals who receive HCB waiver services over the course of a year from this version of the program to Version 2. Additional amendments are necessary to protect the health, safety, and welfare of individuals receiving services via this program. Defining "licensed social worker" and authorizing this professional to perform certain roles is necessary as they historically have been authorized to and are qualified to do so. Adding physician assistants to those authorized to provide follow-up tuberculosis testing is necessary as they are qualified to do so and there is a need for such testing. Deleting the statement regarding excluding an individual from the program is a necessary correction.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by enabling DMS to transition individuals from the current version of this program to a new version over the course of a year and by enhancing health, safety, and welfare safeguards for individuals who receive services via this program. The amendments after comments will conform to the content of the authorizing statutes by clarifying or correcting provisions.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by enabling DMS to transition individuals from the current version of this program to a new version over the course of a year and by enhancing health, safety, and welfare safeguards for individuals who receive services via this program. The amendments after comments will assist in the effective administration of the authorizing statutes by clarifying or correcting provisions.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently sixty-three (63) providers (home health departments and adult day health care centers) enrolled as HCB waiver program providers. Over 9,500 individuals are currently receiving services through 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: No action is required by providers. No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation continues the program as is temporarily; thus, there is no change in benefits.

(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 amendment will be budget neutral initially.

(b) On a continuing basis: DMS anticipates that the amendment 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 U.S.C. 1396a(a)(19), and 42 C.F.R. 447.26.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 amendment 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 amendment 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: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 1:170. Reimbursement for home and community based waiver services version 1.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes the [~~method for determining amounts payable by the~~] Medicaid Program reimbursement provisions and requirements regarding[~~for services provided by~~] home and community based waiver services version 1[~~service providers to an eligible recipient as an alternative to nursing facility care~~].

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066, Section 4; and (b) Certified for Medicaid participation by the department.

(3) "Cost report" means the Home Health and Home and Community Based Cost Report and the Home Health and Home and Community Based Cost Report Instructions.

(4) "DD" means developmentally disabled.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Fixed upper limit" means the maximum amount the department shall reimburse for a unit of service.

(7) "HCB" means home and community based waiver.

(8)[~~"HCB recipient" means an individual who:~~

~~(a) Meets the criteria for a recipient as defined in KRS 205.8451; and~~

~~(b) Meets the criteria for HCB services as established in 907 KAR 1:160.~~

~~(9)~~] "Level I reimbursement" means a reimbursement rate paid to an ADHC center for a basic unit of service provided by the ADHC center to a participant[~~an individual designated as an HCB recipient~~].

(9)[~~(10)~~] "Level II reimbursement" means a reimbursement rate paid to an ADHC center for a basic unit of service provided by the ADHC center to a participant[~~an individual designated as an HCB recipient~~], if the ADHC center meets the criteria established in Sections 5 and 6[~~and 7~~] of this administrative regulation.

(10)[~~(11)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(11)[~~(12)~~] "Metropolitan statistical area" means the designation of an urban population center based on the national census and updated on a yearly basis as published by the United States Office of Management and Budget.

(12)[~~(13)~~] "Nonprofit organization" means a legally constituted organization under the Internal Revenue Service code whose objective is to support or engage in activities of public or private interest without any commercial or monetary profit.

(13)[~~(14)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(14)[~~(15)~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(15) "Participant" means a recipient who:

(a) Meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) Meets the eligibility criteria for HCB services established in Section 4 of this administrative regulation.

(16) "Physical therapist" is defined by KRS 327.010(2).

(17) "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.

(18) "Quality improvement organization" or "QIO" is defined in 42 C.F.R. 475.101.

(19)[~~"Revenue code service" means:~~

~~(a) An assessment, reassessment, homemaking, personal care, respite, or attendant care service; or~~

~~(b) A minor home adaptation.~~

~~(20) "Safety net provider" means a provider which:~~

~~(a) Provides 100,000 or more units, adjudicated by the department, of revenue code services via the department's home and community based waiver services program per year;~~

~~(b) Provides revenue code services via the department's home and community based waiver services program in an area that is not a Metropolitan Statistical Area of the Commonwealth; and~~

~~(c) Is a nonprofit organization.~~

~~(21)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

Section 2. HCB Service Reimbursement. (1)(a) Except as provided in Section 3, 4, or 5 of this administrative regulation, the department shall reimburse for a home and community based waiver service provided in accordance with 907 KAR 1:160 at the lesser of:

1. Billed charges; or

2. 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:

Home and Community Based Waiver Service	Fixed Upper Payment Rate Limit	Unit of Service
Assessment	$100.00	Entire assessment process
Reassessment	$100.00	Entire reassessment process
Case Management	$15.00	15 minutes
Homemaking	$13.00	30 minutes
Personal Care	$15.00	30 minutes
Attendant Care	$11.50	1 hour (not to exceed 45 hours per week)
Respite	$2,000 per 6 months (January 1 through June 30 and July 1 through December	1 hour

	31, not to exceed $4,000 per calendar year)	
Minor Home Adaptation	$500 per calendar year	

(2) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

(3) A homemaking service shall be limited to no more than four (4) units per week per participant[~~HCB recipient~~].

Section 3. Local Health Department HCB Service Reimbursement. (1) The department shall reimburse a local health department for HCB services:

(a) Pursuant to Section 2 of this administrative regulation; and

(b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall submit a cost report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual cost report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department's[~~department~~] HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual cost report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's cost report if it determines an audit is necessary.

Section 4.[~~Safety Net Provider Standard Reimbursement. (1) The department shall reimburse for a revenue code service provided by a safety net provider a rate equal to the median rate of all local health departments for the revenue code service.~~

~~(2) The median rate referenced in subsection (1) of this section shall be the median rate subsequent to any supplemental payment pursuant to Section 3(4) or recoupment pursuant to Section 3(5) of this administrative regulation.~~

~~Section 5.~~] Reimbursement for an ADHC Service. (1) Reimbursement shall:

(a) Be made:

1. Directly to an ADHC center; and

2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 120 units per calendar week at each participant's[~~HCB recipient's~~] initial review or recertification.

(2) Level I reimbursement shall be the lesser of:

(a) The provider's usual and customary charges; or

(b) Two (2) dollars and fifty-seven (57) cents per unit of service.

(3) Level II reimbursement shall be the lesser of:

(a) The provider's usual and customary charges; or

(b) Three (3) dollars and twelve (12) cents per unit of service.

(4) The department shall not reimburse an ADHC center for more than twenty-four (24) basic units of service per day per participant[~~HCB recipient~~].

(5) An ADHC basic daily service shall:

(a) Constitute care for one (1) participant[~~HCB recipient~~]; and

(b) Not exceed twenty-four (24) units per day.

(6) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(7) An ADHC center may request a Level II reimbursement rate for a participant[~~an HCB recipient~~] if the ADHC center meets the following criteria:

(a) The ADHC center has an average daily census limited to individuals designated as:

1. Participants[~~HCB recipients~~];

2. Private pay; or

3. Covered by insurance; and

(b) The ADHC center has a minimum of eighty (80) percent of its individuals meeting the requirements for DD as established in Section 5(2)[~~6(2)~~] of this administrative regulation.

(8) If an ADHC center does not meet the Level II reimbursement requirements established in Section 5[~~6~~] of this administrative regulation, the ADHC center shall be reimbursed at a Level I reimbursement[~~payment~~] rate for the quarter for which the ADHC center requested Level II reimbursement.

(9) To qualify for Level II reimbursement, an ADHC center that was not a Medicaid provider before July 1, 2000 shall:

(a) Have an average daily census of at least twenty (20) individuals who meet the criteria established in subsection (7)(a) of this section; and

(b) Have a minimum of eighty (80) percent of its individuals meet the description of DD as established in Section 5(2)[~~6(2)~~] of this administrative regulation.

(10) To qualify for reimbursement as an ancillary therapy, a service shall be:

(a) Medically necessary;

(b) Ordered by a physician**, a physician assistant, or an advanced practice registered nurse**; and

(c) Limited to:

1. Physical therapy provided by a physical therapist or physical therapist assistant;

2. Occupational therapy provided by an occupational therapist[~~therapy~~] or occupational therapy[~~therapist~~] assistant; or

3. Speech therapy provided by a speech-language pathologist.

(11) Ancillary therapy service reimbursement shall be:

(a) Per participant[~~HCB recipient~~] per encounter; and

(b) The usual and customary charges not to exceed the Medicaid upper limit of seventy-five (75) dollars per encounter per participant[~~HCB recipient~~].

(12) A respite service shall:

(a) Be provided on site in an ADHC center; and

(b) Be provided pursuant to 907 KAR 1:160.

(13) One (1) respite service unit shall equal one (1) hour to one (1) hour and fifty-nine (59) minutes.

(14) The length of time a participant[~~an HCB recipient~~] receives a respite service shall be documented.

(15) A covered respite service shall be reimbursed as established in Section 2 of this administrative regulation.

Section 5.[~~6.~~] Criteria for DD ADHC Level II Reimbursement. To qualify for Level II reimbursement:

(1) An ADHC center shall meet the requirements established in Section 4[~~5~~] of this administrative regulation; and

(2) Eighty (80) percent of its ADHC service individuals shall have:

(a) A substantial disability that shall have manifested itself before the individual reaches twenty-two (22) years of age;

(b) A disability that is attributable to an intellectual disability or a related condition which shall include:

1. Cerebral palsy;

2. Epilepsy;

3. Autism; or

4. A neurological condition that results in impairment of general intellectual functioning or adaptive behavior, such as an intellectual disability, which significantly limits the individual in two (2) or more of the following skill areas:

a. Communication;

b. Self-care;

c. Home-living;

d. Social skills;

e. Community use;
f. Self direction;
g. Health and safety;
h. Functional academics;
i. Leisure; or
j. Work; and
(c) An adaptive behavior limitation similar to that of a person with an intellectual disability, including:
1. A limitation that directly results from or is significantly influenced by substantial cognitive deficits; and
2. A limitation that is not attributable to only a physical or sensory impairment or mental illness.

Section 6.[~~7.~~] The Assessment Process for ADHC Level II[~~ADHC~~] Reimbursement.
(1)(a) To apply for Level II[~~ADHC~~] reimbursement, an ADHC center shall contact the QIO on the first of the third month of the current calendar quarter.
(b) If the first of the month is on a weekend or holiday, the ADHC center shall contact the QIO the next business day.
(2) The QIO shall be responsible for randomly determining the date each quarter for conducting a Level II reimbursement assessment of an ADHC center.
(3) In order for an ADHC center to receive Level II reimbursement:
(a) The[~~An~~] ADHC center shall:
1. Document on a MAP-1021, ADHC Payment Determination Form that it meets the Level II reimbursement criteria established in Section 5[~~6~~] of this administrative regulation;
2. Submit the completed MAP-1021, ADHC Payment Determination Form to the QIO via facsimile or mail no later than ten (10) working days prior to the end of the current calendar quarter in order to be approved for Level II reimbursement for the following calendar quarter; and
3. Attach to the MAP-1021, ADHC Payment Determination Form a completed and signed copy of the [~~"~~]Adult Day Health Care Attending Physician Statement[~~"~~] for each individual listed on the MAP-1021, ADHC Payment Determination Form;
(b) The QIO shall review the MAP-1021, ADHC Payment Determination Form submitted by the ADHC center and determine if the ADHC center qualifies for Level II reimbursement; and
(c) The department shall review a sample of the ADHC center's Level II assessments and validate the QIO's determination.
(4) If the department invalidates an ADHC center Level II reimbursement assessment, the department shall:
(a) Reduce the ADHC center's current rate to the Level I rate; and
(b) Recoup any overpayment made to the ADHC center.
(5) If an ADHC center disagrees with an invalidation of a Level II reimbursement determination, the ADHC center may appeal in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 7. Applicability and Transition to Version 2. (1) The provisions and requirements established in this administrative regulation shall:
(a) Apply to HCB waiver services provided to an HCB waiver service pursuant to 907 KAR 1:160; and
(b) Not apply to individuals receiving HCB waiver services version 2 pursuant to 907 KAR 7:010.
(2) The provisions and requirements established in this administrative regulation shall become null and void at the time that every eligible HCB waiver recipient served in accordance with 907 KAR 1:160 has transitioned to the HCB waiver services version 2 program pursuant to 907 KAR 7:010.

Section 8. Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Map-1021, ADHC Payment Determination Form", August 2000[~~Edition~~];
(b) "Adult Day Health Care Attending Physician Statement", August 2000 [~~Edition~~];
(c) "The Home Health and Home and Community Based Cost Report", November 2007 [~~Edition~~]; and
(d) "The Home Health and Home and Community Based Cost Report Instructions", November 2007 [~~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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or
(b) Online at http://www.chfs.ky.gov/dms/incorporated.htm.

LISA LEE, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: January 14, 2016
FILED WITH LRC: January 14, 2016 at 4 p.m.

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 reimbursement provisions and requirements regarding home and community based (HCB) waiver services. This program enables individuals who have nursing facility level of care needs to be able to reside in and receive services in a community setting (including their own residence) rather than have to be admitted to a nursing facility.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program coverage provisions and requirements regarding
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by helping enable individuals who have nursing facility level of care needs to reside in and receive services in a community setting rather than in a nursing facility.
(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 helping enable individuals who have nursing facility level of care needs to reside in and receive services in a community setting rather than in a nursing facility.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation. The amendment eliminates the safety net provider reimbursement; replaces the term "HCB recipient" with "participant" as that is the term adopted by the Centers for Medicare and Medicaid Services (CMS) for individuals receiving home and community based waiver services; contains formatting and revisions to comply with KRS Chapter 13A requirements; and establishes that the provisions in this administrative regulation apply to services rendered to individuals under the current version of this waiver program until they transition to a new version – Version 2. The Department for Medicaid Services (DMS) is concurrently promulgating administrative regulations (907 KAR 7:010 and 907 KAR 7:015) which establish provisions and requirements associated with Version 2 of this waiver program. Individuals currently receiving HCB waiver services will continue to receive services pursuant to 907 KAR 1:160 until their next "recertification." Likewise, DMS's reimbursement for services provided pursuant to 907 KAR 1:160 will continue to be as established in this administrative regulation. The recertification is an annual process whereby individuals are re-assessed to verify that they continue to meet the criteria to qualify for HCB waiver services. At the time individuals are recertified (provided they continue to meet the criteria) they will transition to Version 2 of this program. Until then they will receive services pursuant to 907 KAR

1:160 (Version 1 of the program) and for which DMS will continue to pay pursuant to this administrative regulation. After all individuals have transitioned to Version 2, DMS intends to repeal 907 KAR 1:160 and this administrative regulation. The amendment after comments clarifies that a physician assistant or an advanced practice registered nurse can order ancillary services (physical therapy, occupational therapy, speech therapy).

(b) The necessity of the amendment to this administrative regulation: Eliminating the safety net reimbursement is necessary as it is no longer needed to ensure an adequate provider base and to comply with the federal upper payment limit. When DMS launched the safety net provider reimbursement two (2) entities qualified with one (1) eventually no longer qualifying. The existing qualifying entity has ended up receiving reimbursement well above costs as well as the federal upper payment limit. Consequently, DMS is terminating the payment to protect the receipt of federal Medicaid funding, to protect taxpayer monies, and to ensure compliance with federal payment requirements. The amendment regarding transitioning to Version 2 fo the program is necessary to enable DMS to transition individuals who receive HCB waiver services over the course of a year from this version of the program to Version 2. The amendment after comments is necessary for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring compliance with federal upper payment limits and by enabling DMS to transition individuals from the current version of this program to a new version over the course of a year. The amendment after comments will conform to the authorizing statutes by clarifying who can order ancillary services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring compliance with federal upper payment limits and by enabling DMS to transition individuals from the current version of this program to a new version over the course of a year. The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying who can order ancillary services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently sixty-three (63) providers (home health departments and adult day health care centers) enrolled as HCB waiver program providers. Over 9,500 individuals are currently receiving services through 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: No action is required by providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants in the program will benefit by being able to receive services under this version of the program until they transition to the transformed version of the program that is addressed in 907 KAR 7:010 and 907 KAR 7:015.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no costs initially as a result of the amendment.

(b) On a continuing basis: DMS anticipates no costs on a continuing basis as a result of the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement 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 U.S.C. 1396a(a)(19), and 42 C.F.R. 447.26.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 no costs for the first year as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no costs in subsequent years as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary

to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 7:010. Home and community based waiver services version 2.

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 provisions and requirements for home and community based waiver services version 2.

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) "Abuse" regarding:

(a) An adult is defined by KRS 209.020(8); or

(b) A child means abuse pursuant to KRS Chapter 600 or 620.

(3) "ADHC" means adult day health care.

(4) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(5) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant who:

(a) Does not require twenty-four (24) hour care in an institutional setting; and

(b) May need twenty-four (24) hour respite services when experiencing a short-term crisis due to the temporary or permanent loss of the primary caregiver.

(6) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(7) "Area agency on aging and independent living" means:

(a) An area agency on living as defined by 42 U.S.C. 3002(6); and

(b) A local agency designated by the Department for Aging and Independent Living to administer funds received under Title III for a given planning and service area.

(8) "Assessment" means an evaluation completed using the Kentucky Home Assessment Tool.

(9) "Blended services" means a non-duplicative combination of HCB waiver services that are not participant-directed services as well as participant-directed services.

(10)[~~**"Budget allowance" is defined by KRS 205.5605(1).**~~

[~~**(11)**~~**]** "Center for independent living" is defined by 42 U.S.C. 796a(1).

(11)[~~**(12)**~~**]** "Certified nutritionist" is defined by KRS 310.005(12).

(12)[~~**(13)**~~**]** "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(13)[~~**(14)**~~**]** "Chemical restraint" means a drug or 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.

(14)[~~**(15)**~~**]** "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual;

(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another or a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(15)[~~**(16)**~~**]** "DAIL" means the Department for Aging and Independent Living.

(16)[~~**(17)**~~**]** "DCBS" means the Department for Community Based Services.

(17)[~~**(18)**~~**]** "Department" means the Department for Medicaid Services or its designee.

(18)[~~**(19)**~~**]** "Electronic signature" is defined by KRS 369.102(8).

(19) "Experimental goods or services" means goods or services that are serving the ends of or used as a means of experimentation.

(20) "Exploitation" regarding:

(a) An adult is defined by KRS 209.020(9); or

(b) A child means exploitation pursuant to KRS Chapter 600 or 620.

(21) **"Extended family member" means a relative of an individual by blood or marriage beyond the individuals included in the definition of "immediate family member."**

(22) "Home and community based waiver services" or "HCB waiver services" means home and community based waiver services:

(a) Covered pursuant to this administrative regulation; and

(b) For individuals who meet the requirements of Section 4 of this administrative regulation.

(23)[~~**(22)**~~**]** "Home and community support services" means nonresidential and nonmedical home and community based services and supports that:

(a) Meet the participant's needs; and

(b) Constitute a cost-effective use of funds.

(24)[~~**(23)**~~**]** "Home delivered meal provider" means a food service establishment as defined by KRS 217.015(21).

(25)[~~**(24)**~~**]** "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081; and

(b) Medicare and Medicaid certified.

(26)[~~**(25)**~~**]** "Illicit drug" means:

(a) A drug, prescription or not prescription, used illegally or in excess of therapeutic levels; or

(b) A prohibited drug.

(27) "Immediate family member" is defined by KRS 205.8451(3).

(28) "Legally responsible individual" means an individual who:

(a) Has a duty under state law to care for another person; and

(b)1. Is a parent (biological, adoptive, or foster) of a minor child who provides care to the child;

2. Is the guardian of a minor child who provides care to the child; or

3. Is a spouse of a participant.

(29)[~~**(26)**~~**]** "Licensed clinical social worker" means an individual who meets the requirements established by KRS 335.100.

(30)[~~**(27)**~~**]** "Licensed dietitian" is defined by KRS 310.005(11).

(31)[~~**(28)**~~**]** "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.

(32)[~~**(29)**~~**]** "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition established by KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(33) "Licensed social worker" means an individual who meets the requirements established in KRS 335.090.

(34)[~~**(30)**~~**]** "MWMA portal" means the Kentucky Medicaid Waiver Management Application internet portal located at http://chfs.ky.gov/dms/mwma.htm.

(35)[~~(31)~~] "Natural supports" means a non-paid person, persons, **primary caregiver,** or community resource who can provide or has historically provided assistance to the participant or due to the familial relationship would be expected to provide assistance.

(36)[~~(32)~~] "Neglect" regarding:

(a) An adult is defined by KRS 209.020(016); or

(b) A child means neglect pursuant to KRS Chapter 600 or 620.

(37)[~~(33)~~] "NF" means nursing facility.

(38)[~~(34)~~] "NF level of care" means a high intensity or low intensity patient status determination made by the department in accordance with 907 KAR 1:022.

(39)[~~(35)~~] "Normal baby-sitting" means general care provided to a child that includes custody, control, and supervision.

(40) "Normal care sitting" means general care:

(a) Provided to an adult who is at least eighteen (18) years of age; and

(b) That includes custody, control, and supervision.

(41)[~~(36)~~] "Participant" means a recipient who:

(a) Meets the NF level of care criteria established in 907 KAR 1:022; and

(b) Meets the eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation.

(42)[~~(37)~~] "Participant corrective action plan" means a written plan that is developed by the case manager or service advisor in conjunction with the participant or representative to identify, eliminate, and prevent future violations from occurring by:

(a) Providing the participant or representative with the specific administrative regulation that has been violated;

(b) Identifying factual information regarding the violation; and

(c) Reaching an agreement between the case manager and the participant or representative to the resolution and being in compliance within the timeframe established in the participant corrective action plan being issued.

(43)[~~(38)~~] "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(44)[~~(39)~~] "PDS" means participant-directed services.

(45)[~~(40)~~] "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 7 of this administrative regulation.

(46) "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.

(47)[~~(41)~~] "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 include 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.

(48)[~~(42)~~] "Physician assistant" or "PA" is defined by KRS 311.840(3).

(49)[~~(43)~~] "Plan of treatment" means a care plan developed and used by an ADHC center based on the participant's individualized ADHC service needs, goals, interventions, and outcomes.

(50)[~~(44)~~] "Prohibited drug" means a drug or substance that is illegal under KRS Chapter 218A or statutes or administrative regulations of the Commonwealth of Kentucky.

(51)[~~(45)~~] "Public health department" means an agency recognized by the Department for Public Health pursuant to 902 KAR Chapter 8.

(52)[~~(46)~~] "Recipient" is defined by KRS 205.8451(9).

(53)[~~(47)~~] "Registered nurse" or "RN" means a person who:

(a) Meets the definition established by KRS 314.011(5); and

(b) Has one (1) year or more experience as a professional nurse.

(54)[~~(48)~~] "Representative" is defined by KRS 205.5605(6).

(55)[~~(49)~~] "Service advisor" is defined by KRS 205.5605(7).

(56)[~~(50)~~] "Sex crime" is defined by KRS 17.165(1).

(57)[~~(51)~~] "Support spending plan" means a component of the person-centered service plan that identifies the:

(a) Services requested;

(b) PDS employee or service provider name;

(c) Hourly wage or unit rate;

(d) Hours per month;

(e) Monthly pay or reimbursement; and

(f) PDS employer taxes.

(58)[~~(52)~~] "Violent crime" is defined by KRS 17.165(3).

(59)[~~(53)~~] "Violent offender" is defined by KRS 17.165(2).

Section 2. Provider Participation Requirements Excluding Participant-Directed Services. (1) In order to provide HCB waiver services, excluding participant-directed services, an HCB waiver provider shall:

(a) Be:

1. Approved by the department, licensed, or certified; and

2.a. An adult day health care center;

b. A home health agency;

c. A center for independent living;

d. A public health department;

e. A home delivered meal provider; or

f. An area agency on aging and independent living; and

(b) Meet the service requirements specified in Section 5 for any service provided by the provider.

(2) An out-of-state HCB waiver provider shall comply with the requirements of this administrative regulation.

(3) An HCB waiver provider:

(a) Shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672;

3. 907 KAR 1:673;

4. 907 KAR 7:005 if the provider is a certified waiver provider; and

5. This administrative regulation;

(b) Shall not enroll a participant for whom the provider cannot provide HCB waiver services;

(c) Shall be permitted to accept or not accept a participant;

(d)1. Shall implement a procedure to ensure that critical incident reporting is done in accordance with Section 9 of this administrative regulation;

2. Shall implement a process for communicating the critical incident, the critical incident outcome, and the critical incident prevention plan to the participant, a family member of the participant, or participant's guardian or legal representative; and

3. Shall maintain documentation of any communication provided in accordance with subparagraph 2 of this paragraph by:

a. Entering a record of the communication in the:

(i) MWMA portal; and

(ii) Participant's case record; and

b. Having the documentation signed and dated by the staff member making the entry;

(e) Shall inform a participant or any interested party in writing

of the provider's:

1. Hours of operation; and

2. Policies and procedures;

(f) Shall not permit a staff member who has contracted a communicable disease to provide a service to a participant until the condition is determined to no longer be contagious;

(g) Shall ensure that a staff supervisor is available at all times to provide oversight and technical assistance;

(h) Shall ensure that each staff person:

1. Prior to independently providing a direct service is trained regarding:

a. Abuse, neglect, fraud, and exploitation;

b. The reporting of abuse, neglect, fraud, and exploitation;

c. Person-centered planning principles;

d. Documentation requirements; and

e. HCB services definitions and requirements;

2. Receives DAIL attendant care certification training initially and then annually thereafter;

3. Receives cardio pulmonary resuscitation certification and first aid certification provided by a nationally accredited entity within six (6) months of employment;

4. Maintains current CPR certification and first aid certification for the duration of the staff person's employment;

5.a. Completes a tuberculosis (TB) risk assessment performed by a licensed medical professional within the past twelve (12) months and annually thereafter; and

b.(i) If a TB risk assessment resulted in a TB skin test being performed, have 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; and

(ii) If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work, he or she shall be administered follow-up testing by his or her physician **or physician assistant** with the testing indicating the person does not have active TB disease; and

6. Prior to the beginning of employment, has successfully passed a drug test with no indication of prohibited or illicit drug use;

(i) Shall maintain documentation:

1.a. Of an annual TB risk assessment or negative TB test for each staff who provides services or supervision; or

b. Annually for each staff with a positive TB test that ensures no active disease symptoms are present; and

2. Of the results of a drug test for each staff;

(j)1. Shall:

a. Prior to hiring an individual obtain:

(i) The results of a criminal record 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 employment;

(ii) The results of a Nurse Aide Abuse Registry check as described in 906 KAR 1:100 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; and

(iii) The results of a Caregiver Misconduct Registry check as described in 922 KAR 5:120 and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; and

b. Within thirty (30) days of the date of hire, obtain the results of a Central Registry check as described in 922 KAR 1:470 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; or

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; and

(k) Shall not allow a staff person to provide HCB waiver services if the individual:

1. Has a prior conviction of or pled guilty to a:

a. Sex crime; or

b. Violent crime;

2. Is a violent offender;

3. Has a prior felony conviction;

4. Has a drug related conviction, felony plea bargain, or amended plea bargain conviction within the past five (5) years;

5. Has a positive drug test for an illicit or a prohibited drug;

6. Has a conviction of abuse, neglect, or exploitation;

7. Has a Cabinet for Health and Family Services finding of:

a. Child abuse or neglect pursuant to the Central Registry as described in 922 KAR 1:470; or

b. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry as described in 922 KAR 5:120;

8. Is listed on the Nurse Aide Abuse Registry pursuant to 906 KAR 1:100;

9. Within twelve (12) months prior to employment is listed on or has a finding indicated on another state's equivalent of the:

a. Nurse Aide Abuse Registry as described in 906 KAR 1:100 if the other state has an equivalent;

b. Caregiver Misconduct Registry as described in 922 KAR 5:120 if the other state has an equivalent; or

c. Central Registry as described in 922 KAR 1:470 if the other state has an equivalent; or

10. Has been convicted of Medicaid or Medicare fraud.

(4) A home delivered meal provider shall:

(a) Comply with KRS Chapter 217 and 902 KAR 45:005 requirements regarding food and food service establishments; and

(b) Be subject to:

1. Monitoring; and

2. Annual certification by DAIL in accordance with 907 KAR 7:005.

Section 3. Maintenance of Records. (1)(a) Regarding each participant, an HCB waiver provider shall maintain:

1. A case record; and

2. Fiscal reports, service records, and incident reports regarding services provided.

(b) A case record shall:

1. Be maintained in the MWMA portal; and

2. Contain:

a. A comprehensive assessment approved by the department;

b. A completed person-centered service plan;

c. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the participant or participant's legal representative at the time of application or reapplication and each recertification thereafter;

d. The name of the**:**

(i) Case manager **or[,]** service advisor**;[,]** and

(ii) Independent assessor;

e. Documentation of all level of care determinations;

f. Documentation related to prior authorizations including requests, approvals, and denials;

g. Documentation of each contact with, or on behalf of, the participant;

h. Documentation that the participant, if receiving ADHC services, was provided a copy of the ADHC center's posted hours of operation;

i. Documentation that the participant or participant's legal representative was informed of the procedure for reporting complaints and incidents; and

j. Documentation of each service provided, which shall include:

(i) The date the service was provided;

(ii) The duration of the service;

(iii) The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's home;

(iv) Itemization of each service delivered;

(v) The participant's arrival and departure time, excluding travel time, if the service was provided at the ADHC center;

(vi) A monthly progress note each month, which shall include documentation of changes, responses, and services utilized to evaluate the participant's health, safety, and welfare needs; and

(vii) The signature of the service provider.

(c) Fiscal reports, service records, and incident reports regarding services provided shall be retained:

1. At least six (6) years from the date that a covered service is provided unless the participant is a minor; or

2. If the participant is a minor, the longer of:

a. Three (3) years after the participant reaches the age of majority under state law; or

b. Six (6) years from the date that a covered service is provided.

(2) Upon request, an HCB provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) DAIL;

(d) The United States Department for Health and Human Services or its designee;

(e) General Accounting Office or its designee;

(f) Office of the Auditor of Public Accounts or its designee; or

(g) Office of the Attorney General or its designee.

Section 4. Participant Eligibility Determinations and Redeterminations. (1)(a) To be eligible to receive HCB waiver services, an individual:

1. Shall be determined by the department to meet NF level of care requirements;

2. Without waiver services may be admitted by a physician's order to an NF;

3. Shall be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for HCB waiver services; and

4. Shall meet the Medicaid eligibility requirements established in 907 KAR 20:010.

(b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection, the individual, a representative on behalf of the individual, or independent assessor 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:

a. MAP - 115 Application Intake - Participant Authorization; and

b. MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form.

(c) A participant, participant's guardian, or participant's legal representative shall annually sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form at the time of each recertification to document that the participant was informed of the choice to receive HCB waiver or institutional services.

(2)[(3)] The department shall perform a level of care determination for each participant at least:

(a) Once every twelve (12) months; or

(b) More often due to a change in function or condition.

(3)[(4)] An HCB waiver service shall not be provided to a participant who:

(a) Does not require a service other than:

1. An environmental or minor home adaptation;

2. A home delivered meal;

3. Conflict free case management; or

4. Goods and services;

(b) Is an inpatient of:

1. A hospital;

2. An NF; or

3. An intermediate care facility for individuals with an intellectual disability;

(c) Is a resident of a licensed personal care home;

(d) Has a primary diagnosis that is not related to age or a disability; or

(e) Is receiving services from another Medicaid 1915(c) home and community based services waiver program.

(4)[(5)] An eligible participant or the participant's legal representative shall select a participating HCB waiver provider from which the participant wishes to receive HCB waiver services.

(5)[(6) The department may exclude from the HCB waiver program an individual for whom the aggregate cost of HCB waiver services would reasonably be expected to exceed the cost of NF services.

(7)] An HCB waiver provider shall notify in writing electronically or in print the local DCBS office and the department of a participant's:

(a) Termination from the HCB waiver program;

(b)1. Admission to an NF for less than sixty (60) consecutive days; and

2. Return to the HCB waiver program from an NF within sixty (60) consecutive days; or

(c) Failure to access services within the parameters of the participant's level of care determination for greater than sixty (60) days.

Section 5. Covered Services and Related Requirements. (1)(a) HCB waiver services shall include:

1. Conflict free case management;

2. Attendant care;

3. Specialized respite care services;

4. Environmental or minor home adaptations;

5. ADHC services;

6. Goods and services; or

7. Home delivered meals.

(b)1. Participant-directed services shall include:

a. Environmental or minor home adaptations;

b. Goods and services;

c. Home and community supports;

d. Non-specialized respite care services; or

e. PDS coordination services.

2. Participant-directed services provided to a participant shall not replace the participant's natural support system.

(2)(a) An HCB waiver service and a PDS, except as established in subparagraph 3 of this paragraph, shall:

1. Be prior authorized by the department based upon a request that provides all of the information needed to ensure that the service or modification of the service meets the needs of the participant;

2. Be provided pursuant to the participant's person-centered service plan;

3. Except for PDS, not be provided by an immediate family member, guardian, or legally responsible individual of the participant;

4. Be accessed within sixty (60) days of the date of prior authorization;

5. Be a one (1) on one (1) encounter except for:

a. An ADHC service in which case the ADHC center providing the service shall comply with the ADHC personnel requirements established in 902 KAR 20:066; or

b. A service for which a one (1) on one (1) encounter is not appropriate due to the participant's circumstances or condition in which case the circumstances or condition shall be documented in the:

(i) Assessment; and

(ii) Person-centered service plan;

6. Not occur at the same time as another service, regardless of payer source, except for a:

a. Doctor visit; or

b. Physical therapy, occupational therapy, or speech-language pathology service appointment; and

7. Be provided by an individual who:

a. Does not have a communicable disease pursuant to Section 2(3)(f) of this administrative regulation; and

b. Provides services at a level that appropriately and safely meets the needs of the participant.

(b) A 1915(c) home and community based waiver service that is not part of a hospice service package may be covered in conjunction with hospice services.

(3) To request prior authorization:

(a) For a non-PDS HCB waiver service, a case manager shall submit a completed**[MAP-10, Waiver Services Physician's Recommendation, and a]** person-centered service plan to the department; or

(b) For a PDS, a service advisor shall submit a

completed**[~~MAP-10, Waiver Services Physician's Recommendation, and a~~]** person-centered service plan to the department.

(4) **Except for case management and PDS coordination,** services shall not begin and payment shall not be made for services until:

(a) A level of care determination has been approved by the department;

(b) A person-centered service plan has been:

1. Developed by the person-centered team; and

2. Approved by the department; and

(c)1. DCBS has determined that the individual meets financial eligibility requirements and a valid MAP 552 is on file for a new applicant for Medicaid; or

2. The first day of the month following the level of care determination if the applicant is a recipient currently enrolled with a managed care organization. The managed care organization shall be responsible for ensuring the applicant's health, safety, and welfare during the period between the level of care determination and the first day of the month following the level of care determination.

(5)(a) Case management requirements shall be as established in Section 8 of this administrative regulation.

(b) Except for the requirement established in Section 8(7)(b), the requirements established in Sections 6 and 8 of this administrative regulation shall apply to service advisors.

(6)(a) An attendant care service shall provide care that consists of:

1. General household activities including:

a. Cleaning;

b. Cooking; or

c. Chores;

2. Personal care services including assistance with:

a. Bathing;

b. Grooming;

c. Dressing;

d. Eating;

e. Toileting;

f. Transferring;**[~~or~~]**

g. Assistance with self-administration of medication; **or**

h. Ambulation; or

3. Transporting a participant to a needed place as specified in the participant's person-centered service plan including:

a. A grocery;

b. A pharmacy; or

c. An appointment.

(b)1. An individual transporting a participant shall have a valid driver's license.

2. A minimum of current liability insurance shall be required for a vehicle used to transport a participant.

(c)1. An attendant care provider shall maintain a sign in and out log documenting the provision of services to participants.

2. 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;

d. A description of the service provided; and

e. The name, title, and signature of the staff who provided the service.

(7)(a) A specialized respite care service shall:

1. Be short-term care based on the absence or need for relief of the non-paid primary caregiver;

2. Be provided by staff who provides services at a level that appropriately and safely meets the needs of the participant;

3. Be provided to a participant who has care needs beyond normal baby-sitting or normal care sitting;

4. If the participant receiving the service is assessed pursuant to 907 KAR 7:015 as qualifying the provider for Level II reimbursement, have twenty-four (24) hour access to an RN for emergency situations and consultations; and

5. If applicable, be provided in accordance with 902 KAR 20:066.

(b)1. A provider of specialized respite care shall maintain a sign in and out log documenting the provision of services to participants.

2. 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;

d. A description of the service provided; and

e. The name, title, and signature of the staff who provided the service.

(8)(a) An environmental or minor home adaptation service shall:

1. Be a physical adaptation to a home owned by the participant or family member of the participant that is necessary to ensure the health, welfare, and safety of the participant;

2. Meet all applicable safety and local building codes;

3. Relate strictly to the participant's disability and needs;

4. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the participant;

5. Be provided by a licensed and insured provider qualified to provide the modification;

6. Not add to the total square footage of a home except if necessary to complete an adaptation;

7. Be submitted on the person-centered service plan for prior authorization; and

8. Not be covered unless prior authorized.

(b) A person emergency response system shall be considered to be a covered environmental or minor home adaptation if it meets the requirements established in this subsection.

(9)(a) An ADHC service shall:

1. Be provided to a participant who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to participants 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. The presence of an RN or LPN;

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of a participant, 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;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include specialized respite care services pursuant to subsection (7) of this section;

5. Be provided to a participant 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 **licensed social worker;**

h. A certified social worker;

i.[~~h.~~] A licensed clinical social worker;

j.[~~i.~~] A certified nutritionist; or

k.[~~j.~~] A health aide; and

6. Be provided pursuant to a plan of treatment that is included in the participant's person-centered service plan.

(b) A plan of treatment shall:

1. Be developed and signed by each member of the plan of treatment team, which shall include the participant, participant's

guardian, or participant's legal representative;

2. Include:

a. Pertinent diagnoses;

b. Mental status;

c. Services required;

d. Medication or food allergies and special diet;

e. Contradictions for specific types of activities and preventive health care measures;

f. Frequency of visits to the ADHC center;

g. Prognosis;

h. Rehabilitation potential;

i. Functional limitation;

j. Activities permitted;

k. Nutritional requirements;

l. Medication;

m. Treatment;

n. Safety measures to protect against injury;

o. Instructions for timely discharge; and

p. Other pertinent information; and

3. Be developed annually from information on the assessment and revised as needed.

(c)1. Modification of an ADHC unit of service shall require:

a. Modification of the participant's person-centered service plan; and

b. Prior authorization.

2. Upon approval or denial of a prior authorization request, the department shall provide written notification to the case manager and to the participant.

3. A case manager shall:

a. Inform the ADHC center of approval or denial; and

b. Document the approval or denial in the case record.

(d)1. An ADHC center shall maintain a sign in and out log documenting the provision of services to participants.

2. Documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the participant;

d. A description of the service provided; and

e. The title, name, and signature of the staff who provided the service.

(11) Goods and services shall:

(a) Be individualized;

(b) Meet identified needs required by the participant's person-centered service plan that are necessary to ensure the health, welfare, and safety of the participant;

(c) Be items that are utilized to reduce the need for personal care or to enhance independence within the participant's home or community;

(d) Not include experimental goods or services;

(e) Not include chemical or physical restraints; and

(f) Not be covered unless prior authorized by the department.

(12) A home delivered meal shall:

(a) Meet at least one-third (1/3) of the recommended daily allowance per meal and meet the requirements of the dietary guidelines for Americans;

(b) Be provided to a participant who is unable to prepare his or her own meals and for whom there are no other persons available to do so including natural supports;

(c) Be furnished in accordance with menus that are approved in writing by a licensed dietitian;

(d) Take into consideration the participant's medical restrictions; religious, cultural, and ethnic background; and dietary preferences;

(e) Be individually packaged heated meals;

(f)1. Be provided for inclement weather, holidays, or emergencies if prior approval is provided by the department and if the meals:

1. Are individually packaged if not heated;

2. Are shelf stable; or

3. Have components separately packaged if the components are clearly marked as components of a single meal; and

(g) Not:

1. Supplement or replace meal preparation activities that occur during the provision of attendant care services or any other similar service;

2. Supplement or replace the purchase of food or groceries;

3. Include bulk ingredients, liquids, and other food used to prepare meals independently or with assistance;

4. Be provided while the participant is hospitalized, residing in an institutional setting, or while in attendance at an ADHC center; or

5. Duplicate a service provided through other programs operated by any governmental agency.

(13)(a) Home and community support services shall consist of:

1. General household activities including;

a. Cleaning;

b. Cooking; or

c. Chores;

2. Personal care services including assistance with:

a. Bathing;

b. Grooming;

c. Dressing;

d. Eating;

e. Toileting;

f. Transferring;**[**~~or~~**]**

g. Assistance with self-administration of medication; or

h. Ambulation; or

3. Transporting a participant to a needed place as specified in the participant's person-centered service plan including:

a. A grocery;

b. A pharmacy; or

c. An appointment.

(b)1. An individual transporting a participant shall have a valid driver's license.

2. A minimum of current liability insurance shall be required for a vehicle used to transport a participant.

(14) Non-specialized respite care shall be provided:

(a) To a participant who has care needs beyond normal baby-sitting or normal care sitting; and

(b) In relief of a non-paid primary caregiver.

(15)(a) PDS coordination services shall include service advisory and management of funds.

(b) The financial management service provider shall:

1. Perform the employer responsibilities on behalf of the participant of payroll processing, which shall include:

a. Issuing paychecks;

b. Withholding federal, state, and local tax and making tax payments to the appropriate tax authorities; and

c. Issuing W-2 forms;

2. Be responsible for performing all fiscal accounting procedures at least every thirty (30) days including issuing expenditure reports to:

a. The participant, the participant's guardian, or the participant's legal representative;

b. The participant's case manager; and

c. Upon request, to the department;

3. Maintain a separate account for each participant while continually tracking and reporting funds, disbursements, and the balance of the participant's prior authorizations; and

4. Process and pay invoices for:

a. PDS goods and services approved in the person-centered service plan; and

b. Environmental or minor home adaptations in the person-centered service plan.

Section 6. Miscellaneous Participant-Directed Services Requirements. (1) A PDS provider shall:

(a) Be selected by the participant;

(b) Be at least eighteen (18) years of age;

(c) 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;

(d) Be able to communicate effectively with the participant, representative, participant's guardian, or family of the participant;

(e) Be able to understand and carry out instructions;

(f) Be able to keep records as required by the participant;

(g) Comply with the requirements for background and related

checks established in Section 2(3)(j) of this administrative regulation;

(h) Not be a PDS provider if the individual:

1. Has a prior conviction of or pled guilty to a:

a. Sex crime; or

b. Violent crime;

2. Is a violent offender;

3. Has a prior felony conviction;

4. Has a drug related conviction, felony plea bargain, or amended plea bargain conviction within the past five (5) years;

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 as described in 922 KAR 1:470; or

b. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry as described in 922 KAR 5:120;

7. Is listed on the Nurse Aide Abuse Registry pursuant to 906 KAR 1:100;

8. Within twelve (12) months prior to employment is listed on or has a finding indicated on another state's equivalent of the:

a. Nurse Aide Abuse Registry as described in 906 KAR 1:100 if the other state has an equivalent;

b. Caregiver Misconduct Registry as described in 922 KAR 5:120 if the other state has an equivalent; or

c. Central Registry as described in 922 KAR 1:470 if the other state has an equivalent; or

9. Has been convicted of Medicaid or Medicare fraud;

(i)1. Prior to the beginning of employment, complete training on the:

a. Reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030; and

b. Needs of the participant; and

2. Receive DAIL attendant care training initially and then annually thereafter;

(j)1. Obtain first aid certification within six (6) months of providing PDS services; and

2. Maintain first aid certification for the duration of being a PDS provider;

(k)1. Except as established in subparagraph 2 of this paragraph:

a. Obtain cardiopulmonary resuscitation (CPR) certification by a nationally accredited entity within six (6) months of employment; and

b. Maintain CPR certification for the duration of being a PDS provider; or

2. If the participant to whom a PDS provider provides services has a signed Do Not Resuscitate order, not be required to meet the requirements established in subparagraph 1 of this paragraph;

(l) Comply with the TB risk assessment and test requirements established in Section 2(3)(h)5. of this administrative regulation;

(m) Maintain and submit timesheets:

1. Signed by the:

a. Participant or representative; and

b. Provider; and

2. Documenting:

a. Hours worked;

b. The provision of a service including:

(i) A full description of the service provided; and

(ii) Any concerns or issues, if existing, regarding the general well-being of the participant; and

c. The participant's choice of daily activities and services; and

(n) Submit a completed Kentucky Participant-Directed Services Employee Provider Contract to the service advisor.

(2)(a) A participant may designate a representative to act on the participant's behalf.

(b) A representative shall:

1. Submit to all of the background and related checks established in Section 2(3)(j) of this administrative regulation;

2. Be at least eighteen (18) years of age;

3. Be chosen by the participant, except as established in paragraph (d) of this subsection, to manage and direct all related aspects of the participant's PDS; and

4. Not be a PDS representative if found in violation of the provisions established in subsection (1)(h) of this section.

(c) A representative shall be chosen for a participant if a condition established in this paragraph exists. If the participant:

1. Is under eighteen (18) years of age, a family member of the participant shall appoint a representative for the participant;

2. Has a guardian or legal representative, the participant's guardian or legal representative shall appoint a representative for the participant; or

3. Has failed to adhere to the terms of a participant corrective action plan and chooses to continue receiving PDS, the participant's person-centered team shall present a list of multiple potential representatives to the participant from which the participant shall choose a representative.

(d) A participant's choice of representative shall be made via a MAP-2000, Initiation/Termination of Participant-Directed Service, which the participant shall submit to the participant's service advisor.

(3) A participant may voluntarily terminate PDS by completing a MAP-2000, Initiation/Termination of Participant-Directed Service and submitting it to the participant's service advisor.

(4) The department shall immediately terminate a participant from receiving PDS if:

(a) Imminent danger to the participant's health, safety, or welfare exists; or

(b) The participant's person-centered service plan indicates he or she requires more hours of service than the program can provide, which may jeopardize the participant's safety and welfare due to being left alone without a caregiver present.

(5) A service advisor:

(a) Providing PDS coordination shall:

1. Meet the case manager requirements established in Section 8(1) and (2) of this administrative regulation; and

2. Within seven (7) days of receiving a referral regarding a participant from an independent assessor, schedule a face-to-face visit with the participant, the participant's guardian, or the participant's legal representative;

(b) Shall work with the participant or participant's legal representative to develop a participant corrective action plan:

1. If the participant, participant's legal representative, or PDS employee has exhibited abusive, intimidating, or threatening behavior; or

2. Pursuant to Section 8(7)(d) of this administrative regulation;

(c) For a participant with a participant corrective action plan**[~~shall~~]**:

1. **Shall** monitor the progress of the participant corrective action plan; and

2.a. **Shall** determine that the participant corrective action plan has been satisfied and continue with PDS;

b. **May assist or direct the participant in appointing[~~appoint~~]** a representative pursuant to subsection (2)(c) of this section; or

c. **Shall** proceed with involuntary termination of PDS if the participant or legal representative is unable or unwilling to comply with the participant corrective action plan;

(d) If proceeding with involuntary termination, shall:

1. Notify the independent assessor in writing of termination of PDS within thirty (30) days;

2. Provide the participant or participant's legal representative with written information regarding the traditional waiver program and traditional waiver providers;

3. Provide the participant or participant's legal representative with information regarding the right to appeal the PDS denial in accordance with 907 KAR 1:563;

4. Complete and submit to the department a MAP-2000, Initiation/Termination of Participant-Directed Service terminating the participant from PDS; and

5. Document the:

a. Reason for the termination;

b. Actions taken to assist the participant with the participant corrective action plan; and

c. Outcomes; and

(e) Shall conduct at least one (1) in person visit with:

1. The participant each month at:

a. The participant's residence; or

b. ADHC center if the participant receives services at an ADHC center; and

2. The participant's representative each three (3) months if designated by the participant.

(6) Except as provided in subsection (4) or (5) of this section regarding a participant's termination from PDS, the participant's service advisor shall:

(a) Notify the independent assessor and service provider of potential termination;

(b) Assist the participant in developing a participant corrective action plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS representative;

(d) Complete and submit to the department a MAP-2000, Initiation/Termination of Participant-Directed Service terminating the participant from receiving PDS if the participant fails to meet the requirements established in paragraph (c) of this subsection; and

(e) Assist the participant in transitioning back to traditional HCB services by providing a current list of traditional HCB service providers.

(7) A personal services agency shall:

(a) Meet the requirements established in 906 KAR 1:180; and

(b) Comply with the requirements of this section of this administrative regulation.

(8) An immediate family member, guardian, or legally responsible individual may provide a PDS upon written approval from the department if:

(a) The individual submits to the department a completed PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as a Paid Service Provider;

(b) The individual has unique abilities necessary to meet the needs of the participant;

(c) The individual has obtained education, job experience, volunteerism, or training beyond the direct care of the participant;

(d) The services being provided are not natural supports;

(e) The individual enables the participant to be integrated in the community; and

(f)1. The nearest provider is more than thirty (30) miles from the participant's residence; or

2. A qualified provider cannot:

a. Provide the necessary services according to the person-centered service plan; or

b. Accommodate the participant's schedule.

(9) A service advisor through PD care coordination shall:

(a) Advise a participant regarding any aspect of PDS or blended services and facilitate access to services;

(b) Provide information for accessing assistance 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 health, safety and welfare and provide information on how to access resources;

(e) Request a:

1. Copy of the participant's current person-centered service plan; or

2. Reassessment through the independent assessor; and

(f) Conduct at least one (1) face-to-face visit:

1. With the participant monthly;

2. With the participant and the participant's representative, if the participant has a representative, at least once every three (3) months; and

3. At the participant's residence at least once every three (3) months.

(10) A participant shall be responsible for all employer-related expenses and responsibilities.

(11) A PDS provider shall not provide more than forty (40) hours of PDS in a calendar week (Sunday through Saturday).

Section 7. 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 legal representative;

2. The participant's case manager **or service advisor**;

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 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; and

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 that 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 **or service advisor**; and

2. Updated in the MWMA portal by the participant's case manager **or service advisor**.

(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 8. Case Management Requirements. (1) A case manager shall:

(a) Have:

1.a. A bachelor's degree in a health or human services field from an accredited college or university; and

b.(i) At least one (1) year of experience in a health or human services field; or

(ii) The educational or experiential equivalent in the field of aging or disabilities; or

(b) Be a registered nurse who has:

1. At least two (2) years of experience as a professional nurse in the field of aging or disabilities; or

2. A master's degree in a health or human services field from an accredited college or university.

(2) A case manager shall be supervised by a case management supervisor who:

(a) Has at least four (4) years of experience as a case manager in the field of aging or disabilities; and

(b) Meets the requirements established in subsection (1) of this section.

(3) A case manager shall meet with a participant, the participant's guardian, or the participant's legal representative within seven (7) days of receiving a referral from an independent assessor regarding the participant.

(4) 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 that 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, guardian'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) Accurately reflect in the MWMA portal if a participant is:

1. Terminated from the HCB waiver program;

2. Admitted to a hospital;

4. Admitted to a skilled nursing facility;

4. Transferred to another Medicaid 1915(c) home and community based waiver service program; or

5. Relocated to a different address; and

(n) Provide information about participant-directed services to the participant, participant's guardian, or participant's legal representative:

1. At the time the initial person-centered service plan is developed; and

2. At least annually thereafter and upon inquiry from the participant, participant's guardian, or participant's legal representative.

(5)(a) Case management for any individual who begins receiving HCB 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 HCB 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 HCB 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 HCB waiver services.

(e) If a participant chooses a new case manager in order to comply with the conflict free case management requirement, the new case manager and the participant's assessment team shall be responsible for:

1. Developing the material necessary for the participant's next level of care determination;

2. Submitting the material associated with the participant's next level of care determination to the MWMA portal;

3. Developing the participant's next person-centered service plan; and

4. Submitting the participant's next person-centered service plan to the MWMA portal.

(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.

(7) A case manager shall:

(a) Arrange for a service but not provide a service directly;

(b) Contact the participant at least monthly by telephone or through a face-to-face visit with a minimum of one (1) face-to-face visit between the case manager and the participant:

1. Every other month in:

a. An adult day health care center; or

b. The participant's residence;

2. At least three (3) times a calendar year in the participant's residence;

(c) Ensure that services are provided in accordance with the participant's person-centered service plan;

(d) Issue a participant corrective action plan if:

1. The participant does not comply with the 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 any HCB waiver provider;

3. Imminent threat of harm to the participant's health, safety or welfare exists;

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 an assessment, case management, or service advisory; or

5. If the PDS provider does not comply with the PDS provider requirements established in Section 6(1) of this administrative regulation; and

(e) Issue a recommendation to the department for termination from HCB waiver services or PDS if a participant corrective action plan cannot be agreed upon or fulfilled by the participant, participant's guardian, or participant's legal representative.

Section 9. Critical Incident Reporting. (1)(a) An event that potentially or actually impacts the health, safety, or welfare of the participant shall be a critical incident.

(b) A critical incident may include:

1. Death;

2. Alleged or suspected abuse, neglect, or exploitation;

3. Homicidal or suicidal ideation;

4. Missing person;

5. A medication error resulting in consultation or intervention of a licensed medical professional;

6. An event involving police or emergency response personnel intervention; or

7. Other action or event that may result in harm to the participant.

(2)(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 inci-
dent shall be reported by the individual who witnessed or discovered the critical incident via the MWMA portal within eight (8) hours of discovery.

(c) The HCB 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.

(d) The participant's case manager shall follow up to ensure that the participant's health, safety, and welfare are not jeopardized.

(3)**[~~(a) Following a death of a participant receiving services from an HCB waiver~~**
~~provider, the participant's case manager 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. A full life history of the participant including any update from the last version of the life history;~~

~~9. 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;~~

~~10. Emergency medical services notes regarding the~~

~~**participant if available;**~~

~~**11. The police report if available;**~~

~~**12. A copy of:**~~

~~**a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable;**~~

~~**b. The cardiopulmonary resuscitation and first aid card for any HCB provider's staff**~~

~~**member who was present at the time of the incident that resulted in the participant's**~~

~~**death;**~~

~~**13. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and**~~

~~**14. A record of any crisis training for any staff member present at the time of the incident that resulted in the participant's death.**~~

~~**(4)**~~**]** An HCB provider shall report a medication error by making an entry into the MWMA portal.

Section 10. Involuntary Termination of HCB Waiver Services. (1) If the department involuntarily terminates a participant's participation in the HCB waiver program, the department shall:

(a) Notify in writing of the decision to terminate services the:

1. Participant's independent assessor;

2. Participant, participant's guardian, or participant's legal representative;

3. Participant's case manager; and

4. Participant's HCB waiver service providers; and

(b) Inform the participant, participant's guardian, or participant's legal representative of the right to appeal the department's decision to terminate HCB waiver services.

(2)(a) If an HCB waiver provider involuntarily terminates providing HCB waiver services to a participant, the HCB waiver provider shall:

1. At least thirty (30) days prior to the effective date of the termination:

a. Simultaneously notify in writing the:

(i) Participant, participant's guardian, or participant's legal representative;

(ii) Participant's case manager;

(iii) The participant's independent assessor; and

(iv) Department;

2. Document the termination in the MWMA portal; and

3. In conjunction with the participant's case manager:

a. Provide the participant, participant's guardian, or participant's legal representative with the name, address, and telephone number of each HCB waiver provider in Kentucky;

b. Provide assistance to the participant, participant's guardian, or participant's legal representative in contacting another HCB waiver provider; and

c. Provide a copy of pertinent information to the participant, participant's guardian, or participant's legal representative.

(b) The notice referenced in paragraph (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.

Section 11. Use of Electronic Signatures. 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.

Section 12. Applicability and Transition to Version 2. (1) The provisions and requirements established in this administrative regulation shall not apply to individuals receiving HCB waiver services version 1 pursuant to 907 KAR 1:160.

(2) A participant receiving services pursuant to 907 KAR 1:160 shall transition to receiving services pursuant to this administrative regulation upon the participant's next level-of-care determination provided that the determination confirms that the individual is still eligible for HCB waiver services.

Section 13. Appeal Rights. An appeal of a department determination regarding NF level of care or services to a participant shall be in accordance with 907 KAR 1:563.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(b) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(c) "MAP – 531 Conflict-Free Case Management Exemption", May 2015;

(d) "PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as a Paid Service Provider", August 1, 2015;

(e) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;

(f) "MAP 2000, Initiation/Termination of Participant-Directed Services", June 2015;

(g) "MAP-10, Waiver Services Physician's Recommendation", June 2015;

(h) "Kentucky Participant-Directed Services Employee Provider Contract", June 2015; and

(i) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015.

(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
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 14, 2016

FILED WITH LRC: January 14, 2016 at 4 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding a new version – Version 2 – of home and community based (HCB) waiver services. The HCB program enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility. Individuals will be transitioned to the new version of the HCB program at the time of their next level-of-care certification/determination. The certification is a process that assesses the individual to determine if they still meet HCB waiver program participation criteria (i.e. still have nursing facility level-of-care needs). Differences between Version 2 and Version 1 include establishing new federally-mandated case management requirements (that case management be free from conflict of interest); 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; establishing a person-centered service plan along with associated requirements (federally mandated) for each program participant. The over-arching requirement of the person-centered service plan is to more greatly involve and afford more choice by the participant and/or participant's representative in designing the plan and related components as well as better enable them to assimilate into their community. Additional differences include adding home-delivered meals as a covered service; creating a new service (home and community supports) by consolidating former services (homemaking and personal care); establishing a specialized and non-specialized version of respite; adding a new service called

participant-directed service (PDS) coordination; adds new rights that must be guaranteed for individuals receiving services; require providers to check the Caregiver Misconduct Registry before hiring an individual and prohibits the hiring of anyone listed on the registry; and narrows the classes of incidents (to be reported) from two (2) classes to one (1) class (critical).

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for a new version – Version 2 - of Medicaid's home and community based waiver program and in accordance with federal requirements.

(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 new version of a program that enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(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 nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(2) If 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 in the amended after comments administrative regulation include deleting the definition of "budget allowance"; inserting a definition of "extended family member", "immediate family member", "legally responsible individual", "licensed social worker", "normal care setting", "person-centered team"; adding licensed social worker to those authorized to be on an adult day health care health team; authorizing licensed social workers to be case managers; authorizing physician assistants to perform follow-up tuberculosis testing; deleting the statement authorizing DMS to exclude an individual from the HCB waiver program if the individual's aggregate costs of HCB waiver services would reasonably be expected to exceed the cost of NF services; deleting the deleting the requirement (regarding requesting prior authorization of services) that a case manager or service advisor has to submit a completed MAP-10, Waiver Services Physician's Recommendation" to DMS; clarifying that except for case management and PDS coordination services won't begin and payment won't be made until a level of care determination has been approved and other steps have occurred; clarifying that person care services include assistance with ambulation; clarifying that a service advisor may assist or direct a participant in appointing a representative rather than appointing the representative; clarifying that person-centered service plan responsibilities that apply to a case manager also apply to a service advisor; and deleting the mortality documentation requirements.

(b) The necessity of the amendment to this administrative regulation: Deleting the definition of "budget allowance" is necessary as the administrative regulation does not use the term. Inserting the definitions is necessary for clarity in response to public comments. The other amendments are necessary to correct or clarify policies in response to public comments. Removing the requirement that a case manager produce the array of records and information following a mortality is necessary as case managers in this home and community based waiver program would not readily have access to the information and producing the data would impose an undue hardship.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments will conform to the content of the authorizing statutes by clarifying policies.

(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 clarifying policies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Currently sixty-three (63) providers (home health departments and adult day health care centers) enrolled as HCB waiver program providers and over 9,500 individuals are receiving services through 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: 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 amendment 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 amendment will be budget neutral in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 7:015. Reimbursement for home and community based waiver services version 2.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program reimbursement requirements and provisions for home and community based waiver services version 2.

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) "ADHC" means adult day health care.

(3) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066; and

(b) Certified for Medicaid participation by the department.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Fixed upper payment limit" means the maximum amount the department shall reimburse per unit.

(6) "HCB" means home and community based waiver.

(7) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(8) "Participant" means a recipient who:

(a) Meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) Meets the eligibility criteria for HCB services established in 907 KAR 7:010.

(9) "Recipient" is defined by KRS 205.8451(9).

Section 2. HCB Service Reimbursement. (1)(a) Except as provided in Section 3 or 5 of this administrative regulation, the department shall reimburse for a home and community based waiver service or item at the lesser of the billed charges or the fixed upper payment limit for each unit.

(b) The fixed upper payment limits, unit amounts, and reimbursement maximums established in the following table shall apply:

Service	Fixed Upper Payment Rate Limit	Unit Amount	Maximum
PDS coordination	$162.50 per unit		Two (2) units per month
Case management	$100.00	One (1) month	One (1) unit per month
Attendant care not as a PDS	$24.00 per hour	One (1) hour	$200 per day alone or in combination with ADHC services. Travel to and from the participant's residence shall be excluded
Home and community supports	$2.88 per unit	Fifteen (15) minutes	Forty-five (45) hours per week; Maximum of $200 per day alone or in combination with ADHC services; Travel to and from the participant's residence shall be excluded
Non-specialized respite	$2.75 per unit	Fifteen (15) minutes	$200 per day alone or in combination with specialized respite. Non-specialized respite alone or in combination with specialized respite shall not exceed $4,000 per level of care year.

Goods and services	$3,500 per level of care year	Level of care year	$3,500 per level of care year; shall not be covered unless prior authorized
Home delivered meals	$7.50 per hot meal	One (1) hot meal	One (1) hot meal per day and five (5) hot meals per week
Adult day health care services	$2.83 per unit for Level I services; $3.43 per unit for Level II services **except for specialized respite, which shall be $10.00 per unit for Level II**	Fifteen (15) minutes	200 units per week
Specialized respite	$4.00 per unit **for Level I; $10.00 per unit for Level II**	Fifteen (15) minutes	$200 per day alone or in combination with non-specialized respite. Specialized respite alone or in combination with non-specialized respite shall not exceed $4,000 per level of care year.
Environmental or minor home adaptation	$2,500 per level of care year	One (1) level of care year	$2,500 per level of care year; shall not be covered unless prior authorized

(2)(a) Reimbursement for a service provided as a PDS shall not exceed the department's allowed reimbursement for the same service as established in the table in subsection (1) of this section.

(b) Participants receiving services through the PDS option shall have three (3) months from the date of level of care recertification to comply with the reimbursement limit established in paragraph (a) of this subsection.

(3)(a) Three (3) quotes from a prospective provider shall be required for:

1. An environmental or minor home adaptation; or
2. Goods and services.

(b) Documentation justifying the need for the following shall be uploaded into the MWMA portal:

1. An environmental or minor home adaptation; or
2. Goods and services.

(5) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

Section 3. Local Health Department HCB Service Reimbursement. (1) The department shall reimburse a local health department for HCB services:

(a) Pursuant to Section 2 of this administrative regulation; and

(b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall:

(a) Each year complete a Home Health and Home and Community Based Cost Report completed in accordance with the Home Health and Home and Community Based Cost Reporting Instructions; and

(b) Submit the Home Health and Home and Community Based Cost Report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual Home Health and Home and Community Based Cost Report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department's HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual Home Health and Home and Community Based Cost Report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's Home Health and Home and Community Based Cost Report if it determines an audit is necessary.

Section 4. Reimbursement for an ADHC Service. (1) Reimbursement for an ADHC service shall:

(a) Be made:

1. Directly to an ADHC center; and
2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 200 units per calendar week.

(2) Level I reimbursement shall be the lesser of:

(a) The provider's usual and customary charges; or

(b) Two (2) dollars and eighty-three (83) cents per unit of service.

(3)(a) **Except as established in paragraph (b) of this subsection,** Level II reimbursement shall be the lesser of:

1. The ADHC center's usual and customary charges; or
2. Three (3) dollars and forty-three (43) cents per unit of service.

(b)**1. The department shall pay a Level II reimbursement for specialized respite provided by a:**

a. Registered nurse; or

b. Licensed practical nurse under the supervision of a registered nurse.

2. The Level II reimbursement for specialized respite shall be the lesser of:

a. The ADHC center's usual and customary charges; or

b. Ten (10) dollars per unit of service.

(c) An ADHC center's reimbursement for Level II services shall be:

1. Per participant; and
2. Based upon the participant's assessed level of care and most recent person-centered service plan.

(4) An ADHC basic daily service shall constitute care for one (1) participant.

(5) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(6) The level of and reimbursement rate for any ADHC service provided to a participant shall be determined by an assessment of the participant using the Kentucky Home Assessment Tool (K-HAT).

Section 5. Criteria for High Intensity Level II Reimbursement **and Home Health Level II Reimbursement**. (1) Any ADHC service provided to a participant by an ADHC center shall qualify for Level II reimbursement if the participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT).

(2)**(a)** Specialized respite care provided to a participant by a home health agency shall qualify for Level II reimbursement if**:**

1. The participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT)**; and**

2. Provided by a:

a. Registered nurse; or

b. Licensed practical nurse under the supervision of a registered nurse.

(b) The Level II reimbursement for specialized respite

provided by a home health agency shall be the reimbursement established in Section 4(3)(b) of this administrative regulation.

(3) If a participant's assessment determines that:

(a) ADHC services to the participant do not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center for services provided to the participant; or

(b) Specialized respite care to the participant does not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center or home health agency for the specialized respite care service.

Section 6. Applicability. The reimbursement provisions and requirements established in this administrative regulation shall:

(1) Apply to services or items provided to individuals who receive home and community based services version 2 pursuant to 907 KAR 7:010; and

(2) Not apply to services or items provided to individuals receiving home and community based services version 1 pursuant to 907 KAR 1:160.

Section 7. Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

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

(a) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015;

(b) "The Home Health and Home and Community Based Cost Report", November 2007; and

(c) "The Home Health and Home and Community Based Cost Report Instructions", November 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

LISA LEE, Commissioner
VICKI YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: January 14, 2016
FILED WITH LRC: January 14, 2016 at 4 p.m.

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 is a new administrative regulation which establishes the Medicaid program reimbursement provisions and requirements regarding a new version of home and community based waiver program services (Version 2.) This program enables individuals who have nursing facility level of care needs to, rather than receive services in a nursing facility, live in and receive services in a community setting. Differences between Version 1 and Version 2 include: adding reimbursement for a new service - home-delivered meals; adding reimbursement for home and community supports which results from consolidating former services (homemaking and personal care); establishing reimbursement for two (2) types of respite - specialized and non-specialized version; adding reimbursement for a new service called participant-directed service (PDS) coordination; increasing the rate for Level I adult day health care (ADHC) center services from $2.57 per unit to $2.83 per unit; revising the criteria for Level II adult day health care (ADHC) center reimbursement as well as increasing the rates from $3.12 per unit to $3.43 per unit; and eliminating reimbursement for a "safety net provider".

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program reimbursement provisions and requirements for a new version of the home and community based waiver services program. Increasing reimbursement for Level I and Level II ADHC services is necessary to help providers of such services meet the demand for services. Eliminating the safety net provider category and reimbursement is necessary to comply with a federal mandate and to ensure receipt of federal funds. The safety net provider category was created several years ago in response to a need for services in Eastern Kentucky. The initial provider that qualified no longer meets the criteria and a new provider emerged whose reimbursement has ended up not only exceeding costs but the federal upper payment limit. The Department for Medicaid Services (DMS) is ending the reimbursement to comply with the federal upper payment limit and ensure receipt of federal funds for the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid program reimbursement provisions and requirements regarding a new version of the home and community based waiver services program and complying with federal requirements for the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Medicaid program reimbursement provisions and requirements regarding a new version of the home and community based waiver services program and complying with federal requirements for the program.

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments establishes a Level II reimbursement rate for specialized respite. The rate will be $10.00 per unit (fifteen minutes) and the service must be provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to insert a Level II rate for specialized respite.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will conform to the content of the authorizing statutes by inserting a Level II reimbursement rate for specialized respite.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by inserting a Level II reimbursement rate for specialized respite.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Currently sixty-three (63) providers (home health departments and adult day health care centers) enrolled as HCB waiver program providers and over 9,500 individuals are receiving services through the program. There is one (1) entity that qualified in recent years as a safety net provider.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participants who receive goods and services will have to produce three (3) quotes (from providers) for goods and services in order for the department to reimburse for the goods and services. Additionally, documentation justifying the need for goods and services and for environmental or minor home adaptations must also be documented in the MWMA portal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Some costs could be experienced related to acquiring three (3) quotes for goods and services but the cost is indeterminable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Home and community based waiver program participants will benefit by being able to receive

home-delivered meals among other new services. ADHC centers will benefit from higher reimbursement for ADHC services and providers of home-delivered meals (a new service) will benefit by being reimbursed for such services.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates 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 U.S.C. 1396a(a)(19) and 42 C.F.R. 447.26.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services and the Department for Aging and Independent Living.

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), and 205.520(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 implementing the administrative regulation will be budget neutral for the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that implementing the administrative regulation will be budget neutral for the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)

102 KAR 1:060. Refunds.

RELATES TO: KRS 161.470
STATUTORY AUTHORITY: KRS 161.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.470(6) provides that members of the Kentucky Teachers' Retirement System (KTRS) may receive a refund of their contributions, less contributions to the medical insurance fund, upon withdrawal from service. This administrative regulation provides the administrative procedures necessary to carry out the provisions of this statute.

Section 1. Definitions. (1) "Alternate payee" is defined by KRS 161.220(26).
(2) "Qualified domestic relations order" or "QDRO" is defined by KRS 161.220(25).

Section 2. Refunds shall be made on the basis of permanent withdrawal from service in a covered position. No refund may be made if the member is under contract for employment in a covered position.

Section 3.[~~2.~~] Partial refunds of member contributions shall only be permitted when a member cancels service credit and obtains credit for the service in a state or municipal retirement system outside Kentucky as provided in 102 KAR 1:045.

Section 4. Administrative Provisions. (1) Following permanent withdrawal from service, a member may contact KTRS and request a refund application. A refund may be processed no earlier than sixty (60) days after the member's termination date.
(2) Upon receipt of a request for a refund, KTRS shall review the member's account. If the member is eligible for service retirement, the member shall not refund the account unless:
(a) Denial of the refund shall prohibit the member from qualifying for Social Security benefits; or
(b) The member shall be using the refund to obtain credit in another retirement plan.
(3) If the member is eligible for service retirement as provided in KRS 161.600, KTRS shall provide the member with instructions on how to apply for service retirement.
(4) If the member is eligible for a refund, KTRS shall forward the following:
(a) A KTRS Refund Application for Withdrawal of Account Balance form;
(b) A Direct Rollover Statement;
(c) A Refund Tax Notice; and
(d) A Special Tax Notice Regarding Plan Payments.
(5) If the member worked for multiple KTRS employers, Section B only of the application may be duplicated, as needed.
(6) KTRS may accept a photocopy or facsimile of Section B of the application from the employer.
(7) If the member has not made any contributions to KTRS within the last two (2) fiscal years, Section B of the application shall not be completed.
(8) The member may choose one (1) of the following payment options:
(a) Refund paid directly to the member;
(b) Refund rolled into a qualified plan or IRA; or
(c) Partial payment to the member and the remainder of the refund rolled into a qualified plan or IRA. A minimum of $200 shall be rolled into a qualified plan or IRA.
(9) If the member chooses to have all or a portion of the refund rolled into a qualified plan or IRA, the member shall forward the Direct Rollover Statement to the qualified plan or IRA for completion.
(10) The member shall file the signed application with KTRS.
(11) The member shall also provide KTRS with a photocopy of the member's:
(a) Signed Social Security card; and
(b) Valid driver's license.
(12) KTRS shall not process the refund until the retirement system receives the member's completed application, signed Social Security card, valid driver's license, and if necessary, Direct Rollover Statement. KTRS shall compare information provided by the employer in Section B of the application to the information previously provided by the employer in the annual statement or most recent payroll report to confirm the information. If there is a discrepancy between the information in Section B of the application and the information in the annual statement or most recent payroll report, KTRS shall contact the employer to reconcile the information.
(13) A refund shall be processed at either the beginning or the middle of each month, whichever is the applicable date following receipt of the properly completed application.
(14) If the member requested a direct refund of the account balance, KTRS shall mail the member:
(a) The refund check; and
(b) A letter that shall include a breakout of the gross, taxable, and net amount of the refund.
(15) If the member requests a partial or full rollover of the account balance, KTRS shall mail the refund check directly to the qualified plan or IRA. The member shall receive a letter that shall confirm payment of the refund to the qualified plan or IRA.
(16) If a QDRO requires a portion of a member's refund to be paid to an alternate payee, the QDRO shall be submitted to KTRS for approval as required by KRS 161.700 and 102 KAR 1:320.
(a) Following approval of the QDRO by KTRS and entry by a court of competent jurisdiction, if the member is eligible for, and requests a refund, KTRS shall forward the documents listed in subsection (4) of this section to the member.
(b) KTRS shall forward to the alternate payee the following:
1. The Qualified Domestic Relations Order (QDRO)/Application for Withdrawal of Account Balance form (QDRO/Application);
2. The Qualified Domestic Relations Order (QDRO)/Direct Rollover Statement;
3. A Refund Tax Notice; and
4. A Special Tax Notice Regarding Plan Payments.
(c) The alternate payee shall file the QDRO/Application form with a copy of the alternate payee's signed Social Security card. If the alternate payee chooses to have all or a portion of his or her refund rolled into one (1) of the options set forth in subsection (8) of this section, the alternate payee shall forward the Qualified Domestic Relations Order (QDRO)/Direct Rollover Statement to the qualified plan or IRA for completion.
(d) KTRS shall respond to the alternate payee as required by either subsection (14) or (15) of this section.
(17) KTRS shall record the date of the refund on the member's account and designate the member's account status as refunded.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Refund Application for Withdrawal of Account Balance", 2016;
(b) "Direct Rollover Statement", 2016;
(c) "Refund Tax Notice", 2016;
(d) "Special Tax Notice Regarding Plan Payments", 2016;
(e) "Qualified Domestic Relations Order (QDRO)/Application for Withdrawal of Account Balance", 2016; and
(f) "Qualified Domestic Relations Order (QDRO)/Direct Rollover Statement", 2016.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

ARTHUR GREEN, Chairperson
APPROVED BY AGENCY: December 21, 2015

FILED WITH LRC: January 14, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, 24 February 2016, at 9:00 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, 17 February 2016, five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Monday, 29 February 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides the administrative procedures necessary to refund contributions of a member upon the member's withdrawal from KTRS covered service.

(b) The necessity of this administrative regulation: This administrative regulation sets forth the administrative procedures for obtaining a refund of the member's contributions upon withdrawal from service in a KTRS covered position.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by (1) setting forth the steps necessary for filing and processing an application for refund, and (2) incorporating the forms required by KTRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the detailed procedures for filing an application for retirement as required by KRS 161.600(4).

(2) If 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 (1) set forth the steps which must be taken by the member and, if necessary, an alternate payee and KTRS to process an application for refund, and (2) incorporate the forms required by KTRS.

(b) The necessity of the amendment to this administrative regulation: To set forth the procedures for requesting and processing an application for refund and incorporate the forms required by KTRS.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments set forth the precise procedures to be followed to request and process an application for refund.

(d) How the amendment will assist in the effective administration of the statutes: Members and, if necessary, an alternate payee, will be advised of the procedures, information and documentation necessary for the processing of an application for refund.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members and, if necessary, an alternate payee, requesting an application for refund.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Members will have to contact KTRS to obtain an application and provide the requisite proof of identification and, if necessary, salary information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the members, and if necessary, the alternate payee, of the retirement system other than the cost of postage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members, and if necessary, an alternate payee, will be aware of the process to obtain a refund of the member's account balance.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and 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: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Active, contributing members or inactive members who are not eligible for service retirement of Kentucky Teachers' Retirement System and alternate payees of either active, contributing or retired members who shall receive portions of account refunds pursuant to a Qualified Domestic Relations Order to Divide KTRS Benefits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310 and KRS 161.470.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Administrative costs will depend upon the number of refund applications received and cannot be quantified at this time.

(d) How much will it cost to administer this program for subsequent years? Future administrative costs will depend upon the number of refund applications received and cannot be quantified at this time.

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:

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)

102 KAR 1:070. Application for retirement.

RELATES TO: KRS 161.600, 161.605(11), 161.640
STATUTORY AUTHORITY: KRS 161.310(1), 161.600(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Kentucky Teachers' Retirement System (KTRS) to promulgate all administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.600(4) requires the board to promulgate administrative regulations concerning application for an annuity to receive benefit payments. This administrative regulation establishes procedures for filing of retirement applications and for determining effective dates of annuity payments.

Section 1. Applications for retirement shall be filed on the Application for Service Retirement and shall include:
(1) A photocopy of the applicant's signed Social Security card;
(2) A certified birth certificate;
(3) If applicable, a certified marriage certificate[~~license~~]; and
(4) A voided or cancelled check from the institution to which monthly disbursements shall be electronically transmitted.

Section 2. Applications for retirement for service shall not be filed later than the first day of the month immediately preceding the month that retirement is to be effective.
(1) Retirement for service shall be effective on the first day of the month following the date that a properly completed and filed application is received at the offices of Kentucky Teachers' Retirement System.
(2) A member eligible to retire may exercise this right during a school year in which the member has been in employment if there is filed with the application a statement from the chief administrative officer or other authorized representative of the employing board or agency to the effect that the member is being released from the employment contract for the purpose of retirement.

Section 3. An application received by mail and bearing the U.S. Postal Service postmark dated on or before the filing date established in Section 2 of this administrative regulation shall be accepted as having been filed in compliance with Section 2 of this administrative regulation.

Section 4.[~~An application for service retirement may be approved by the board of trustees with an effective date that is retroactive up to a maximum of three (3) months if the member was not under contract for the period.~~

~~Section 5.~~] The provisions of this administrative regulation shall apply to any member who is returning to retirement after having waived his or her retirement allowance under the provisions of KRS 161.605(11).

Section 5.[~~6.~~] Incorporation by reference. (1) "Application for Service Retirement", 2016[~~2013~~], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601-3800, Monday through Friday, 8 a.m. to 5 p.m.

ARTHUR GREEN, Chairperson
APPROVED BY AGENCY: December 21, 2015
FILED WITH LRC: January 14, 2016 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, 24 February 2016, at 9:00 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, 17 February 2016, five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the heating may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Monday, 29 February 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes procedures for filing a retirement application and determining the effective date of annuity payments.
(b) The necessity of this administrative regulation: Members who meet the conditions for retirement mandated by KRS 161.600(1) must also meet the criteria for filing an application to begin receiving an annuity benefit.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The KTRS Board of Trustees is mandated under KRS 161.600(4) to establish the process for filing an application for retirement.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the detailed procedures for filing an application for retirement as contemplated by KRS 161.600(4).
(2) If 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 reflects the necessity of receipt of a certified copy of the member's marriage certificate rather than a marriage license and deletes the provision for retroactive dating of an application.
(b) The necessity of the amendment to this administrative regulation: To clarify that the member must provide a copy of the certified marriage certificate which is the official document which confirms that the marriage did, in fact, occur on a date certain and has been recorded in the state's official record, rather than a copy of the certified marriage license which permits the parties to marry and to delete the provision for retroactive dating of an application.
(c) How the amendment conforms to the content of the authorizing statutes: Clarifies that a certified marriage certificate is required with the retirement application to confirm the identity of the member's surviving spouse who may be named as a beneficiary or eligible for future survivor benefits and deletes the provisions for retroactive dating of an application.
(d) How the amendment will assist in the effective administration of the statues: A certified marriage certificate confirms the identity of the member's surviving spouse who may be named as a beneficiary or eligible for future survivor benefits and cease retroactive dating of an application.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Active, contributing, married members of KTRS who are eligible for retirement.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative

regulation or amendment: Members who are married will have to file a copy of their certified marriage certificate concurrent with the application for retirement no later than the first of the month preceding the month in which the member wants his retirement to be effective.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Married members of the retirement system shall incur the cost of obtaining a copy of their certified marriage certificates which varies dependent upon the law of the jurisdiction in which the marriage ceremony took place.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be able to retire on their chosen date.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and 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: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all married members are treated the same

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310(1), 161.600(4).

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

4. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Administrative costs will be dependent upon the number of applications processed and cannot be quantified at this time.

(d) How much will it cost to administer this program for subsequent years? Administrative costs incurred will be dependent upon the number of applications processed and cannot be quantified at this time.

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:

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS 161.220, 161.716, 403.190, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 161.310(1), 161.700(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the Board of Trustees of the Kentucky Teachers' Retirement System (KTRS) to promulgate administrative regulations for the administration of the funds of the retirement system. KRS 161.700(4) requires the Board of Trustees of KTRS to promulgate administrative regulations setting forth the requirements, procedures, and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system. This administrative regulation establishes these requirements.

Section 1. Definitions. (1) "Alternate payee" is defined by KRS 161.220(26).

(2) "Benefits" means a monthly service or disability retirement allowance or refund payable at the request of a participant covered by KTRS who terminates employment in a KTRS covered position prior to becoming eligible to receive a retirement allowance.

(3) "Member" is defined by KRS 161.220(4).

(4) "Participant" is defined by KRS 161.220(24).

(5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:

(a) The member's name, KTRS member identification number, and last-known mailing address;

(b) The alternate payee's name and last known mailing address;

(c) Whether the order applies to:

1. An active account from which the member is not currently receiving a retirement allowance; or

2. A retired account from which the member is currently receiving a retirement allowance and the date on which the member retired the account;

(d) The date of marriage;

(e) The date of decree of dissolution of marriage;

(f) That the order is for the purpose of property division;

(g) Whether the alternate payee shall receive payments under Option A, Option B, or Option C;

(h) The amount of the participant's monthly retirement allowance or termination refund to be paid by KTRS to the alternate payee as either;

1. A fixed dollar amount; or

2. The percentage calculated under Section 7(1) or (2) of this administrative regulation;

(i) When payments shall begin;

(j) When payments shall cease;

(k) That the alternate payee shall be paid in the same form as the participant;

(l) If the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to the alternate payee;

(m) Who shall be responsible for payment of the KTRS processing fee; and

(n) All information required on the Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits.

(2) A QDRO shall be:

(a) Approved by KTRS as to enforceability and compliance with the requirements of KRS 161.700 and this administrative regulation;

(b) Approved and submitted by the participant and alternate payee or their legal counsel;

(c) Signed by the judge of a court of competent jurisdiction;

(d) Filed with the clerk of the court; and

(e) Certified by the clerk of the court.

Section 3. Administrative Provisions. (1) Upon entry of a final divorce decree, the participant shall forward a copy of the decree to KTRS and:

(a) If the participant is a retired member, request:

1. A Change of Option Following Termination of Marriage form, if the participant wants to change his or her retirement option, which shall be done within sixty (60) days of the final divorce decree;

2. A Change of Beneficiary form, if the participant had chosen retirement Option I or Option II and does not want to change his or her retirement option, but wants to name a new beneficiary;

3. A Designation of Beneficiary for KTRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate; or

4. A W-4P Withholding Certificate for Pension or Annuity Payments or W-4P, if the participant wants to change the amount of federal tax withheld from his or her retirement benefit; or

(b) If the participant is an active member, he or she shall request:

1. A Designation of Beneficiary for KTRS Retirement Account Balance form, if the participant wants to designate a beneficiary other than his or her estate; or

2. A Designation of Beneficiary for KTRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate.

(2) Thirty (30) days prior to filing the QDRO with KTRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee or third party, including the party's legal counsel, shall provide a completed KTRS Authorization for Release of Information form with the request.

(3)[~~(a)~~] For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, KTRS may, for the current fiscal year, provide the unaudited salary information electronically submitted to KTRS by[~~shall forward a KTRS Report for Current Year Earnings and Contributions form to~~] the participant's employer upon receipt of the written request and release.

[~~(b) The employer shall return the completed form to KTRS within ten (10) work days.~~]

(4) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, KTRS shall not project future earnings or future service. KTRS shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by KTRS and for which the member has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage or receipt of the request for information.

(5) If the participant has retired, KTRS shall provide the amount of the participant's monthly retirement allowance, the participant's accumulated account balance at retirement, the total retirement allowance received to date, and the participant's total accrued service credit, including any service credit purchased during the marriage. The parties, their legal counsel, or the court may use the information to decide what portion of the participant's account is marital. KTRS shall not decide whether, or if, any portion of the participant's account is marital and potentially subject to division.

(6) The participant or alternate payee or legal counsel shall submit a Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits form to KTRS for review forty-five (45) days prior to filing the QDRO with the court. If more than one (1) of participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each KTRS account.

(7) KTRS shall not review the QDRO unless it is accompanied by the following:

(a) The KTRS Administrative Regulatory Compliance form, which has been approved by both the participant or alternate payee or their legal counsel;

(b) A fifty (50) dollar nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

(c) The KTRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

(d) Copies of the participant's and alternate payee's signed Social Security cards;

(e) KTRS Authorization for Direct Deposit form; and

(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including KTRS Military Service Certification and Affidavit form, with a copy of discharge papers.

(8) Within twenty (20) days of receipt of the QDRO, KTRS shall notify the participant and alternate payee in writing whether the QDRO meets KTRS requirements. If the QDRO meets KTRS requirements, KTRS shall approve the QDRO and circulate an original, signed QDRO for signature by the participant and alternate payee for submission to the court. If the participant or alternate payee is represented by legal counsel, the approved QDRO shall instead be provided to their legal counsel for signature by counsel and submission to the court. KTRS shall forward a W-4P Withholding Certificate for Pension or Annuity Payments form to the alternate payee.

(9) If the QDRO does not meet KTRS requirements, KTRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to KTRS for review and approval prior to filing with the court.

(10) KTRS shall reject any QDRO entered by a court which has not been reviewed or approved by KTRS prior to its submission to the court. KTRS shall notify the participant, the alternate payee, or their legal counsel, and the court in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance before it shall be accepted by KTRS.

(11) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to KTRS with a twenty-five (25) dollar nonrefundable processing fee for review and approval.

(12) Following approval by the court, the participant, alternate payee, or legal counsel shall file a certified copy of the QDRO with KTRS.

(a) The QDRO shall not become effective until the certified copy is received by KTRS.

(b) Upon receipt of the certified copy, KTRS shall designate the participant's account for implementation of the QDRO.

(c) While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established.

(d) If the participant is a retired member, payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by KTRS, if the alternate payee has supplied a correctly executed W-4P[~~Withholding Certificate for Pension or Annuity Payments~~] form. If the alternate payee either fails to return the W-4P or does not correctly execute the form, KTRS shall apply the IRS default option of married with three (3) exemptions, which results in no withholding of federal tax. If the alternate payee chooses a different option and then provides a correctly executed W-4P, future payments shall be adjusted.

(e) If the participant is an active member, payments to the

alternate payee shall commence in the calendar month in which the participant begins to receive a monthly annuity, if the alternate payee has provided his or her current address, a correctly executed W-4P and banking information as required by subsection (15) of this section. If the alternate payee either fails to return the W-4P or does not correctly execute the form, KTRS shall proceed in the same manner as described in paragraph (d) of this subsection.

(f) If the participant is an active member who withdraws from service prior to eligibility for retirement and requests a refund of his or her accumulated account balance, 102 KAR 1:060 sets forth the requirements for processing payment of the refund to the participant and the alternate payee.

(13) If KTRS is enforcing a QDRO which is subsequently amended or terminated by the court, then either the participant, alternate payee, or legal counsel shall submit a certified copy of the amended QDRO or order of termination to KTRS for processing.

(14) The participant, alternate payee, or legal counsel shall not submit a QDRO that is not final and under consideration by an appellate court.

(15) The alternate payee shall be responsible for notifying KTRS of any change in name, mailing address, or banking information.

(a) KTRS shall provide a Name or Change of Address form or Authorization for Direct Deposit form upon request.

(b) KTRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable.

(c) Other than sending a notice as established in paragraph[~~paragraphs (a) and~~] (b) of this subsection, KTRS shall have no duty or responsibility to search for, or locate, the alternate payee.

(d) If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify KTRS of an address change or if the bank notifies KTRS that the alternate payee's account has been closed, within sixty (60) days of the return of the notification to the alternate payee or receipt of notification from the bank, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address or bank account information is provided by the alternate payee.

(e) KTRS shall have no liability to the alternate payee with respect to amounts paid to the participant.

(16) The participant shall be responsible for notifying KTRS in writing of an event which causes benefit payments to the alternate payee spouse, child, or other dependent, to cease.

(a) The participant shall provide KTRS with a certified copy of the alternate payee's death certificate or marriage certificate. KTRS shall suspend payments due the alternate payee provided that submission of proof of the death or marriage of the alternate payee, if marriage terminates payments under the terms of the QDRO, is received by the beginning of the month following KTRS's receipt of the participant's written notification.

(b) The alternate payee shall also be responsible for notifying KTRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments.

(c) KTRS shall not be responsible for payments made to the alternate payee until it is given timely written notice and documentation of any event terminating those payments.

Section 4. A QDRO may apply to a participant's:

(1) Retirement allowance;

(2) Disability retirement allowance; or

(3) Termination refund.

Section 5. A QDRO shall not apply to a participant's:

(1) Survivor annuity that becomes payable after the member's death;

(2) Survivor benefits that become payable after an active contributing member's death;

(3) Accounts that are not vested at the time of the dissolution of marriage;

(4) Life insurance benefit;

(5) Refund as a result of an error;

(6) Refund of an active or retired account in response to a member's death;

(7) Health insurance; and

(8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires, or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1)(a) If the participant has retired, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and

2. The denominator of which shall be the participant's total full and fractional years of KTRS service credit through the date of retirement.

(b) The resulting fraction shall be converted to a percentage which shall be divided by two (2).

(c) Option C may be utilized if the duration of the retired participant and the alternate payee's marriage was less than the participant's total full and fractional years of KTRS service at the date of retirement. The parties or their legal counsel shall report the marital years in Option C of the QDRO.

(2)(a) In the case of an active account, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage, as reported by the parties or their legal counsel in Option C of the QDRO; and

2. The denominator of which shall be the participant's total full and fractional years of KTRS service credit as determined by KTRS at the time that the participant retires either by service retirement or disability retirement or requests a refund of his or her account balance.

(b) The resulting fraction shall be converted to a percentage which shall be divided by two (2).

(3) If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(4) If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's disability retirement allowance which is subsequently discontinued, the alternate payee shall not receive a benefit. Further, if a participant remains disabled at the end of his or her entitlement period, pursuant to KRS 161.661(5), the disability benefits shall be recalculated which may result in a lower monthly payment to both the participant and the alternate payee.

(5) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the

discounts required under KRS 161.620(1)(b) and (d).

(a) If at retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, KTRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts.

(b) KTRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(6) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(7) The participant may select any retirement option[~~, but payment to the alternate payee shall be measured as though the participant had chosen Option I, Straight Life Annuity with Refundable Balance, under KRS 161.620 and 102 KAR 1:150~~].

Section 8. Any person who attempts to make KTRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to KTRS for its costs and legal fees.

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

(a) "KTRS Authorization for Release of Information", 15 January 2013;

(b)[~~"KTRS Report for Current Year Earnings and Contributions", 14 July 2010;~~

~~(c)~~] "Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits", 14 March 2014;

(c)[~~(d)~~] "KTRS Administrative Regulatory Compliance", 14 July 2010;

(d)[~~(e)~~] "KTRS Confidential Information", 14 January 2013;

(e)[~~(f)~~] "KTRS Authorization for Direct Deposit", 14 July 2010;

(f)[~~(g)~~] "KTRS Military Service Certification and Affidavit", 14 July 2010;

(g)[~~(h)~~] "KTRS Name or Change of Address", 14 July 2010;

(h)[~~(i)~~] "Change of Option Following Termination of Marriage", 15 February 2002;

(i)[~~(j)~~] "Change of Beneficiary", February 2002;

(j)[~~(k)~~] "Designation of Beneficiary for KTRS Life Insurance Benefit", 15 January 2013;

(k)[~~(l)~~] "Designation of Beneficiary for KTRS Retirement Account Balance", 15 January 2013; and

(l)[~~(m)~~] "W-4P", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

(3) W-4P may also be obtained at www.irs.gov/pub/irs-pdf/w4p.pdf.

ARTHUR GREEN, Chairperson

APPROVED BY AGENCY: December 21, 2015

FILED WITH LRC: January 14, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, 24 February 2016, at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, 17 February 2016, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Monday, 29 February 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements, procedures and forms for the approval and processing of qualified domestic relations orders ("QDRO") by Kentucky Teachers' Retirement System ("KTRS").

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with the amendments to KRS 161.700.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by (1) setting forth the procedures and timelines to be followed in filing a QDRO with KTRS, (2) setting the filing fees, (3) providing the formula for calculating the amount to be paid to the alternate payee, and (4) incorporating the forms required by KTRS.

(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 informing KTRS participants, their alternate payees, legal counsel and the courts what is required to expedite approval and implementation of a QDRO.

(2) If 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 (1) expand the information which may be provided to retired participants regarding their account balance to permit the parties to determine what portion, if any, of the account balance is attributable to the marital years and may be awarded to the alternate payee, (2) delineate between payments to alternate payees dependent on whether the participant is retired or in active, contributing status or will be receiving a refund of an account balance, and (3) set a time frame for the participant to provide documentation of the event that causes payments to the alternate payee to cease.

(b) The necessity of the amendment to this administrative regulation: To expand the information provided to retired participants, clarify when payments to alternate payees shall begin dependent on whether the participant is retired or in active, contributing status, provide the necessary reference for the proper procedures to follow if a refund is being paid pursuant to the terms of a QDRO, and inform participants of the time frame in which to provide documentation of the event that causes payments to the alternate payee to cease.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to the administrative regulation ensure that the parties are placed on notice as to what supplemental information may be offered retired participants, when and how payments will be disbursed to alternate payees and of participant's reporting requirements.

(d) How the amendment will assist in the effective administration of the statues: The amendments to the administrative regulation will ensure prompt and accurate payments are made to the participant and the alternate payee.

(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 participants and alternate payees of participants of KTRS who are subject to a qualified domestic relations order.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The participants and their alternate payees will have to adhere to the requirements for obtaining a refund of the account balance. The alternate payees will have to keep the retirement system apprised of current contact and banking information to ensure prompt receipt of their portion of the participant's retirement annuity. Participants will have to provide proof of the event causing payments to the alternate payee to cease in a timely manner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a $50.00 initial processing fee and a $25.00 processing fee for amended QDROs to be paid by the participant, the alternate payee or shared by both parties as ordered by the court.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Alternate payees will be permitted to access participants' retirement benefits which were previously exempt from distribution during dissolution of marriage.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: Continuing costs will be determined by the number of QDROs filed with KTRS and cannot be quantified at this point.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of KTRS incurred in processing QDROs will be paid via the processing fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation establishes the fees to be assessed for processing QDROs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes a $50.00 initial processing fee and a $25.00 processing fee for amended QDROs.

(9) TIERING: Is tiering applied? Tiering is not applied, as all participants and alternate payees of participants are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.700, KRS 161, 310, KRS 161.480, 161.655.

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

4. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Less than five hundred dollars ($500) was generated 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? Future revenue generated by this regulation will be dependent upon the number of QDROs filed with KTRS and cannot be quantified at this time.

(c) How much will it cost to administer this program for the first year? The cost in terms of staff time for processing the QDROs was less than a thousand dollars.

(d) How much will it cost to administer this program for subsequent years? Future cost in terms of staff time for processing QDROs will depend upon the number of orders received and cannot be quantified at this time.

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:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:370. Kentucky Retirement Systems Personnel Policies.

RELATES TO: KRS Chapter 11A, 16.505 - 16.652, 18A.095, 61.394, 61.510 - 61.705, 78.510, 164.357, Chapter 218A, 335B.010(4), 335B.020, Chapter 342, 344.030, 344.040, 29 C.F.R. 825, 21 U.S.C. 812

STATUTORY AUTHORITY: KRS 61.645(9)(c), (d), (g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.645(9)(c) provides that, effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the board of trustees. KRS 61.645(9)(d) requires the board of trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy. This administrative regulation establishes the Kentucky Retirement Systems Personnel Policies.

Section 1. An employee of the Kentucky Retirement Systems shall comply with the Kentucky Retirement Systems Personnel Policies.

Section 2. Incorporation by Reference. (1) The "Kentucky Retirement Systems Personnel Policies", as amended December 3, 2015[~~May 20, 2010~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM A. THIELEN, Executive Director

APPROVED BY AGENCY: January 13, 2016

FILED WITH LRC: January 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2016, at 9:00 a.m. Eastern Time at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 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: Jennifer A. Jones, Assistant General Counsel, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800, ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation
established the "Kentucky Retirement Systems Personnel Policies."

(b) The necessity of this administrative regulation: KRS 61.645(9)(c) provides that, effective December 1, 2002, all employees of the Kentucky Retirement Systems were transferred to a personnel system adopted by the Board of Trustees. KRS 61.645(9)(d) requires the Board of Trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy. This administrative regulation establishes the "Kentucky Retirement Systems Personnel Policies."

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.645(9)(d) requires the Board to adopt by administrative regulation a fair, equitable, and comprehensive personnel policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 61.645(9)(d) requires the Board to adopt by administrative regulation a fair, equitable, and comprehensive personnel policy.

(2) If 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 makes the following changes to the Kentucky Retirement Systems Personnel Policies:

Section 1.01 Administration of Policies- Clarified that is cases of ambiguity, KRS may look to the policies and procedures utilized in 18A for guidance.

Section 1.04 Definitions-Created a definition section to clarify terms utilized throughout the policies. Adopted a definition of "immediate family," which is consistent with Executive Branch Ethics.

Section 3.03 Equal Employment Statement & Section 3.04 Civility and Anti-Harassment- Addresses federal prohibitions regarding discrimination on the basis of genetic information and veteran status.

Section 3.04 Civility and Anti-Harassment- Amended to expand the time limits for conducting an investigation from 14 to 20 working days due to difficulty completing the exhaustive process within the current timeframe and other amendments to clarify the process for employees.

Section 3.07 Disability Accommodations Policy- Created to recognize KRS' commitment to comply with the provisions of the American's with Disabilities Act ("ADA").

Section 4.04 Employee Actions- Modified to clarify the procedures and distinction between Promotions and Reclassifications.

Section 5.05 Salary Basis Policy- Amended to recognize the proposed amendments to the Fair Labor Standards Act (FSLA) expected in 2016.

Section 6.04 Dismissals and Notification of Dismissal- Amended to eliminate unnecessary provisions and comply with state law.

Section 6.06 Disciplinary Action- Amended to recognize written reprimands as an element of progressive discipline.

Section 7.09 Inclement Weather Policy- Modified to reflect Retirement Systems' practice of following the procedures outlined in KRS Chapter 18A.

Section 7.10 Compensatory Time- Amended to allow up to 8 hours a day compensatory time for individuals traveling on official KRS duty outside of the normal workday. Currently, a KRS traveler, traveling outside of normal work hours as a passenger, does not receive compensatory time unless actively engaged in other KRS business. It is KRS' management's experience that the currently policy encourages inefficiency and creates animosity. Additionally, clarified when compensatory time is credited to an employee's balance in preparation for KRS' new time and attendance product.

Section 8.04 Military Leave- Modified to document compliance with changes to the Uniformed Services Employment and Reemployment Rights Act (USSERA) regarding the extension of the period of time an employee can be absent without pay due to military service and still seek restoration of employment. An additional spousal leave benefit was also added pursuant to state law requirements.

Sections 8.05, 8.07 and 8.11 Voting, Blood Donation, and Bereavement Leave- Modified to reflect Retirement Systems' practice of following the procedures similar to those outlined in KRS Chapter 18A.

Section 8.08 Family Medical Leave Act (FMLA) was modified to document compliance with FMLA regarding the granting of Military Caregiver Leave and Qualifying Exigency Leave for members of military families.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to effect the necessary changes to the Kentucky Retirement Systems Personnel Policies as outlined in 2(a) above.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments outlined in 2(a) above are necessary to have a fair, equitable, and comprehensive personnel policy as required by statute.

(d) How the amendment will assist in the effective administration of the statutes: These amendments outlined in 2(a) above assist in the effective administration of the statutes by allowing Kentucky Retirement Systems to have a fair, equitable, and comprehensive personnel policy as required by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will affect Kentucky Retirement Systems as an agency and its employees. Currently Kentucky Retirement Systems has 263 employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the Kentucky Retirement Systems Personnel Policies.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agency and employees will have fair, equitable, and comprehensive personnel policies.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no additional cost. Kentucky Retirement Systems already administers its personnel policies.

(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: The administrative expenses of Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and 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: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected 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? Kentucky Retirement Systems.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 61.645(9)(g).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost. The agency already administers its personnel policies.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost. The agency already administers its personnel policies.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121

STATUTORY AUTHORITY: KRS 315.002, 315.005, 315.191

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and requires the board to ensure safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

Section 1. Definition. (1) "Immediate supervision" is defined by KRS 315.010(11).

(2) "Long-term care facility" or "LTCF" means:

(a) An intermediate care facility;

(b) A skilled nursing facility;

(c) A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016;

(d) An intermediate care facility for intellectually and developmentally disabled; or

(e) A personal care facility.

(3) "Pharmacist-in-charge" means a pharmacist mandated as in charge under KRS 315.020 and who meets the requirements of 201 KAR 2:205.

(4) "Supervision" is defined by KRS 315.010(25).

Section 2. General Requirements. (1) The pharmacist-in-charge of the dispensing pharmacy shall be responsible for policy and procedures governing the procurement, distribution, and control of all drugs that are provided to a long-term care facility.

(2) Dispensing.

(a) Medications shall be dispensed only on the medical order (for a non-controlled substance) or a prescription drug order of a licensed practitioner.

(b) A medical order (for a non-controlled substance) shall be considered a prescription drug order if it is entered on the medical record of a patient at an LTCF and if the medical order contains the:

1. Name of patient;

2. Date of issuance;

3. Name, strength, and dosage form of drug prescribed;

4. Directions for use;

5. Quantity of length of therapy as defined in policy and procedures or as defined by medical order; and

6. Practitioner's name.

(3) Emergency Drugs.

(a) The pharmacist-in-charge of the dispensing pharmacy shall establish policy and procedures for supplying emergency drugs.

(b) For expediency and efficiency, emergency drugs shall be limited in number to include controlled substances stocked pursuant to 902 KAR 55:070 that shall not exceed six (6) individual doses of six (6) different controlled substances <u>and shall not exceed six (6) individual doses of thirty (30) different non-controlled substances</u>, and whose prompt use and immediate availability are generally regarded as essential in the proper treatment of sudden and unforeseen patient emergencies.

(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be included in the emergency kit based upon evidence of use.

(d) Emergency drug stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.

(e) Emergency drug stock shall not be stocked in a personal care facility.

(4) Long Term Care Facility Pharmacy Stock.

(a) Pharmacy stock of drugs in an LTCF shall not exceed fifteen (15) individual doses each of 150 non-controlled substances.

(b) Pharmacy stock of drugs in a personal care facility shall not exceed five (5) individual doses each of thirty (30) non-controlled substances.

(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in pharmacy stock based upon evidence of use.

(d) The pharmacist-in-charge shall be responsible for authenticating the need for pharmacy stock.

(e) A pharmacist shall review the prescription drug or medical order before the release of medication.

(f) Pharmacy stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if stocks are being maintained at adequate levels.

(g) Pharmacy stock shall be used for a patient for no more than the next business day.

(h) Except for pharmacy stock of intravenous fluids with no additive drugs or irrigation solutions, the pharmacy stock shall be replenished by:

1. A secure box delivered by the pharmacy; or

2. A pharmacist or a pharmacist intern, or a certified pharmacy technician, who shall be under the immediate supervision of a pharmacist on-site, unless there is a pharmacy on-site, then the pharmacy stock shall be replenished by a pharmacist or a pharmacist intern or a certified pharmacy technician under the supervision of a pharmacist on-site.

JOEL THORNBURY, R.Ph., President

APPROVED BY AGENCY: January 13, 2016

FILED WITH LRC: January 14, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday February 24, 2016, at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made

unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day on February 29, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

(b) The necessity of this administrative regulation: This regulation is necessary to establish standards of practice for pharmacy services in long-term care facilities. This regulation is necessary to comply with KRS 315.191(1), 315.002, 315.005.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation establishes requirements for pharmacy services in long-term care facilities and the authorizing statute requires the board to promulgate administrative regulations to regulate and control pharmacies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Long-term care facilities are on notice how pharmacy services are regulated in within the facility.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes a maximum of six individual doses of thirty different non-controlled substances.

(b) The necessity of the amendment to this administrative regulation: The amendment clarifies the number of emergency drugs that are non-controlled substances.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation establishes pharmacy standards for the number of doses and non-controlled substances that constitute emergency drugs in a long term care facility

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes a clear standard of practice for pharmacy services of non-controlled emergency drugs in long-term care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that approximately 300 long-term care facilities will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The long-term care facility may have emergency drugs of up to six individual doses of up to thirty different non-controlled substances.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Long term care facilities will have clear parameters of doses and numbers of non-controlled emergency drugs.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to pharmacy services in all long-term care facilities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.191(1) authorizes the Board to promulgate administrative regulations to regulate and control pharmacies. KRS 315.002 and 315.005 requires standards of practice in all settings where drugs are handled and requires the board to ensure safety of all drug products provided to the citizens of Kentucky.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:260. Organization and administration standards for prelicensure <u>registered nurse or practical nurse</u> programs of nursing.

RELATES TO: KRS 314.041(1), 314.111(1), 314.131

STATUTORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs.

Section 1. Definitions. (1) "Campus" means a division of a college or university that has its own grounds, buildings, and students, but is administratively joined to the rest of the college or university.

(2) "Clerical assistance" means the provision of administrative, secretarial, or clerical help by qualified individuals that assists the program of nursing.

(3) "Clinical instructor" means a nurse who is employed by a program of nursing solely to provide students with traditional clinical or simulated experiences.

(4) "NCLEX" means the National Council Licensure Examination.

(5) "Nurse faculty" means a nurse who is employed by a program of nursing, either full-time, part-time, or adjunct, to provide didactic instruction, and may also provide clinical instruction or simulated experiences.

(6) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a student.

(7)[~~(2)~~] "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse[~~and includes secondary learning sites, if applicable~~].

(8) "Suspension of enrollment" means temporarily halting the admission of students into an approved program of nursing tract.

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution that establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program administrator for the prelicensure program of nursing who is qualified pursuant to 201 KAR 20:310 and is responsible for fulfilling the duties specified in subsection (3) of this section on a twelve (12) month basis;

2. Assure that at least fifty (50) percent and up to 100 percent of the program administrator's time shall be dedicated to complete the duties specified in this administrative regulation at each program of nursing[~~, up to 100 percent~~]. A governing institution that is unable to comply with this standard may request an exemption from the board in writing.

a. The request shall state the reasons for noncompliance and the efforts the institution has taken and will take to comply with the standard.

b. If the exemption is granted, it shall be for one (1) academic year. During this time, the governing institution shall not open a new program of nursing and shall not increase enrollment at an existing program of nursing;

3. Establish administrative policies;

4. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;

5. Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

6. Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

7. Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and expertise to accomplish program outcomes and quality improvement;

8. Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, and retention[~~promotion, retention, and tenure~~];

9. Involve the nurse faculty in determining academic policies and practices for the program of nursing; and

10. Provide for the security, confidentiality, and integrity of faculty employment and student records.

(d) The governing institution shall provide an organizational chart that describes the organization of the program of nursing and its relationship to the governing institution;

(2) Administrative policies.

(a) There shall be written administrative policies for the program of nursing that shall be:

1. In accord with those of the governing institution; and

2. Available to the board for review.

(b) The board shall be notified in writing of a vacancy or pending vacancy in the position of the program administrator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. If the program administrator vacates the position, the head of the governing institution shall submit to the board in writing:

1. The effective date of the vacancy;

2. The name of the registered nurse who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae;

3.a. If there is to be a lapse between the date of the vacancy and the date the newly-appointed program administrator assumes duties, the head of the governing institution shall submit a plan of transition to ensure the continuity of the program.

b. Progress reports shall be submitted if requested by the board;

4.a. The length of the appointment of an interim program administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position; and

5.a. If the individual to be appointed as the interim program administrator is not qualified pursuant to 201 KAR 20:310, the head of the governing institution shall petition the board for a waiver prior to the appointment.

b. A waiver shall be granted if the individual to be appointed meets at least the minimum requirements established in 201 KAR 20:310 for nurse faculty.

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause by either party;

(3) A program or an interim program administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) Submission of[~~Within thirty (30) days of appointment to the program of nursing, submit~~] the qualifications of all nurse faculty and clinical instructors as set forth in 201 KAR 20:310, Section 4;

(e) To provide leadership within the nurse faculty for the

development, implementation, and evaluation of the program of nursing and program outcomes;

(f) To facilitate the implementation of written program policies for the following:

1. Student admission;

2. Student readmission and advance standing;

3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on and off campus;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Student conduct that incorporates the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the continuing academic and professional development for the nurse faculty;

(h) 1. To coordinate the development and negotiation of contracts with clinical facilities, the number and variety of which shall be adequate to meet curricular outcomes; and

2. To coordinate the development of written criteria for the selection and evaluation of[~~criteria for~~] clinical facilities and ensure that the criteria shall be utilized by the program of nursing;

(i) The establishment of student-nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients-
clients shall be defensible in light of safety, learning objectives, student level, and patient acuity.

2. The student-nurse faculty ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or other supervised learning[~~preceptored~~] experiences.[~~Observational experiences shall include an assignment where a student observes nursing and where the student does not participate in direct patient or client contact but has access to a clinical instructor as needed.~~]

3. This ratio shall not apply to on campus skill lab experiences;

(j) The submission of the Certified List of Kentucky Program of Nursing Graduates, as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma, or certificate, regardless of the state in which the graduate intends to seek licensure;

(k) The development and maintenance of an environment conducive to the teaching and learning process;

(l) To facilitate the development of long-range goals and objectives for the nursing program;

(m) To ensure that equipment, furnishings, and supplies shall be current and replaced in a timely manner;

(n) To ensure that the nurse faculty has sufficient time to accomplish those activities related to the teaching-learning process and program outcomes;

(o) To coordinate an orientation to the roles and responsibilities of full-time, part-time, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program shall be achieved;

(p) To facilitate regular communication with the full and part time nurse faculty and clinical instructors in the planning, implementation, and evaluation of the program of nursing;

(q) To ensure that recruitment materials provide accurate and complete information to prospective students about the program including the:

1. Admission criteria;

2. Nature of the program, including course sequence, prerequisites, corequisites, and academic standards;

3.[~~2.~~] Length of the program;

4.[~~3.~~] Current cost of the program; and

5.[~~4.~~] Transferability of credits to other public and private institutions in Kentucky;

(r) To conduct or participate in the written evaluation of each nurse faculty member, clinical instructor, and support staff according to published criteria, regardless of contractual or tenured status;

(s) To ensure the adherence to the written criteria for the selection and evaluation of clinical facilities utilized by the program of nursing;

(t) To maintain current knowledge of requirements pertaining to the program of nursing and licensure as established in 201 KAR Chapter 20;

(u) To attend a board orientation for program administrators[~~of Nursing Program Administrators Orientation~~] within one (1) year of appointment;

(v) To develop a structure to allow nurse faculty to assist in the governance of the program; and

(w) To ensure that the curriculum is developed and implemented pursuant to 201 KAR 20:320[~~as submitted to the board~~];

(4) A system of official records and reports essential to the operation of the program of nursing maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for standardized tests, and clinical performance records;

(b) Minutes of faculty and committee meetings, which[~~. These records~~] shall be maintained a minimum of five (5) years, irrespective of institutional policy;

(c) Faculty records including:

1. Validation of current licensure or privilege to practice as a Registered Nurse in Kentucky;

2. Evidence of fulfilling the faculty orientation requirements established in 201 KAR 20:310, Section 3(5); and

3. Performance evaluation for faculty employed more than one (1) year;

(d) Systematic plan of evaluation;

(e) Graduates of the program of nursing; and

(f) Administrative records and reports from accrediting agencies; and

(5) Official publications including:

(a) A description of the governing institution and program of nursing;

(b) Policies on admission, progression, dismissal, graduation, and student grievance procedures;

(c) A description of student services;

(6) Clerical assistance and support staff.

(a)[~~The number of clerical assistants shall be based upon the number of students and faculty.~~

~~(b)~~] There shall be[~~secretarial and~~] clerical assistance and support staff[~~assistants~~] sufficient to meet the needs of the nursing program for the administrator, faculty, and students at the main campus[~~designated primary location, as well as clerical support for secondary and distance learning sites, if applicable~~].

(b) A non-main campus shall have additional clerical assistance and support staff sufficient to meet its needs.

(7) Nurse faculty, full-time, and part-time, with the authority and responsibility to:

(a) Plan, implement, evaluate, and update the program;

(b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;

(c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;

(d) Participate in academic advisement and guidance of students;

(e) Provide theoretical instruction and clinical learning experiences;

(f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;

(g) Develop and implement student evaluation methods and tools for each course that[~~to~~] measure the progression of the student's cognitive, affective, and psychomotor achievement of[~~in~~] course and clinical outcomes based on published rubrics and sound rationale;

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;

(i)[~~Establish clinical outcomes within the framework of the course;~~

~~(j)~~] Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;

(j)[~~(k)~~] Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis;

(k)[~~and (l)~~] Evaluate the student's experience, achievement, and progress in relation to course and clinical[~~or~~] outcomes, with input from the clinical instructor and preceptor, if applicable; and

(l) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure; and

(8) Clinical instructors with the authority and responsibility[~~governance~~] to:

(a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;

(b) Clarify with the nurse faculty member:

1. The role of the preceptor, if applicable;
2. The course responsibilities;
3. The course or clinical outcomes;
4. A course evaluation tool; and
5. Situations in which collaboration and consultation shall be needed;[~~and~~]

(c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes; and

(d) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure.

Section 3. Notification of Change in[~~Increased~~] Enrollment. (1)(a) Within sixty (60) days of the effective date of this administrative regulation, all existing programs of nursing shall submit to the board the maximum number of students that the program is able to enroll in one (1) year. This number shall be referred to as the program's enrollment baseline.

(b) A program of nursing that begins operation after the effective date of this administrative regulation shall submit its enrollment baseline in the initial application.

(2)(a) A program of nursing shall submit a request for an increase in enrollment by twenty (20) percent or more of the enrollment baseline[~~last cohort enrolled~~] or ten (10) students, whichever is greater.[~~(a)~~] The request shall be sent in writing at least two (2)[~~not later than six (6)~~] months prior to the date for which the requested increase is being sought. Exceptions to this time frame shall only be made for exigent circumstances.

(b) The request shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment. These sufficient resources shall include adequate:

1. Number of qualified faculty;
2. Classroom space;
3. Clinical sites;
4. Clerical support; and
5. Financial support.

(c) The program shall investigate the projected impact of the increase on the operation of programs of nursing within a fifty (50) mile radius and shall submit a report to the board.

(d) The program of nursing shall submit evidence that it has met the benchmarks set out in 201 KAR 20:360, Section 5(2)(f).

(3)[~~(2)~~] The board shall evaluate if the program has sufficient resources prior to making the decision of whether to grant or deny the request.

Section 4. Multiple Campuses. (1) A governing institution may have programs of nursing located on different campuses.

(2)(a) The governing institution shall designate a main campus headed by a program administrator.

(b) The program administrator shall have final responsibility and authority for the non-main campuses, but shall designate an assistant program administrator to assist in the governance of each non-main location. The assistant program administrator shall meet the qualification for a nurse faculty as set out in 201 KAR 20:310. The program administrator may designate the amount of release time for the assistant program administrator for administrative duties, but it shall not be less than twenty-five (25) percent.

(3) For purposes of calculating benchmarks set out in 201 KAR 20:360, Section 4(2)(f), each campus shall individually report its data annually to the board. The board shall evaluate the benchmarks for each campus individually.

Section 5. Suspension of Enrollment. (1) A governing institution that decides to suspend enrollment shall notify the board in writing within thirty (30) days following the decision.

(2) The notification shall identify the reasons leading to the decision and how long it is anticipated that the suspension will be in effect.

(3) The governing institution shall report to the board annually on the status of the suspension

(4)(a) If the decision to reinstate enrollment is made within three (3) years of the decision to suspend enrollment, the governing institution shall notify the board in writing of the decision within thirty (30) days.

(b) The notification shall state the date classes will begin. It shall also list the faculty and clinical sites that will be utilized.

(5) If the decision to reinstate enrollment is made three (3) years or more from the decision to suspend enrollment, the governing institution shall comply with the procedures outlined in 201 KAR 20:280.

[~~(3) The board shall not grant approval for the increase in enrollment unless the program has: (a) Full approval status; and~~

~~(b) Program NCLEX pass rate for first time test takers for the preceding year of a minimum of eighty-five (85) percent.~~]

GAIL WISE, President

APPROVED BY AGENCY: December 11, 2015

FILED WITH LRC: January 7, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016 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 end of day, (11:59 p.m.), February 29, 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 organization standards for prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: This amendment is part of a comprehensive review of the administrative regulations governing RN and LPN prelicensure programs of nursing. The relevant administrative regulations have been reviewed to ensure they are current and address all relevant issues. This particular administrative regulation, among several housekeeping changes, includes the following changes: providing for a program administrator who is responsible for the program year round; the recognition that some colleges/universities have multiple campuses with a main campus and non-main campuses and how those locations are to be treated; a change in how a program calculates an increase in enrollment and the process it needs to go through with the Board; and a new provision on reporting a suspension of enrollment to the Board.

(b) The necessity of the amendment to this administrative regulation: The changes were needed to meet new circumstances and to improve the approval process for programs of nursing.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By addressing the issues.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Current and future prelicensure programs of nursing; currently there are 56 RN programs and 30 LPN programs in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
The actions each entity will have to take will differ depending on the particular circumstances of each program. Each program will be expected to be in compliance with the administrative regulation. The Board will work with each program to assist in this endeavor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any potential cost will depend on the particular circumstances of the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:280. Standards for <u>developmental status,</u> initial <u>status, and</u> approval of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3), 314.131(2)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 requires the board to review, approve and possibly withdraw approval for schools of nursing. This administrative regulation establishes the standards for the development and approval of programs which prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states.

Section 1. <u>Definitions. (1) "Developmental status" means approval of the proposal.</u>

<u>(2) "Initial status" means admission of the first class.</u>

<u>(3) "Program approval" means permission by the board to operate a program of nursing.</u>

<u>Section 2.</u> Establishment of a Program of Nursing. (1) The governing institution may receive consultation from the board prior to establishing a program of nursing.

(2) The governing institution that desires to establish and conduct the program of nursing shall be accredited as established in 201 KAR 20:260, Section 2.

Section <u>3.</u>[~~2.~~] Letter of Intent. (1) The governing institution shall submit to the board a letter of intent to establish a prelicensure program of nursing and the fee required by 201 KAR 20:240.

(2) The letter of intent shall be completed under the direction or

consultation of a registered nurse who meets the qualifications of a program administrator as established in 201 KAR 20:310.

(3) The letter of intent shall include:

(a) Approval from the governing body of the institution proposing the program of nursing or other empowered approval bodies as applicable;

(b) The results of a feasibility study that includes the following information related to the need for the program of nursing:

1. Nursing[~~Population data within the past three (3) years of both the state and the geographic area to be served;~~

~~2.~~] workforce supply and demand data from the past year for the area within a fifty (50) mile radius; and

2.[~~3. The rationale for why the particular geographic area was chosen;~~

~~4. A survey of all hospitals, nursing homes, and other health-related facilities where graduates of the program could be hired.~~

~~a. The letter of intent shall include copies of the completed survey forms.~~

~~b. The survey forms shall include:~~

~~(i) How many registered nurses (RNs) and licensed practical nurses (LPNs) are employed;~~

~~(ii) The attrition rate for the nurses employed each year for the past three (3) years and why does this attrition occur;~~

~~(iii) How many openings for RNs and LPNs are available at the time of the survey;~~

~~(iv) How many positions for RNs and LPNs are budgeted for the next three (3) years; and~~

~~(v) If the facility expects to increase or decrease the number of beds in the next three (3) to five (5) years;~~

~~5. A description of the characteristics of the population in the community to be served to include current and emerging health needs based on statistical studies to include age groups and socioeconomic status;~~

~~6. A summary of how the market in this area will support the need for the program with an analysis of data and percentages;~~

~~7.~~] A description of the applicant pool that is being targeted and how this population will be reached;[~~ and~~

~~8. The availability of qualified staff, including faculty, within a fifty (50) mile radius;~~]

(c)[~~Results of an investigation into the projected impact on the operation of programs of nursing with-in a fifty (50) mile radius, which shall include information on the wait list for these programs for the last three (3) years, and~~] Evidence that an introductory letter has been sent to all[~~the impacted~~] programs within a fifty (50) mile radius;

(d) Documentation from cooperating healthcare agencies in the community that they will provide support for the creation of the program of nursing. This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the program;

(e) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources;

(f) A timeline for the hiring of a full time program administrator, admission of students, and projected graduation of the first class;

(g) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

(h) A copy of the curriculum vitae of the registered nurse involved in the planning; and

(i) Description and rationale for the proposed type of program of nursing.

(4)(a) If concerns are raised about the need for the program or about the ability of the program to obtain appropriate clinical sites, a hearing shall be held before the board's education committee to act upon the letter of intent.

(b) At the conclusion of the hearing, the committee shall recommend to the board whether or not to approve the letter of intent.

(c) If the letter of intent is approved by the board, the governing institution shall be notified in writing that it may move to the proposal phase. The governing institution shall appoint a qualified program administrator and provide appropriate resources, consultants, and faculty to develop the proposed program plan. The proposal shall be submitted within one (1) year of the date of the approval of the letter of intent or the letter of intent shall expire.

Section 4.[~~3.~~] Proposal Phase. (1)(a) A completed program proposal shall be submitted to the board by the governing institution for approval[~~no less than one (1) year prior to the anticipated opening date for a program of nursing~~].

(b) If the governing institution has not completed the program proposal within one (1) year of submission, the program proposal shall be void and the governing institution shall comply with Section 3 of this administrative regulation.

(2) The program shall not be announced, advertised, or students admitted to the program of nursing until the proposal has been approved and developmental[~~approval~~] status has been granted by the board.

(3) The program proposal shall include:

(a) Philosophy, mission, and learning outcomes of the governing institution;

(b) An organizational chart of the governing institution and written plan, which describes the organization of the program of nursing and its relationship to the institution;

(c) Proposed philosophy, mission, and learning outcomes for the proposed program;

(d) Curriculum design including proposed course sequence and credit hours delineating those credits assigned to theory and clinical;

(e) Recruitment plan and the enrollment baseline as set out in 201 KAR 20:260, Section 3(1)(b)[~~five (5) year projection for student enrollment~~];

(f) A five (5) year plan for recruiting and retaining qualified nurse faculty;

(g) A proposed job description for the program administrator reflecting authority and responsibility;

(h) A description of faculty offices, classrooms, clinical skills laboratory, library facilities, conference rooms, and learning resources;

(i) A description of support services for students, to include provision of health services or evidence of an emergency plan for care, academic advisement, student services, mechanism for obtaining learning resources, and financial aid;

(j) Availability and willingness of accredited agencies to provide clinical experiences across the curriculum. This information shall include the:

1. Shifts and days students will work;
2. Number of students each agency can accept;
3. Clinical experience that will be available from each agency;
4. Other nursing programs that utilize this agency; and
5. Plan to avoid displacement of students from existing programs;

(k) Policies and procedures for student selection and progression, including the plan to retain students so as to maintain a low attrition rate;

(l) A plan for clerical assistance and support staff as set out in 201 KAR 20:260, Section 2(6)[~~available to the program for planning, implementing, and maintenance of the program~~];

(m) A general plan for an on-going, research based planning and evaluation process that incorporates a systematic review of the program that results in continuing improvement; and

(n) A description of financial resources to support the program including a budget for the first three (3) years with projected revenues and expenditures and the amount of resources going to institutions or organizations for contractual or support services.

(4) The program of nursing shall meet with the board staff[~~A representative of the board shall arrange a site visit to the governing institution and the program of nursing~~] to clarify, verify, and amplify materials included in the[~~proposed~~] program proposal[~~plan~~].

[~~(a) Prior to approval being granted, a written report shall be submitted to the board by the board representative who conducts the site visit.~~

~~(b) This site visit shall not be construed as affirming that the~~

~~proposed program plan meets requirements.~~]

(5) The governing institution shall be notified in writing of action taken by the board on the proposal[~~and the site visit report~~].

(a) If the board determines that all requirements have been met, the program shall be granted developmental status. The board, in collaboration with the program, shall determine an opening date.

[~~(b) If the board determines that all requirements have not been met, the program may be granted developmental status based on compliance with the terms and conditions identified in the site visit report.~~

~~(c) If the program does not comply with the terms and conditions identified in the site visit report, the program shall be denied approval.~~]

(6) Developmental status[~~Approval to establish a program of nursing~~] shall be withdrawn if program requirements are not met or[~~and~~] if a class is not enrolled within eighteen (18) months after the board granted developmental status[~~approval~~].

(a) If a proposed program does not comply with 201 KAR[~~Chapter~~] 20:260 through 360, developmental status[~~approval~~] may be withdrawn.

(b) The governing institution shall be notified in writing of the withdrawal of developmental status[~~approval~~].

(7) Students shall not be admitted to the program of nursing until developmental approval has been granted by the board.

(8) Failure to submit board required reports within the designated time period may result in the withdrawal of developmental[~~approval~~] status.

(9) Employment of program administrator and faculty.

(a) The program administrator shall be the first faculty member employed, and shall have assumed full time responsibilities for the program prior to submission of the proposal to the board.

(b) The faculty as established in 201 KAR 20:310 shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.

(10) Any deviation from the initial curriculum plan approved within the proposal shall be approved by the board before the first class begins course requirements.

(11) Written contracts for use of clinical facilities shall be executed prior to admission to the first nursing course.

(12) The program of nursing shall submit semi-annual[~~quarterly~~] progress and evaluation reports to demonstrate implementation of the approved proposal until the first class graduates.

(13) Site visits shall be conducted by the board as necessary.

Section 5. Initial Status and Program Approval[~~4. Approval Status~~]. (1) The status of the program shall move automatically from developmental status to initial status[~~approval~~] upon admission of the first class. It shall be the responsibility of the program of nursing to notify the board of the admission of the first class.

(2) The program shall notify the board in writing thirty (30) days prior to the graduation of the first class.

(3) Eligibility for program approval occurs after the graduation of the first class. Within sixty (60)[~~ninety (90)~~] days after[~~of~~] graduation of the first class, the faculty shall submit a written report[~~conduct a self-study~~] that:

(a) Evaluates the implementation[~~establishment~~] of the program of nursing compared to the approved proposal; and

(b) Addresses compliance with the standards set by 201 KAR 20:260 through 360[~~submit a written report to the board prior to consideration for full approval~~].

(4) The decision to grant or deny program[~~full~~] approval shall be based on review of the report submitted by the program of nursing and a site visit report by a representative of the board[~~:~~

~~(a) Program evaluation by the faculty and the program administrator;~~

~~(b) Site visit report by the board representative conducted to evaluate program compliance with administrative regulations; and~~

~~(c) Other facts that pertain to the program and reports necessary to document that standards have been met~~].

(5) If program approval is denied, the applicant may request a hearing pursuant to KRS Chapter 13B[~~After receipt of the self-study, the board shall determine the approval status of the program as established in 201 KAR 20:360, Section 1(3)~~].

GAIL WISE, President

APPROVED BY AGENCY: December 11, 2015.

FILED WITH LRC: January 7, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016 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 end of day (11:59 p.m.), February 29, 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 initial approval standards for prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: This amendment is part of a comprehensive review of the administrative regulations governing RN and LPN prelicensure programs of nursing. The relevant administrative regulations have been reviewed to ensure they are current and address all relevant issues. This particular administrative regulation, among several housekeeping changes, includes the following changes: the requirements for a letter of intent have been changed to more appropriately reflect the necessary information; the categories of approval have been changed to developmental, initial, and approved. All other categories have been eliminated.

(b) The necessity of the amendment to this administrative regulation: The changes were needed to meet new circumstances and to improve the approval process for programs of nursing.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By addressing the issues.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Current and future prelicensure programs of nursing; currently there are 56 RN programs and 30 LPN programs in Kentucky.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The actions each entity will have to take will differ depending on the particular circumstances of each program. Each program will be expected to be in compliance with the administrative regulation. The Board will work with each program to assist in this endeavor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any potential cost will depend on the particular circumstances of the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111, 314.470

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. This administrative regulation establishes standards for faculty of programs of nursing that prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Definitions. (1)[~~Definition.~~] "Nursing experience" means employment in a position that requires the individual to hold an active nursing license, such as nursing clinical practice, nursing administration, nursing education, or nursing research.

(2) "Unencumbered" means a license without current disciplinary conditions or restrictions. Enrollment in an alternative to discipline program is not an encumbrance.

Section 2. Faculty for Prelicensure Registered Nurse and Practical Nurse Programs. (1)(a) The faculty shall include a program administrator and shall include at least one (1) other[~~two (2)~~] nurse faculty[~~(one (1) of whom may also serve as program administrator)~~].

1. The faculty may include clinical instructors in the major areas of nursing practice.

2. The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the students, the number of students and classes admitted annually,[~~and any additional secondary site, or continuing education programs conducted,~~] and the educational technology utilized.

(b) The program administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing.

(c)[~~A program of nursing shall designate an assistant program administrator for a secondary site. At least twenty (20) percent of the assistant program administrator's time shall be dedicated to complete administrative duties.~~

~~(d)~~] A program shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each[~~among all~~] program location[~~locations and assistant program administrators~~].

(2) The program administrator for a registered nurse program shall have:

(a) A minimum of a master's or higher degree in nursing from an accredited college or university;

(b) A minimum of five (5) years of nursing experience within the immediate past ten (10) years and demonstrated leadership experience;

(c) A minimum of two (2) years of full time teaching experience at or above the academic level of the program of nursing; and

(d) An unencumbered current license, privilege, or temporary work permit to
practice as a registered nurse in the Commonwealth of Kentucky.

(3) The program administrator for a practical nurse program shall have:

(a) A master's[~~baccalaureate~~] or higher degree[~~with a major~~] in nursing from an accredited college or university;

(b) A minimum of five (5) years of nursing experience within the past ten (10) years with demonstrated leadership experience;

(c) Current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky;

(d) A minimum of two (2) years full time teaching experience at or above the academic level of the program of nursing; and

(e) A current knowledge of nursing practice at the practical or

vocational level.

(f) A program administrator who is currently employed at a practical nurse program and who does not meet the requirements of this subsection on the effective date of this administrative regulation because of the lack of a master's degree may continue to be employed at the program of nursing where they are presently, but shall earn the master's degree or higher within five (5) years of the effective date of this administrative regulation.

(4)(a) Nurse faculty[~~or an assistant program administrator~~] in a baccalaureate degree prelicensure registered nurse program shall hold a degree from an accredited college or university, which shall include:

1. A master's degree within the discipline of nursing or have completed that portion that would be equivalent to a master's in nursing degree; or

2. A baccalaureate degree with a major in nursing and a master's degree in a related field, which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's degree.

(b) Nurse faculty[~~or an assistant administrator~~] in an associate degree prelicensure registered nurse program shall hold a degree from an accredited college or university, which shall include:

1. A master's degree within the discipline of nursing or have completed that portion of a nursing program that would be equivalent to a master's in nursing degree;

2. A baccalaureate degree with a major in nursing and a master's degree in a related field, which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's degree; or

3. A baccalaureate degree with a major in nursing or have completed that portion of a state approved program of nursing that would be equivalent to a baccalaureate degree, and the nurse faculty member shall complete within five (5) years of hire a master's degree commensurate with either subparagraph 1. or 2. of this paragraph.

(c) Nurse faculty[~~or an assistant administrator~~] in a practical nurse program shall have a minimum of a baccalaureate degree with a major in nursing from an accredited college or university.

(d) The nurse faculty shall hold a temporary work permit or a current unencumbered license or privilege to practice as a registered nurse in the Commonwealth of Kentucky, except as set out in paragraph (i) of this subsection.

(e) The nurse faculty shall document a minimum of two (2) years full time or equivalent experience as a registered nurse within the immediate past five (5) years and shall maintain expertise appropriate to teaching responsibilities.

(f) The nurse faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.

(g) Nurse faculty shall have and maintain expertise in the clinical or functional area of responsibility.

(h) Nurse faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(i) 1. Non-nurse faculty members who teach nursing courses required within the curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate.

2. Non-nurse faculty shall be required to collaborate with a nurse faculty member in order to meet the nursing course outcomes.

(j) Nurse faculty who teach via distance or on-line and will not physically practice within the state shall hold an unencumbered active nursing license[~~or multistate privilege~~] to practice as a registered nurse in their primary state of residence[~~the state where they are located~~].

(5)(a) A clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(b) A clinical instructor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the state of the student's clinical site.

(c) A clinical instructor shall have a minimum of two (2) years full time or equivalent experience within the functional area as a registered nurse within the immediate past five (5) years and evidence of clinical competence.

(d) For a registered nurse program, the educational preparation of the clinical instructor shall at least equal the level of the appointing program.

Section 3.[~~Clinical~~] Preceptors. (1) A[~~clinical~~] preceptor may be used to enhance clinical learning experiences. If a[~~clinical~~] preceptor is used, it shall be done after a student has received clinical and didactic instruction from the program faculty in all basic areas for the course or specific learning experience.

(2) A[~~clinical~~] preceptor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse[~~in Kentucky or~~] in the state of the student's clinical site. In a practical nursing program, a[~~clinical~~] preceptor may hold a current unencumbered license, privilege, or temporary work permit to practice as a licensed practical nurse[~~in Kentucky or~~] in the state of the student's clinical site.

(3) A[~~clinical~~] preceptor shall have evidence of clinical competencies related to the area of assigned clinical teaching responsibilities[~~and serve as a role model to the student~~].

(4) A[~~clinical~~] preceptor shall not be used to replace clinical instructors. The ratio of student to preceptor shall not exceed two (2) to one (1). Clinical instructors or nurse faculty retain responsibility for student learning and confer with the[~~clinical~~] preceptor and student for the purpose of monitoring and evaluating learning experiences.

(5) There shall be documentation of orientation to the course, program outcomes, student learning objectives, evaluation methods to be utilized by the faculty, and documented role expectations of faculty, preceptor, and student.

Section 4. Reporting[~~Evaluation~~] of Registered Nurse Program and Practical Nurse Program Faculty Qualifications and Appointments. (1) Evaluation of faculty records. The program administrator shall submit to the board the qualifications of nurse faculty and clinical instructors within thirty (30) days of[~~upon~~] appointment.

(a) Official academic transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.

(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.

(c) Faculty appointments shall be reported to the board in writing.

(d) The program administrator shall report a change in faculty composition within thirty (30) days of appointment or vacancy.

(2) Reevaluation of faculty records. The board shall review annually the qualifications of the faculty employed in the program of nursing.

[~~Section 5. Faculty Supervision of Student Clinical Practice. (1) The ratio of students to a nurse faculty member or clinical instructor is set by 201 KAR 20:260, Section 2(3)(i).~~

~~(2) The clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.~~

~~(3) For Registered Nurse educational programs, the educational preparation of the clinical instructor shall at least equal the level of the appointing program.~~

~~(4) The clinical instructor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in Kentucky or in the state of the student's clinical site.~~

~~(5) A clinical instructor shall have a minimum of two (2) years full time or equivalent experience within the functional area as a registered nurse within the immediate past five (5) years and evidence of clinical competence.~~

~~Section 6. Faculty Waiver. (1) All nurse faculty members shall meet qualifications established in this administrative regulation. The program administrator may request a time-limited temporary waiver if a program of nursing meets the following criteria:~~

~~(a) Full approval status;~~

~~(b) Program NCLEX pass rate for first time test takers for the preceding year of a minimum of eighty-five (85) percent;~~

~~(c) The program has not requested a waiver for the previous two (2) years; and~~]

~~(d) Faculty turnover for the past academic year does not exceed thirty (30) percent.~~

~~(2) A maximum of two (2) faculty waivers shall be permitted at any one (1) time per program.~~

~~(3) The waiver shall be requested by the program administrator. The faculty appointment shall not be implemented by the program until the board has approved it.~~

~~(4) A waiver shall be limited to one (1) time for any individual.~~]

GAIL WISE, President

APPROVED BY AGENCY: December 11, 2015.

FILED WITH LRC: January 7, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016, 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 end of business (11:59 p.m.), February 29, 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 standards for faculty in prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: This amendment is part of a comprehensive review of the administrative regulations governing RN and LPN prelicensure programs of nursing. The relevant administrative regulations have been reviewed to ensure they are current and address all relevant issues. This particular administrative regulation, among several housekeeping changes, includes the following changes: requires a Master's degree in nursing for an LPN program administrator with a grandfather provision; clarifies the standards for a clinical instructor; and removes the section on faculty waivers.

(b) The necessity of the amendment to this administrative regulation: The changes were needed to meet new circumstances and to improve the approval process for programs of nursing.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By addressing the issues.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Current and future prelicensure programs of nursing: Currently there are 56 RN programs and 30 LPN programs in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The actions each entity will have to take will differ depending on the particular circumstances of each program. Each program will be expected to be in compliance with the administrative regulation. The Board will work with each program to assist in this endeavor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any potential cost will depend on the particular circumstances of the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:320. Standards for curriculum of prelicensure nursing programs.

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) requires that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse programs.

Section 1. Definitions. (1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as defined in 201 KAR 20:310, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Distance learning" means didactic instruction offered by any means where the student and faculty are in separate physical locations.

(3)["~~Associate degree program" means a program of nursing organized and administered by a community college, or a four (4) year college or university, which awards the graduate an associate degree in nursing upon meeting the requirements of the governing institution.~~

~~(2) "Baccalaureate degree program" means a program of nursing organized and administered by a senior college or university which awards the graduate a baccalaureate degree in nursing upon meeting the requirements of the governing institution.~~

~~(3) "Master's degree program" means a program leading to a master's degree, which is the individual's first professional degree in nursing and is conducted by an educational unit in nursing within the structure of a senior college or university.~~

~~(4) "Multiple entry-exit program" means a program that allows a student to challenge the NCLEX-RN or NCLEX-PN examinations once the student has completed sufficient course work in a professional nursing program that meets all requirements for the examination.~~

~~(5)~~] "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(4)[~~(6)~~] "Prelicensure nursing education program" means an educational entity that offers the courses and learning experiences that prepare graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN or NCLEX-PN examinations.

(5)[~~(7)~~] "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(6) "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

(7) "Traditional clinical experience" means academic time designated by the program of nursing for learning outside the classroom which includes observation or hands-on experience.[~~A registered nursing program is considered to be any program that culminates in the graduate being eligible for licensure. Examples of registered nurse programs are associate degree programs, baccalaureate degree programs, master's degree programs, and multiple entry-exit programs.~~]

Section 2. General. (1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

(c) The program shall conduct an evaluation[~~assessment~~] to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

[~~(d) The organizing framework shall serve as a foundation for level of progression, level of outcomes, and course sequencing.~~]

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the prelicensure nursing education program shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale,[~~and organizing framework,~~] which describes the organization and development of the curriculum.

(b) The curriculum plan[~~design~~] shall reflect the philosophy, mission, and outcomes of the program.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes-planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabi.

2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through 201 KAR 20:360 for any other course.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310[~~, including the utilization of clinical preceptors~~].

(e) The curriculum shall have written measurable program competencies that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

(a) A prelicensure nursing education program that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation.

1. A request for curriculum revision shall include the present plan, the proposed change with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission or outcomes, which results in a reorganization or re-conceptualization of the entire curriculum; or

b. The addition of tracks or alternative programs of study that provide educational mobility[~~; or~~

~~c. The initiation of on-line learning in which a student may obtain fifty (50) percent or more of the nursing credits needed to meet program completion requirements~~].

(b)[~~An accredited program of nursing shall submit to the board a copy of any curriculum revision submitted to an accrediting agency within thirty (30) days. The program of nursing shall submit a copy of all correspondence related to program accreditation from the accrediting agency to the board.~~

~~(c)~~] A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session during the last semester or quarter of a nursing program.

Section 3. Simulation Standards. (1)(a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total clinical hours required for graduation.

(2) Upon request by the board, a program of nursing shall provide evidence that the standards set in this section have been met.

(3)(a) The program of nursing shall provide adequate fiscal, human, and material resources to support the simulation activities.

(b) Simulation activities shall be managed by a nurse faculty member as defined in 201 KAR 20:310 who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing faculty member shall demonstrate his or her qualifications by:

1. Attendance at simulation conferences;

2. Completion of educational activities related to simulation; or

3. Holding a credential issued by the Society for Simulation in Healthcare or the International Nursing Association for Clinical Simulation.

(c) There shall be a budget that will sustain the simulation activities and training of the faculty.

(d) The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

(e) The program of nursing shall have an orientation plan for faculty concerning simulation.

(f) The program of nursing shall have a written procedure on the method of prebriefing and debriefing each simulated activity.

(4) The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

(5) Faculty, both didactic and clinical, that utilize simulation shall:

(a) Have training in the use of simulation; and

(b) Engage in on-going professional development in the use of simulation.

(6) The simulation activities shall be linked to the program of nursing's course objectives and the programmatic outcomes.

(7)(a) The program of nursing shall develop written criteria to evaluate the simulation activities.

(b) Students and faculty shall evaluate the simulation experience on an ongoing basis.

(8) The program of nursing shall include information about its use of simulation in its annual report to the board.

GAIL WISE, President

APPROVED BY AGENCY: December 11, 2015

FILED WITH LRC: January 7, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016 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 end of day (11:59 p.m.), February 29, 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 standards for curriculum in prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment is part of a comprehensive review of the administrative regulations governing RN and LPN prelicensure programs of nursing. The relevant administrative regulations have been reviewed to ensure they are current and address all relevant issues. This particular administrative regulation, among several housekeeping changes, includes the following changes: a new section had been added on the use of simulation in a program.

(b) The necessity of the amendment to this administrative regulation: The changes were needed to meet new circumstances and to improve the approval process for programs of nursing.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By addressing the issues.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: current and future prelicensure programs of nursing; currently there are 56 RN programs and 30 LPN programs in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The actions each entity will have to take will differ depending on the particular circumstances of each program. Each program will be expected to be in compliance with the administrative regulation. The Board will work with each program to assist in this endeavor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any potential cost will depend on the particular circumstances of the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:340. Students in prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.041(1), 314.051(1), 314.111, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 authorizes the board to regulate nursing education programs. This administrative regulation establishes the standards to be met regarding[~~by~~] students in those programs.

Section 1. Students in Programs of Nursing. (1) The number of students admitted to the program of nursing shall be determined by the number of qualified faculty, adequate educational facilities, resources, and appropriate number of clinical learning experiences for students.

(2) Admission requirements and practices shall be stated and published in the governing institution's publications and shall include an assessment of achievement potential through the use of previous academic records and, if applicable, the use of preadmission examination scores consistent with curriculum demands and scholastic expectations.

(3) Program information communicated by the program of nursing shall be accurate, complete, consistent, and publicly available.

(4) Participation shall be made available for students in the development, implementation, governance, and evaluation of the program.

[~~(5) Programs of nursing shall post the Board of Nursing approval status:~~

~~(a) In a physical location that is able to be seen and accessible to students, faculty, staff, and the general public; and~~

~~(b) On the program's web site.~~]

Section 2. Student Policies. (1) Student policies of the program of nursing shall be congruent with those of the governing institution. Any difference shall be justified by the program of nursing.

(2) Program of nursing student policies[~~, recruitment, and advertising~~] shall be accurate, clear, and consistently applied.

(3) Upon admission to the program of nursing, each student shall be advised in electronic or written format of policies pertaining to:

(a) Approval status of the program as granted by the board;

(b) Policies on admission, transfer or readmission, advanced or transfer placement, withdrawal, progression, graduation, suspension, or dismissal;

(c) Evaluation methods to include the grading system;

(d) Fees and expenses associated with the program of nursing and refund policies;

(e) Availability of counseling resources;

(f) Health requirements and other standards as required for the

protection of student health;

(g) Grievance procedures;

(h) Program of study or curriculum plan;

(i) Financial aid information;

(j) Student responsibilities;

(k) Student opportunities to participate in program development, implementation, governance, and evaluation; and

(l) Information on meeting eligibility for licensure.

(4) A plan for emergency care during class or clinical time shall be in writing and available to faculty and students.

GAIL WISE, President

APPROVED BY AGENCY: December 11, 2015

FILED WITH LRC: January 7, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016 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 end of day, (11:59 p.m.) February 29, 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 standards for students in prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: This amendment is part of a comprehensive review of the administrative regulations governing RN and LPN prelicensure programs of nursing. The relevant administrative regulations have been reviewed to ensure they are current and address all relevant issues. This particular administrative regulation, among several housekeeping changes, includes the following changes: the requirement for posting the approval status has been removed.

(b) The necessity of the amendment to this administrative regulation: The changes were needed to meet new circumstances and to improve the approval process for programs of nursing.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By addressing the issues.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Current and future prelicensure programs of nursing; currently there are 56 RN programs and 30 LPN programs in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The actions each entity will have to take will differ depending on the particular circumstances of each program. Each program will be expected to be in compliance with the administrative regulation. The Board will work with each program to assist in this endeavor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any potential cost will depend on the particular circumstances of the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:350. Educational facilities and resources for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111(1), 314.131(1)
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 authorizes the board to regulate nursing education programs. This administrative regulation establishes the standards for programs of nursing to assure the provision of adequate facilities and resources for conduct of the program of nursing.

Section 1. The facilities and resources shall be provided by the governing institution to meet the teaching and learning requirements of students and nurse faculty of the program of nursing.

Section 2. Physical Facilities. (1) The facilities shall be designed to meet the outcomes of the program of nursing and to foster administrative and instructional activities.
(2) Space allocated for the program shall be based on the number of students and teaching and learning methods.
(3) The physical facilities shall include:
(a) Classrooms, clinical skills laboratory, and conference rooms essential to fulfill program outcomes and adequate in size for the number of students;
(b) Adequately equipped office space to fulfill the essential functions for administrative personnel, faculty, and clerical staff, including the maintenance of confidentiality of student information;
(c) Storage space for equipment and instructional materials;
(d) A private office for the program administrator; and
(e) Space available for use in private counseling with students.
(4) The program of nursing shall report to the board any major changes in the physical facilities, including new buildings.

Section 3. Library and Learning Resources. (1) Instructional material shall be readily available for use in teaching and learning.
(2) The program, through ownership or formal arrangements, shall provide student and nurse faculty with access to an adequate library collection consistent with the program offered. The library collection shall be current and include sufficient titles, references, periodicals, and other material to achieve the outcomes of the curriculum.
(3) The program shall ensure that students and nurse faculty have access to instruction on the use of the library resources.
(4) The use of technology shall enhance student learning and shall be appropriate for meeting the outcomes of the program. Students shall have access to and instruction in the use of the technology.
(5) There shall be sufficient technical and clerical support services available to meet the needs of the nurse faculty and the students.
(6) The collection of library resources for the program of nursing shall be allocated on the same basis as the collections for other departments in the governing institution.
(7) All students[~~Distance learners~~] shall have comparable access to library and learning resources regardless of the student's location[~~as available to on-campus students~~].
(8) A system of acquisition and deletion shall exist that ensures currency and appropriateness of library resources.

Section 4. Clinical Facilities. (1) The program shall arrange for the clinical practice experience of students in the clinical facilities.
(2) Clinical facilities shall show evidence of approval by the appropriate accreditation, evaluation or licensure bodies, when applicable.

GAIL WISE, President
APPROVED BY AGENCY: December 11, 2015
FILED WITH LRC: January 7, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016 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 end of day, (11:59 p.m.) February 29, 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 standards for facilities and resources in prelicensure RN and LPN programs of nursing.
(b) The necessity of this administrative regulation: It is required by statute.
(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment is part of a comprehensive review of the administrative regulations governing RN and LPN prelicensure programs of nursing. The relevant administrative regulations have been reviewed to ensure they are current and address all relevant issues. This particular administrative regulation, among several housekeeping changes, includes the following changes: the requirement for reporting all major changes, including new buildings.
(b) The necessity of the amendment to this administrative regulation: The changes were needed to meet new circumstances and to improve the approval process for programs of nursing.
(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.
(d) How the amendment will assist in the effective administration of the statutes: By addressing the issues.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Current and future prelicensure programs of nursing; currently there are 56 RN programs and 30 LPN programs in Kentucky.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The actions each entity will have to take will differ depending on the particular circumstances of each program. Each program will be expected to be in compliance with the administrative regulation. The Board will work with each program to assist in this endeavor.
(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): Any potential cost will depend on the particular circumstances of the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs[~~Evaluation of prelicensure registered nurse and practical nurse programs~~].

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.111 requires nursing programs to be approved by the board. This administrative regulation establishes evaluative standards to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility as registered nurses or as practical nurses.

Section 1. Program of Nursing Accredited by a National Nursing Accrediting Body. (1)(a) A prelicensure registered nursing or licensed practical nursing program that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall be deemed to be in compliance with the standards of 201 KAR 20:260 through 20:360.

(b) The board shall retain jurisdiction over accredited programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:260 through 20:360.

(2) A prelicensure program of nursing that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall submit all correspondence and reports to and from the accrediting body to the board within thirty (30) days of submission or receipt.

Section 2. Programs of Nursing Not Accredited by a National Nursing Accrediting Body. (1) A prelicensure registered nursing or licensed practical nursing program that is not accredited by a national nursing accrediting body recognized by the United States Department of Education shall be required to demonstrate compliance with 201 KAR 20:260 through 20:360 at least every eight (8) years for continued approval.

(2)(a) A site visit shall be conducted at least every eight (8) years.

(b) A specific list of information required for review shall be sent by the board to the program of nursing prior to the site visit.

(3) Prior to the site visit, the program of nursing shall submit:

(a) A self-evaluation report that provides evidence of compliance with 201 KAR 20:260 through 20:360; and

(b) Other information as requested by the board.

Section 3. Reports and Evaluation. (1) A program of nursing shall submit the Annual Report of the Program of Nursing to the board regarding its compliance with 201 KAR 20:260 through 20:360.

(2) To verify continued compliance with 201 KAR 20:260 through 20:360, the program of nursing shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other documents as requested by the board.

(3) Pursuant to 201 KAR 20:260, Section 2(7)(a), the faculty shall establish an evaluation plan and shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board.

(4) The evaluation plan shall include evidence that data collection is evidence-based, on-going, and reflects the collection, aggregate analysis, and trending of data.

(5) The evaluation plan shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

(a) Organization and administration of the program of nursing;

(b) Curriculum;

(c) Resources, facilities, and services;

(d) Teaching and learning methods including distance education;

(e) Faculty evaluation;

(f) Student achievement of program outcomes;

(g) Graduation rates;

(h) Licensure examination pass rates;

(i) Employment rates of graduates; and

(j) Clinical resources, including laboratory and simulation.

(6) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus based program.

(7) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the program.

Section 4. Calculation of Pass Rate. (1) The board shall calculate the pass rate for a program of nursing on an annual basis from January 1 to December 31 for all first time takers of the NCLEX.

(2) Individuals included in the annual calculation shall have tested within six (6) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070.

Section 5. Site Visits. (1) The board may conduct site visits at any time.

(2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:260 through 20:360 are being met:

(a) Denial, withdrawal, or change of status by a national nursing accrediting agency;

(b) Providing false or misleading information to students or the public concerning the program;

(c) A written complaint received from faculty, students, or the general public relating to a violation of these administrative regulations;

(d) A change in physical facilities;

(e) Information received by the board that may indicate a violation of 201 KAR 20:260 through 20:360;

(f) A change in any of these benchmarks:

1. A pass rate as calculated by Section 4 of this administrative regulation that:

a. Is less than an average of eighty-five (85) percent for three (3) consecutive years; or

b. Varies above and below eighty-five (85) percent from year to year over the previous five (5) years;

2. A faculty turnover rate greater than thirty (30) percent for two (2) consecutive years;

3. A program administrator turnover rate of more than three (3) individuals in five (5) years;

4. A graduation rate of less than sixty (60) percent of the admitted cohort within the maximum time frame allowed for completion. The maximum time frame shall be determined by multiplying the standard program length for normally progressing students by 1.5;

5. Twenty-five (25) percent or more of the total number of nursing faculty who file grievances or appeals that are substantiated; or

6. Substantiated student grievances and appeals of more than ten (10) percent of the nursing student population each year; or

(g) Failure to submit reports as required.

Section 6. Action Following Site Visit. (1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.

(c) If the site visit results in a finding of non-compliance with these administrative regulations by the program of nursing, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify the program of nursing of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the program of nursing is unable to meet the requirements in the time set by the board, it may request additional time. The board, in its discretion, may grant or deny this request.

(b) If the board denies the request, it shall send notice to the program administrator of its intent to withdraw approval. This notice shall be sent return receipt requested.

(3) Within thirty (30) days of receipt of the notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the program shall be closed. A closed program shall comply with subsection (5) of this section.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer or before the full board.

(5)(a) A program of nursing whose approval has been withdrawn by the board shall be removed from the official approved status listing upon the effective date of the decision. Students currently enrolled in the last semester or quarter of the program may complete the program. If the student graduates, he or she may apply for licensure and make take the licensure examination. No other student shall be allowed to apply for licensure or take the licensure examination, unless they graduate from another approved program of nursing.

(b) The program of nursing that has been closed shall assist a currently enrolled student to transfer to an approved program of nursing.[~~Approval Status and Withdrawal of Approval. Approval status shall be based upon each program of nursing's performance and demonstrated compliance with 201 KAR 20:260 through 20:360. (1) Developmental approval shall be the designation granted to a proposed program of nursing to continue development of plans for program implementation.~~

~~(2) Initial approval shall be the designation granted to a new program of nursing upon admission of the first class, if provided the date of enrollment is within eighteen (18) months of board approval of the proposal. During the period of initial approval, reports documenting implementation of the proposal shall be submitted on a quarterly basis.~~

~~(3)(a) Full approval shall be the designation granted to a program of nursing that has implemented the proposal and that continues to meet the standards of 201 KAR 20:260 through 20:360.~~

~~(b) Monitoring status shall be the designation granted to a program of nursing as established in this paragraph.~~

~~1. A program of nursing that has achieved initial approval and fails to achieve the pass rate established in Section 2(4) of this administrative regulation for its first graduating class shall be placed on monitoring status.~~

~~2. A program of nursing that meets the standards of 201 KAR 20:260 through 20:360 including achieving the pass rate established in Section 2(4) of this administrative regulation shall be granted full approval status.~~

~~3. A program of nursing that has achieved full approval status and fails to meet one (1) or more of the standards of 201 KAR 20:260 through 20:360 including achieving the pass rate established in Section 2(4) of this administrative regulation for one (1) year shall be placed on monitoring status.~~

~~4. While on monitoring status, a program of nursing shall make progress to correct its deficiencies.~~

~~a. If the deficiency is not achieving the pass rate established in Section 2(4) of this administrative regulation, the program administrator shall comply with Section 2(6) of this administrative regulation. The program's pass rate for the next year shall show an upward trend.~~

~~b. If the deficiency relates to any other standard, the program administrator shall analyze data to assess the factors that contribute to the deficiency and submit a plan to correct the deficiency that includes the timeframe involved. The program of nursing shall report its progress to the board.~~

~~c. The program shall submit the required documentation no later than four (4) months from the notice of deficiency.~~

~~5. A program of nursing shall not remain on monitoring status for more than three (3) consecutive years. The board may conduct a yearly site visit if the program's response warrants it. The program shall either attain full approval or be moved to conditional approval status.~~

~~(4) Conditional approval shall be the designation granted to a program of nursing if one (1) or more of the standards of 201 KAR~~

~~20:260 through 20:360 have not been met following monitoring status.~~

~~(a) Following the decision of the board to place a program of nursing on conditional approval status, the program administrator shall be notified of the areas of deficiency and the time frame allowed for corrective action to be implemented.~~

~~(b) The program administrator shall, within thirty (30) days of the notice of the deficiencies being sent, file a plan of compliance to correct each of the identified deficiencies.~~

~~(c) The program administrator may, within thirty (30) days of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.~~

~~(d) If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to evaluate if deficiencies have been corrected.~~

~~(e) If the plan of compliance is not completed within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the conditional approval status of the program of nursing shall be adjusted to probationary status.~~

~~(5) Probationary status shall be the designation granted to a program of nursing if one (1) or more standards have continued to be unmet.~~

~~(a) Following the decision of the board to place a program of nursing on probationary status, the program administrator shall be notified of the continued areas of deficiency. The probationary status shall not exceed one (1) academic year. A new student shall not be admitted to a program of nursing while it is on probationary status.~~

~~(b) The program administrator shall, within thirty (30) days of the notice of the deficiencies being sent, file a plan to correct each of the identified deficiencies.~~

~~(c) The program administrator may, within thirty (30) days, of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.~~

~~(d) If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board shall conduct quarterly evaluations of the program of nursing during the time of correction to evaluate if deficiencies have been corrected.~~

~~(6) If the program of nursing has not corrected the deficiencies within one (1) academic year of being placed on probationary status, a hearing pursuant to KRS Chapter 13B shall be conducted to evaluate whether to withdraw approval of the program of nursing.~~

~~(7) If the board decides to withdraw approval of a program of nursing, upon the effective date of the decision, the program of nursing shall be removed from the official approved status listing. A program of nursing whose approval has been withdrawn shall:~~

~~(a) Allow a student who is currently enrolled in a nursing class to complete the program of nursing; or~~

~~(b) Assist a currently enrolled student to transfer to an approved program of nursing.~~

~~(8) A program of nursing whose approval has been withdrawn but continues to operate pursuant to subsection (7)(a) of this section shall be continuously monitored by the board until the program closes.~~

~~Section 2. Reports and Examination Pass Rates. (1) A program of nursing that prepares graduates for licensure shall meet all standards of 201 KAR 20:260 through 20:360 in order to retain full approval. Level of approval status shall be established annually by the board on the basis of the program's annual report, NCLEX examination pass rates for first time test takers, and other pertinent data.~~

~~(2) A program of nursing shall submit an annual report regarding its compliance with administrative regulations 201 KAR 20:260 through 20:360. A secondary or distance learning site shall be treated independently for purposes of compliance with the regulatory standards.~~

~~(3) To verify continued compliance with these administrative regulations, the program administrator shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other documents as requested by the board.~~

~~(4) A program of nursing shall maintain at least an eighty-five (85) percent annual pass rate for graduates taking the NCLEX-RN or NCLEX-PN for the first time. Pass rates shall be published on a calendar year basis for those graduates who have tested within twelve (12) months of the program completion date as reported by the program of nursing.~~

~~(5) A program of nursing and a secondary learning site shall be evaluated individually concerning licensure examination results.~~

~~(6) If a program of nursing's pass rate for first time test takers is less than eighty-five (85) percent for a calendar year, the program administrator shall submit a self study report that evaluates factors that contributed to the graduates' performance on the NCLEX examination and a description of the corrective measures to be implemented.~~

~~Section 3. Factors That May Jeopardize Program Approval Status. Approval status may change for any of the following reasons:~~

~~(1) Deficiencies in compliance with 201 KAR 20:260 through 20:360;~~

~~(2) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives, outcomes, or policies;~~

~~(3) Continual failure to submit records or reports to the board within the designated time frame;~~

~~(4) Failure to provide clinical learning opportunities for students as described in 201 KAR 20:320, Section 2(7)(b) and (c);~~

~~(5) Failure to comply with requirements of the board within the specified time;~~

~~(6) Failure to maintain the pass rate on the licensure examination for first time test takers as established in Section 2(4) of this administrative regulation; or~~

~~(7) Withdrawal of accreditation by a national nursing accrediting body recognized by the United States Department of Education.~~

~~Section 4. Program Evaluation. (1) The faculty shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation plan that is submitted to the board.~~

~~(2) The evaluation plan shall include evidence that data collection is evidence-based, on-going, and reflects the collection, aggregate analysis, and trending of data.~~

~~(3) The evaluation plan shall provide evidence that the outcomes of the assessment process are used to improve the quality and strength of the program.~~

~~(4) The evaluation plan shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:~~

~~(a) Organization and administration of the program of nursing;~~

~~(b) Curriculum;~~

~~(c) Resources, facilities, and services;~~

~~(d) Teaching and learning methods including distance education;~~

~~(e) Faculty performance;~~

~~(f) Student achievement of program outcomes;~~

~~(g) Graduation rates;~~

~~(h) Licensure examination pass rates;~~

~~(i) Employment rates of graduates; and~~

~~(j) Clinical resources.~~

~~(5) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus based program.~~]

Section 7.[~~5.~~] Voluntary Closure of a Program. (1) A governing

institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing as established in paragraph (a) or (b) of this subsection.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards until all students enrolled in nursing courses have graduated or transferred.

2. The official closing of the program shall be the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program following the transfer of students to other approved programs.

1. The program shall continue to meet the standards until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to the board for safekeeping.

1. The transcript of the student or graduate shall identify the date on which the program closed.

2. The board shall be consulted about the disposition of all other program records.

Section 8.[~~6.~~] Change in Ownership or Organization of the Governing institution. (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership. The new administrative authority or owner shall inform the board of its plans for immediate and future operation.

(2) The board shall conduct a site visit to ensure adherence by the program of nursing to 201 KAR 20:260 through 20:360.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership or administrative authority if the approval standards continue to be met.

Section 9. Incorporation by Reference. (1) "Annual Report of the Program of Nursing", 12/15, Kentucky Board of Nursing, is incorporated by reference.

(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: December 11, 2015

FILED WITH LRC: January 7, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016 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 end of day, (11:59 p.m.), February 29, 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 process for continued approval and evaluation of prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: This amendment is part of a comprehensive review of the administrative regulations governing RN and LPN prelicensure programs of nursing. The relevant administrative regulations have been reviewed to ensure they are current and address all relevant issues. This particular administrative regulation, among several housekeeping changes, includes the following changes: the role of accreditation for programs of nursing; how site visits are to occur and what may trigger a site visit, in particular a change in several benchmarks; what evaluative reports are due from the programs; how the pass rate is to be calculated and how it is to be used to evaluate a program; and the process to be used if a program does not meet the standards.

(b) The necessity of the amendment to this administrative regulation: The changes were needed to meet new circumstances and to improve the approval process for programs of nursing.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By addressing the issues.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: current and future prelicensure programs of nursing; currently there are 56 RN programs and 30 LPN programs in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The actions each entity will have to take will differ depending on the particular circumstances of each program. Each program will be expected to be in compliance with the administrative regulation. The Board will work with each program to assist in this endeavor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any potential cost will depend on the particular circumstances of the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.470, 403.707, 421.500-421.575

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application. (1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:

(a) Position description and qualifications of the nurse administrator of the SANE course;

(b) Qualifications and description of the faculty;

(c) Course syllabus;

(d) Course completion requirements;

(e) Tentative course presentation dates;

(f) Records maintenance policy; and

(g) Copy of certificate of course completion form.

(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.470, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(3) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.

(4) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees;

(b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level
behaviors to be achieved by the learner;

(c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;

(d) Content, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;

1. The SANE course shall include:

a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3. of this paragraph; and

b. The clinical practice experience required by subparagraph 2. of this paragraph.

2. Clinical practice. The clinical portion of the course[~~shall be a minimum of sixty (60) hours and~~] shall include:

a. Detailed genital and anal inspection, including speculum insertion[~~a minimum of sixteen (16) speculum examinations~~], visualization techniques, and use of equipment supervised by a physician, a physician[~~physician's~~] assistant, an advanced practice registered nurse, or a sexual assault nurse examiner until the student is deemed competent by the supervisor[~~– twenty-six (26) hours~~];

b.[~~Mock~~] Sexual assault history taking and examination techniques with evaluation supervised by a physician, a physician[~~physician's~~] assistant, an advanced practice registered nurse, or a sexual assault nurse examiner[~~- ten (10) hours~~];

c. Observing live or previously recorded[~~relevant civil or~~] criminal trials, meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying[~~, or similar legal experience - sixteen (16) hours~~];

d. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate[~~or mental health professional with expertise in the treatment of a sexually assaulted individual – four (4) hours~~]; and

e. Meeting with local[~~members of~~] law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process[~~- four (4) hours~~].

3. The didactic portion of the course shall include instruction consistent with the Sexual Assault Nurse Examiner (SANE) Education Guidelines. It shall also include:

a. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2); and

b. The victim's bill of rights, KRS 421.500 through 421.575[~~in the following topics related to forensic evaluation of an individual reporting sexual assault:~~

~~a. The role and responsibilities of a sexual assault nurse examiner, health care professional, rape crisis, law enforcement, and judicial system personnel;~~

~~b. Application of the statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2);~~

~~c. Principles and techniques of evidence identification, collection, evaluation, preservation, and chain of custody;~~

~~d. Assessment of injuries, including injuries of forensic significance;~~

~~e. Physician consultation and referral;~~

~~f. Medicolegal documentation;~~

~~g. Victim's bill of rights, KRS 421.500 through 421.575;~~

~~h. Crisis intervention;~~

~~i. Dynamics of sexual assault;~~

~~j. Testifying in court;~~

~~k. Overview of the criminal justice system and related legal issues;~~

~~l. Available community resources including rape crisis centers;~~

~~m. Historical development of the forensic nursing conceptual model;~~

~~n. Cultural diversity and special populations;~~

~~o. Ethics;~~

~~p. Genital anatomy, normal variances, and development stages;~~

~~q. Health care implications and interventions; and~~

~~r. Developing policies and procedures~~].

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and

(g) Instructional or reference materials required which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date, and site of the course; and

(b) Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date, and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed. (1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.470;

(b) Have completed a board approved SANE educational course or a comparable course;

1. The board or its designee shall evaluate the applicant's course to determine its course comparability; and

2. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;

(c)[~~If the applicant has completed a comparable course, complete that portion of a SANE course of at least five (5) hours which shall include those topics specified in Section 2(4)(d)3a, b, c, g, k, and l of this administrative regulation if not included in the comparable course completed by the applicant.~~

~~1. The Office of the Attorney General may offer in cooperation with a board approved continuing education provider a course of at least five (5) hours.~~

~~2. The course shall include those topics specified in this paragraph;~~

~~(d)~~] Complete the Sexual Assault Nurse Examiner Application for Credential;

(d)[~~(e)~~] Pay the fee established in 201 KAR 20:240;

(e)[~~(f)~~] Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and pay the fee required by the FBI that is within six (6) months of the date of the application;

(f)[~~(g)~~] Provide a report from the Kentucky Administrative Office of the Courts, CourtNet Disposition System that is within six (6) months of the date of the application;

(g)[~~(h)~~] Provide a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(h)[~~(i)~~] Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e)[~~(1)(f)~~] of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the SANE Renewal Application or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the Sexual Assault Nurse Examiner Application for Credential;

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and paying the fee required by the FBI that is within six (6) months of the date of the application;

(e) Providing a report from the Kentucky Administrative Office of the Courts, CourtNet Disposition System that is within six (6) months of the date of the application;

(f) Providing a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(g) Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to adoption by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Initial or Continued SANE Course Approval", 6/2014, Kentucky Board of Nursing;

(b) "Sexual Assault Nurse Examiner Application for Credential", 6/2014, Kentucky Board of Nursing;

(c) "SANE Renewal Application", 6/2012, Kentucky Board of Nursing;[~~and~~]

(d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 6/2014, Kentucky Board of Nursing; and

(e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2015 Edition, International Association of Forensic Nurses.

(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 40222-5172, Monday through Friday, 8:30 a.m. to 4:30 p.m.

GAIL WISE, President

APPROVED BY AGENCY: December 11, 2015

FILED WITH LRC: January 7, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016 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 end of day, (11:59 p.m.), February 29, 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 standards for Sexual Assault Nurse Examiner (SANE) programs and credentials.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: The content of the required SANE course has been changed to conform to current needs and modern standards.

(b) The necessity of the amendment to this administrative regulation: The changes were needed to meet new circumstances and to improve the course content.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the course.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: future Sexual Assault Nurse Examiners, 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: The applicants will take the new course.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be little or no change in the 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
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(Amendment)

201 KAR 44:050. Per diem of board members.

RELATES TO: KRS 319B.020(6)

STATUTORY AUTHORITY: KRS 319B.020(6), 319B.030(2)[~~and 12.070(5)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.020(6) authorizes board members to receive a per diem reimbursement of reasonable expenses for each day actually engaged in the duties of the office.[~~KRS 12.070(5) authorizes the board members to receive reimbursement for their actual and necessary expenses.~~] This administrative regulation sets the per diem amount board members receive to be reasonable expenses as set forth in this administrative regulation[~~reimbursement for their actual and necessary expenses~~].

Section 1. Each member of the board shall receive reimbursement of their reasonable expenses. Reasonable expenses shall be compensation of $100 per day for each day actually engaged in official duties of the office as a board member plus any and all actual and necessary expenses related thereto pursuant to KRS319B.020(6)[~~for their actual and necessary expenses~~].

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: November 18, 2015

FILED WITH LRC: December 18, 2015 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2016, at 1:30 p.m., in the office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. 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 through February 29, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nicole Biddle

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation governs the payment of a per diem reimbursement of expenses.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the process that the board must follow to reimburse its members for each day actually engaged in the duties of the office.

(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 per diem reimbursement of reasonable expenses determined by the board pursuant to KRS 319B.020(6).

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by establishing and clarifying per diem reasonable expenses, allowing reimbursement to board members for engaging in the official duties of office.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies and defines reasonable expenses to be paid for performance of official board duties.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so the board is in compliance with KRS 319B.020(6) and the regulation is amended to provide a per diem reimbursement of reasonable expenses calculated as set forth in 201 KAR 44:050.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319B.020(6) and 319B.030(2).

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides the board with a per diem of reasonable expenses as authorized by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Prosthetics, Orthotics and Pedorthics, consisting of five (5) members, shall receive a per diem as set forth in KRS 319B.

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

(a) List 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 board members will have to complete forms to receive their payments and reimbursements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost is approximately $500 per meeting, plus actual and necessary expenses already reimbursed per meeting.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board members shall receive

a per diem payment per statute.

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

(a) Initially: An additional cost of approximately $6,000 per year will be incurred by the board.

(b) On a continuing basis: An additional cost of approximately $6,000 per year will be incurred by the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as this amendment applies to all board members.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Prosthetics, Orthotics and Pedorthics

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319B.020(6) and KRS 319B.030(2)

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

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

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

(c) How much will it cost to administer this program for the first year? Approximately $6,000 per year.

(d) How much will it cost to administer this program for subsequent years? Approximately $6,000 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(Amendment)

201 KAR 44:080. Renewals.

RELATES TO: KRS 319B.120

STATUTORY AUTHORITY: KRS 319B.030(1)(a), (b), (e), 319B.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.120 authorizes the board to promulgate administrative regulations required to establish conditions for the renewal and reinstatement of licenses. This administrative regulation establishes procedures for the renewal of licenses.

Section 1. Renewal. (1) A licensed prosthetist, licensed orthotist, licensed pedorthist, or licensed fitter-orthotics shall annually, on or before June 30:

(a) File a completed Kentucky Board of Prosthetics, Orthotics and Pedorthics Renewal Application, 2015[~~Application for Renewal~~];

(b) Submit proof of completion of continuing education established by 201 KAR 44:060; and

(c) Pay to the board the renewal fee established by 201 KAR 44:010.

Section 2. Grace Period. A six (6) month grace period shall apply beginning July 1, during which a licensed prosthetist, licensed orthotist, licensed pedorthist, or licensed fitter-orthotics may:

(1) Continue to practice during the six (6) month grace period;[~~and~~]

(2) Renew his or her license upon payment of the initial license fee and the late renewal fee; and

(3) Complete the requirements of Section 1(1)(a) and (b) of this administrative regulation.

Section 3. Expiration of License. (1) A license that is not renewed before December 31 shall be expired for failure to renew.

(2) Upon expiration for failure to renew, the licensed prosthetist, licensed orthotist, licensed pedorthist, or licensed fitter-orthotics shall not practice prosthetics, orthotics, or pedorthics in the Commonwealth of Kentucky.

(3) The board shall:

(a) Notify in writing the licensed prosthetist, licensed orthotist, licensed pedorthist, or licensed fitter-orthotics at the last known address of record of the expiration for failure to renew; and

(b) Instruct in writing the person whose license has expired to cease and desist practice.

Section 4. Reinstatement. After January 1, a person whose license has expired for failure to renew[~~,~~] shall have his or her license reinstated upon:

(1) Payment of the initial license fee and the reinstatement fee;

(2) Completion of the Kentucky Board of Prosthetics, Orthotics and Pedorthics Reinstatement Application, 2015[~~Application for Reinstatement~~];

(3) Documentation of employment from the time of expiration of employment until the present; and

(4) Completion of the current requirements for licensure established in this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Board of Prosthetics, Orthotics and Pedorthics Renewal Application", 2015[~~Application for Renewal", 4/2012~~]; and

(b) "Kentucky Board of Prosthetics, Orthotics and Pedorthics Renewal Application", 2015[~~Application for Reinstatement", 4/2012~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Prosthetics, Orthotics, Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: November 18, 2015

FILED WITH LRC: December 18, 2015 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2016, at 1:30 p.m., in the office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. 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 through February 29, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nicole Biddle

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation sets forth the procedure by which those applicants shall apply for a license renewal or reinstatement under the provisions of KAR Chapter 201.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedure for licensure renewals and reinstatements of persons who wish to practice in this state as a Licensed Orthotist, Licensed Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 319B requires the board to establish a procedure for the licensure renewal and reinstatement of persons who wish to practice in this state as a Licensed Orthotist, Licensed Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by establishing a procedure for licensing renewal and reinstatement.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates new renewal and reinstatement application forms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so the board is in compliance with KRS 319B.030 and KRS 319B.120.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319B.030, KRS 319B.120, and the renewal regulation sets forth procedures and requirements for licensure renewal and reinstatement applicants.

(d) How the amendment will assist in the effective administration of the statutes: This amendment incorporates new application forms that are clearer and reflect updated fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Prosthetics, Orthotics and Pedorthics has approximately 173 active licensees and renewals annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have to complete new renewal and reinstatement application forms to receive licensure credentials.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of this amendment are an efficient and updated application form for licensure renewals and reinstatements and the granting of licensure.

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

(a) Initially: No additional costs will be incurred.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as this amendment applies to all licensees and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Prosthetics, Orthotics and Pedorthics licensees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319B.030 and KRS 319B.120.

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

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

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

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

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

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 Prosthetics, Orthotics, and Pedorthics
(Amendment)

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013.

RELATES TO: KRS 319B.010, 319B.030, 319B.110

STATUTORY AUTHORITY: KRS 319B.030(1), (2), 319B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1) requires the board to establish licensure categories and issue licenses for persons who wish to practice in this state as a licensed orthotist, licensed prosthetist, licensed orthotist-prosthetist, licensed pedorthist, or licensed orthotic fitter. This administrative regulation establishes the procedure by which those applicants shall apply for a license pursuant to KRS 319B.030.

Section 1. Licensure of an Orthotist, Prosthetist or Orthotist-Prosthetist. An applicant for licensure as an orthotist, prosthetist, or orthotist-prosthetist shall submit:

(1) A completed Kentucky Board of Prosthetics, Orthotics and Pedorthics["] Application for Licensure, 2015[~~", Form BPOP1~~];

(2) A certified copy of the applicant's transcript from an

accredited college or university showing a minimum of a baccalaureate degree awarded to the applicant;

(3) A certified copy of the applicant's education program in orthotics, prosthetics, or both from an educational program accredited by the Commission on Accreditation of Allied Health Education Program;

(4) Proof of completion of a residency meeting the standards established in KRS 319B.010(26) for the discipline for which the applicant has applied;

(5) Proof of the applicant's having obtained a passing score on the American Board of Certification (ABC) examination;

(6) The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) Detailed work history, including scope of practice, covering the four (4) year period immediately prior to the date of application.

Section 2. Licensure of a Pedorthist. An applicant for licensure as a pedorthist shall submit:

(1) A completed Kentucky Board of Prosthetics, Orthotics and Pedorthics["] Application for Licensure, 2015[", ~~Form BPOP1~~];

(2) A certified copy of high school diploma or comparable credential;

(3) Proof of completion of an NCOPE- approved pedorthic education program;

(4) Proof of passing the American Board of Certification (ABC) exam;

(5) Proof of a minimum of 1,000 hours of pedorthic patient care, 500 hours shall be completed after the NCOPE- approved education program;

(6) The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) A detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 3. Licensure of an Orthotic Fitter. An applicant for licensure as an orthotic fitter shall submit:

(1) A completed Kentucky Board of Prosthetics, Orthotics and Pedorthics["] Application for Licensure, 2015[", ~~Form BPOP1~~];

(2) A certified copy of high school diploma or comparable credential;

(3) Proof of completion of an NCOPE- approved orthotic fitter education program;

(4) Proof of passing the American Board of Certification (ABC) exam;

(5) Proof of a minimum of 1,000 hours of orthotic fitter patient care, 500 hours shall be completed after the NCOPE approved education program;

(6) The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) A detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 4. Incorporation by Reference. (1) "Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Licensure", 2015[~~BPOP1, 07/2012~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: December 16, 2015

FILED WITH LRC: December 18, 2015 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2016, at 1:30 p.m., in the office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. 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 through February 29, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nicole Biddle

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation sets forth the procedure by which those applicants shall apply for a license under the provisions of KAR Chapter 201.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedure for the licensure of persons who wish to practice in this state as a Licensed Orthotist, Licensed Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 319B requires the board to establish a procedure for the licensure of persons who wish to practice in this state as a Licensed Orthotist, Licensed Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by establishing a procedure for licensing.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates a new application form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so the board is in compliance with KRS 319B.030 and the regulation is amended to incorporate new application forms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319B.030 sets forth procedures and requirements for licensure applicants.

(d) How the amendment will assist in the effective administration of the statutes: This amendment incorporates new application forms that are clearer and reflect updated fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Prosthetics, Orthotics and Pedorthics has approximately 173 active licensees and renewals annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have to complete new application forms to receive licensure credentials.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of this amendment are an efficient and updated application form for licensure and the granting of licensure.

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

(a) Initially: No additional costs will be incurred.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as this amendment applies to all licensees and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Prosthetics, Orthotics and Pedorthics licensees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319B.030.

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

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

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

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

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

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 Prosthetics, Orthotics, and Pedorthics
(Amendment)

201 KAR 44:100. Inactive status.

RELATES TO: KRS 319B.040(6)

STATUTORY AUTHORITY: KRS 319B.040(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.040(6) authorizes the board to promulgate administrative regulations to establish conditions for inactive licensure status. This administrative regulation establishes procedures for inactive status and reactivation.

Section 1. (1) A licensee may apply for inactive status by submitting:

(a) A completed Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Inactive License, 2015; and

(b) The fee for inactive licensure.

(2) A licensee on inactive status shall not engage in the practice of prosthetics, orthotics, or pedorthics.

(3) The fee for licensure on inactive status shall be fifty (50) dollars per year.

(4) Continuing education requirements shall be waived for licensees on inactive status during the time they remain inactive.

(5) If the inactive licensee applies to the board to return to active status, the licensee shall submit proof that he or she has completed six (6) hours of continuing education for the area of discipline in which the licensee is applying within the last twelve (12) month period immediately preceding the date on which the application is submitted.

(6) The licensee may submit a request to the board to return to active status immediately, with the provision that he shall receive the appropriate number of continuing education hours within six (6) months of the date on which he returns to active status.

(7) The reactivation fee for changing from inactive status to active status shall be in compliance with 201 KAR 44:010, Section 2(1) through (3).

Section 2. Incorporation by Reference. (1) "Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Inactive License", 2015[~~Form BPOP4, 07/2012~~], is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: November 18, 2015

FILED WITH LRC: December 18, 2015 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2016, at 1:30 p.m., in the office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. 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 through February 29, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nicole Biddle

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation sets forth the procedure by which those applicants shall apply for inactive status pursuant to KRS 319B.040(6) and under the provisions of KAR Chapter 201.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedure for persons who wish to apply for inactive status in this state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 319B.040(6) requires the board to establish a procedure for the granting of inactive licensure status.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by establishing a procedure for granting licensees inactive status.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates a new inactive status application form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so the board is in

compliance with KRS 319B.040(6).
(c) How the amendment conforms to the content of the authorizing statutes: KRS 319B.040(6), and the renewal regulation sets forth authority, procedures and requirements for granting inactive licensure status.

(d) How the amendment will assist in the effective administration of the statutes: This amendment incorporates a new form that is clearer and reflects updated fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Prosthetics, Orthotics and Pedorthics has approximately 173 active licensees and renewals annually, who will have the option of changing their status to inactive.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have to complete an inactive license application form.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of this amendment are an efficient and updated application form for granting inactive licensure status.

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

(a) Initially: No additional costs will be incurred.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as this amendment applies to all licensees and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Prosthetics, Orthotics and Pedorthics licensees wishing to apply for inactive status.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319B.040(6).

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

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

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

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

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

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 Prosthetics, Orthotics, and Pedorthics
(Amendment)

201 KAR 44:110. Licensure by endorsement.

RELATES TO: KRS 319B.130
STATUTORY AUTHORITY: KRS 319B.030, 319B.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.130
authorizes the board to issue a license to a prosthetist, orthotist, pedorthist, or orthotic fitter possessing a license issued by another state. This administrative regulation establishes the requirements for issuance of a license by endorsement.

Section 1. The board shall issue a license by endorsement, without examination, to a prosthetist, orthotist, pedorthist, or orthotic fitter currently licensed by examination by the corresponding authority of another state upon:

(1) Verification that the applicant meets all current requirements for licensure as established by KRS 319B.030(1)[~~and 201 KAR 44:090~~];

(2) Payment of the fee for licensure as established by 201 KAR 44:010; and

(3) Verification of the applicant's license issued by another state that certifies that the license is:

(a) Active;

(b) In good standing; and

(c) Free of pending complaints.

Section 2. Incorporated by Reference. (1) "Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Licensure", 2015[~~by Endorsement", BPOP2, 07/2012~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

SIENNA NEWMAN, Chair
APPROVED BY AGENCY: November 18, 2015
FILED WITH LRC: December 18, 2015 at 8 a.m.

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CONTACT PERSON: Megan Woodson, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601,

phone 502-564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nicole Biddle

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation sets forth the procedure by which those applicants shall apply for reciprocal licensure pursuant to KRS 319B.130 and under the provisions of KAR Chapter 201.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedure for persons who wish to apply for reciprocal licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 319B.130 requires the board to establish a procedure for the granting of licenses by reciprocity or endorsement.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by establishing a procedure for granting reciprocal licensees.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates a new application form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so the board is in compliance with KRS 319B.130.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319B.130, and the licensure by endorsement regulation sets forth authority, procedures and requirements for granting licensure by endorsement.

(d) How the amendment will assist in the effective administration of the statutes: This amendment incorporates a new form that is clearer and reflects updated application fee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Prosthetics, Orthotics and Pedorthics has approximately 173 active licensees and a handful of applicants from other states annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have to complete an application form.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of this amendment are an efficient and updated application form.

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

(a) Initially: No additional costs will be incurred.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as this amendment applies to all licensees and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Prosthetics, Orthotics and Pedorthics applicants licensed in another state.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319B.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? None

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

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

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

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 Prosthetics, Orthotics, and Pedorthics
(Amendment)

201 KAR 44:120. Post residency registration.

RELATES TO: KRS 319B.030(1)(c)

STATUTORY AUTHORITY: KRS 319B.030(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(c) authorizes the board to establish circumstances and conditions for individuals who have completed the required training and established circumstances by which an individual may continue to practice as a prosthetist or orthotist. This administrative regulation establishes the requirements for registration for post residency practice.

Section 1. Eligibility. (1) An orthotic or prosthetic resident, who has successfully completed an NCOPE residency in the appropriate field and prior to completing the American Board for Certification examination, may work in the discipline in which he or she is exam eligible upon application to and approval by the board.

(2) An applicant shall submit to the board:

(a) A completed Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Post Residency Registration, 2015[~~form~~];

(b) Documentation of residency completion;

(c) Documentation of application for examination; and

(d) A letter from a supervisory licensed practitioner that monitoring of the applicant will continue.

(3) The exemption shall expire fifteen (15) months from the date of completion of the NCOPE residency.

Section 2. Incorporation by Reference. (1) "Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Post Residency Registration", 2015[~~Form BPOP3, 07/2012~~], is incorporated by reference.

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

Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: November 18, 2015

FILED WITH LRC: December 18, 2015 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2016, at 1:30 p.m., in the office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. 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 through February 29, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-564-3296.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nicole Biddle

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation sets forth the procedure by which those orthotic or prosthetic residents may work in the discipline post residency pursuant to KRS 319B.030(1)(c).

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedure for persons who wish to practice prosthetics and orthotics post residency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 319B.030(1)(c) allows work pending passage of the required examination..

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by establishing a procedure for granting post residency practice.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates a new application form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so the board is in compliance with KRS 319B.030(1)(c).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319B.030(1)(c).

(d) How the amendment will assist in the effective administration of the statutes: This amendment incorporates a new form that is clearer and reflects updated fee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Prosthetics, Orthotics and Pedorthics has approximately 173 active licensees and a handful of applicants for post residency practice approval.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have to complete an application form.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of this amendment are an efficient and updated application form.

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

(a) Initially: No additional costs will be incurred.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as this amendment applies to all licensees and applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Prosthetics, Orthotics and Pedorthics post residency applicants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319B.030(1)(c).

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

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

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

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

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

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 2:132. Elk quota hunts, elk depredation permits, landowner cooperator permits, and voucher cooperator permits.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.105, 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these

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

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

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

(3) "At-large" means any portion of the elk zone not included in a limited entry area.

(4) "Bait":

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

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

(5) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(6) "Elk" means Cervus elaphus nelsoni.

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

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

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

(10) "Out-of-zone" means all counties not included in the restoration zone.

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

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

(13) "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

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

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

(1) Attach a department-issued disposal permit to an elk prior to moving the carcass; and

(2) Not remove the disposal permit until the carcass is processed.

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

(2) An applicant shall:

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

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

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

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

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

(a) Anywhere in the at-large portion of the restoration zone; or

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

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

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

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

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

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool.

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

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

(a) Antlered archery and crossbow;

(b) Antlered firearms;

(c) Antlerless archery and crossbow; and

(d) Antlerless firearms.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools;

(c) Only be selected by a random electronic drawing; and

(d) Pay a nonrefundable application fee of ten (10) dollars for each entry.

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

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

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

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

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

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

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

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

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

~~(a) The permit~~] may be transferred to any person eligible to hunt in Kentucky, but[~~.~~

~~(b)~~] prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department

with the hunter's:

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

(5)[~~(c)~~] The landowner cooperator permit shall not be transferable if it was already[~~after being~~] used for the harvest of one (1) elk.

(6)[~~(4)~~] Public access agreements with the department shall be recorded in writing.

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

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

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

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

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

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

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

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

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

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

(a) Name;

(b) Social security number;

(c) Address; and

(d) Telephone number.

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

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

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

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

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

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

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

(4) A hunter who does not apply for an LEA or is not drawn for an LEA shall be assigned to the at-large area.

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

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

(7) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(8) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

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

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

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

(12) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:

(a) A crossbow or archery equipment loaded with a non-barbed broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;
2. Of .270 caliber or larger; and
3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading firearm of .50 caliber or larger;

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

(e) A handgun loaded with:

1. Centerfire cartridges;
2. Bullets of .270 caliber or larger designed to expand upon impact; and
3. Cartridges with a case length of 1.285 inches or larger.

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

(14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.

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

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

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

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

(a) Is a youth;

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

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

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

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

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

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

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

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

(b) A crossbow to take an antlerless elk from the third Saturday

in October to the fourth Friday in December.

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

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

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

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

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

(b) First Saturday in January for seven (7) consecutive days.

Section 8. LEA Boundaries. (1) Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(2) Levisa Fork LEA - Starting at the intersection of State Hwy 1789 and State Hwy 460 at Millard, the boundary proceeds south and east on Hwy 460 to the intersection of Hwy 460 and State Hwy 1499 at Mouthcard. The boundary then runs north along State Hwy 1499 to the intersection of State Hwy 1499 and State Hwy 194. It then runs west and north on Hwy 194 to the intersection of Hwy 194 and State Hwy 3418 (Ridge Line Road). The boundary then runs west on Hwy 3418 to the intersection of State Hwy 3418 and Raccoon Road. The boundary then runs west on Raccoon Road to the intersection of Raccoon Road and State Hwy 1441. The boundary then runs south along Hwy 1441 to the intersection of State Hwy 1441 and State Highway 1789. The boundary then runs west to the intersection of Hwy 1789 and State Highway 460, completing the boundary.

(3) Middlesboro LEA - Starting at the intersection of US Hwy 25E and the Tennessee border at Middlesboro, the boundary proceeds southward and westward on the Tennessee and Kentucky border until the intersection of State Hwy 190. The boundary proceeds northward and westward on State Hwy 190 to the intersection of US Hwy 25E. The boundary then goes south on US Hwy 25E to the Tennessee border, completing the boundary.

(4)[~~(3)~~] Prestonsburg LEA - The area shall be within the boundary of the Czar Hunter Access Area as indicated by signage.

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

(6) Tug Fork LEA – The area shall be within the boundary of the Revelation Energy Hunter Access Areas in Martin, Pike, and Floyd Counties, as established by signage.

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

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

(a) Were not drawn for the previous elk quota hunts; and

(b) Are residents of counties included, wholly or in part, within an EMU boundary.

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

(4) EMU boundaries shall be:

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

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

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

Section 10. Tagging and Checking Requirements. (1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check the harvested elk before midnight on the day the elk is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

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

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

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

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

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

1. Head; or

2. Udder or vulva attached to the carcass.

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

(a) Confirmation number;

(b) Name; and

(c) Telephone number.

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

(a) Completing the hunter's log;

(b) Checking an elk; or

(c) Creating a carcass tag.

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

(a) Wildlife Management Areas;

(b) Hunter Access Areas;

(c) State forests;

(d) Big South Fork National River and Recreation Area;

(e) Daniel Boone National Forest; or

(f) Jefferson National Forest.

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

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

(4) Paul Van Booven WMA.

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

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

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

Section 12. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the weapons and ammunition requirements established in Section 6 of this administrative regulation.

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

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 10 of this administrative regulation.

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

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

(1) There is a death of the permit holder's:

(a) Spouse;

(b) Child; or

(c) Legal guardian, if the permit holder is under eighteen (18) years old; and

(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

(a) A marriage certificate;

(b) A birth certificate; or

(c) An affidavit of paternity or maternity.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: January 6, 2016

FILED WITH LRC: January 13, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held February 22, 2016, 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 February 29, 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 administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission, landowner cooperator permits and cooperator voucher permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage elk populations in Kentucky, while providing optimal elk hunting opportunities.

(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 hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the statutes by establishing the requirements for the elk permit drawing, quota hunts, legal methods of harvest, the conditions under which special commission permits, landowner cooperator permits, and voucher cooperator permits can be used, the procedures for elk damage abatement and any postseason hunt held after the quota hunts.

(2) If 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 creates two (2) new limited entry areas and defines those boundaries. The amendment also modifies the allowable areas a landowner elk permit holder may hunt.

(b) The necessity of the amendment to this administrative regulation: See 1 (b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 25,000 to 45,000 people who apply to hunt elk in Kentucky each year, of which approximately 910 are drawn. People who own or lease land over 100 acres can enter into an agreement with the Department for elk hunting access and receive elk permits based on the number of elk that are harvested on the property. Alternatively, people who own or lease land over 5,000 acres can enter into an agreement with the Department for hunting access and receive an elk 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: All drawn hunters can apply online for a Limited Entry Area and must comply with the changed boundaries. Landowner cooperator permit holders will now be able to hunt on adjacent property with landowner permission.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change any costs to the entities identified in 3.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Landowner cooperator permit holders will be able to hunt additional property that they were previously restricted to hunt.

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

(a) Initially: Other than a minor administrative cost, there will be no additional cost to the agency to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists.

(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 nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Residents of the counties within the EMUs who are not drawn for the regular quota hunt shall be eligible for a late season depredation hunt. This hunt allows residents to assist landowners in removing elk causing property damage in 2 areas with chronic nuisance elk problems. Fewer than 50 tags for antlerless and spike bulls will be drawn. These tags can only be used on private land within one of the 2 Elk Management Units (EMUs). The number of tags to be issued will be determined by the level of nuisance elk cases or property damage caused by elk documented within the EMUs prior to January each year.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.177, KRS 150.178, KRS 150.390.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For the 2015 elk season, approximately 70,348 applications were purchased at $10 per application $703,480 of revenue to the department). Approximately 742 of the 910 drawn hunters paid for elk permits, generating $72,000 in additional revenue to the department. Total revenue directly generated by the elk hunts for the department was approximately $776,000 for the 2015 season.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that approximately $600,000 to $800,000 will be generated from lottery applications and elk permits for the department. There is also a positive economic impact to cities, counties and local businesses in and near the elk restoration zone as hunters visit to hunt, and the specific dollar is estimated at $2,000,000 annually in or near the elk zone.

(c) How much will it cost to administer this program for the first year? There will be no additional costs for the first year. The department already has mechanisms in place for quota hunt application procedures, random drawings and other aspects of the elk hunts.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred 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 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. This administrative regulation establishes deer hunting seasons and zones, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions. (1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(2) "Adult" means a person who is at least eighteen (18) years of age.

(3) "Antlered deer" means a male or female deer<u>, excluding male fawns,</u> with a visible antler protruding above the hairline.

(4) "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

(5) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(6) "Arrow" means the projectile fired from a bow or crossbow.

(7) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(8) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(9) "Deer" means a member of the species Odocoileus virginianus.

(10) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(11) "Fully automatic firearm" means a firearm that fires more

than one (1) time with a single pull of the trigger.

(12) "License year" means the period from March 1 through the following last day of February.

(13) "Modern gun" means a rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15) "Shotshell" means ammunition containing more than one (1) projectile.

(16) "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(17) "Statewide deer hunting requirements" means the season dates, zone descriptions, bag limits, and other requirements and restrictions for deer hunting established in this administrative regulation.

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

(19) "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting.

(2) In lieu of a statewide deer permit or a license or permit that grants statewide deer hunting privileges, a person possessing a valid junior statewide hunting license shall not use more than two (2) junior deer hunting permits.

(3) An additional deer permit shall not be valid unless accompanied by a valid Kentucky hunting license and a statewide deer permit or a license or permit that grants statewide deer hunting privileges.

Section 3. Hunter Restrictions. (1) A deer hunter shall not:

(a) Take a deer except during daylight hours;

(b) Use dogs, except leashed tracking dogs to recover a wounded deer;

(c) Take a deer that is swimming;

(d) From a vehicle, boat, or on horseback, take a deer, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform; and

(e) Possess or use a decoy or call powered by electricity from any source.

(2) A deer hunter shall not take a deer with any device except a firearm, crossbow, or archery equipment as authorized by Section 5 of this administrative regulation.

(3) A person shall not use any of the following items to take a deer:

(a) Rimfire ammunition;

(b) A fully automatic firearm;

(c) A firearm with a magazine capacity greater than ten (10) rounds;

(d) Full metal jacketed ammunition;

(e) Tracer bullet ammunition;

(f) A shotshell containing more than one (1) projectile;

(g) An arrow or crossbow bolt without a broadhead;

(h) A broadhead smaller than seven-eighths (7/8) inch wide;

(i) A barbed broadhead;

(j) A crossbow without a working safety device;

(k) A chemically treated arrow;

(l) An arrow with a chemical attachment;

(m) Multiple projectile ammunition; or

(n) Any weapon that is not consistent with the appropriate season established in Section 5 of this administrative regulation.

Section 4. Hunter Orange Clothing Requirements. (1) During the modern gun deer season, muzzle-loader season, and any youth firearm season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(2) During an elk firearm season as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back, and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates. (1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern firearm statewide beginning the second Saturday in November for:

(a) Sixteen (16) consecutive days in Zones 1 and 2; and

(b) Ten (10) consecutive days in Zones 3 and 4.

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season in which a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide:

(a) From October 1 through the end of the third full weekend in October;

(b) From the second Saturday in November through December 31; and

(c) During any season in which a firearm may be used to take deer.

(5) A legal resident hunter sixty-five (65) years or older may hunt with a crossbow from the first Saturday in September through the third Monday in January.

(6) Youth firearm season. For two (2) consecutive days beginning on the second Saturday in October, a youth deer hunter:

(a) May take antlered or antlerless deer and shall use a legal method to do so; and

(b) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

(7) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth:

(a) Shall not be required to have a hunting license or deer permit;

(b) May take antlered or antlerless deer and shall use a legal method to do so; and

(c) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

Section 6. Zones. (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Green, Hardin, Harrison, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, McCracken, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Trigg, Trimble, Washington, Webster, and Woodford Counties.

(2) Zone 2 shall consist of Bourbon, Boyd, Carter, Fayette, Fleming, Grayson, Greenup,[~~Hardin,~~] Hart, Henderson, Jessamine, Lawrence, Lewis, Logan, Marion, Mason, McLean, Mercer, Muhlenberg, Nicholas, Ohio, Todd, and Union[~~, and Webster~~] Counties.

(3) Zone 3 shall consist of Adair, Allen, Barren, Bath, Boyle, Breckinridge, Butler, Casey, Clark, Cumberland, Daviess, Edmondson, Elliott, Estill, Hancock, Johnson, Lincoln, Madison,[~~Marion,~~] Meade, Metcalf, Monroe, Montgomery, Morgan, Powell, Rowan, Simpson, Taylor, Warren, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Garrard, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike, Pulaski, Rockcastle, Russell, Wayne, and Whitley Counties.

Section 7. Season and Zone Limits. (1) A person shall not take more than four (4) deer statewide in a license year except:

(a) As authorized in 301 KAR 2:111, 2:176, 2:178, and 3:100; and

(b) A person may take an unlimited number of antlerless deer in Zone 1 if the person has purchased the appropriate additional deer permits.

(2) A person shall not take more than one (1) antlered deer per license year, regardless of the permit type used, except as established in 301 KAR 2:111, 2:178, and 3:100.

(3) In Zone 3, a person may take two (2) deer with a firearm.

(4) In Zone 4, a person may take:

(a) Only two (2) deer with a firearm; and

(b) Only antlered deer during:

1. Modern firearm season;

2. Early muzzleloader season; and

3. The first six (6) days of the December muzzleloader season.

(5) The aggregate bag limit for Zones, 2, 3, and 4 shall be four (4) deer per hunter.

Section 8. Supervision of Youth Firearm Deer Hunters. (1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's firearm.

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

Section 9. Harvest Recording. (1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken:

(b) The date taken:

(c) The county where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log while the person is in the field during the current hunting season.

Section 10. Checking a Deer. (1) A person shall check a harvested deer by:

(a) Calling the toll free telecheck number at (800) 245-4263 or on the department's Web site at fw.ky.gov:

1. Before midnight on the day the deer is recovered; and

2. Prior to processing or removing the hide or head from the carcass;

(b) Providing the information requested by the automated check-in system; and

(c) Writing the confirmation number given by the system on the hunter's log authorized in Section 9 of this administrative regulation.

(2) If a hunter transfers possession of a harvested deer, the hunter shall attach to the carcass a hand-made tag that contains the following information:

(a) The confirmation number;

(b) The hunter's name; and

(c) The hunter's telephone number.

(3) A person shall not provide false information while:

(a) Completing the hunter's log;

(b) Checking a deer; or

(c) Creating a carcass tag.

Section 11. Transporting and Processing Deer. (1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken;

(c) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or an individual who commercially butchers deer shall not accept a deer carcass or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.

(3) An individual who commercially butchers deer shall keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain the records for a period of one (1) year.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: January 6, 2016

FILED WITH LRC: January 13, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016, 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 Way, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by February 29, 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) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes deer hunting seasons and zones, methods of take, bag limits, harvest recording procedures, and checking requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage for a long-term, sustainable, and healthy deer population in Kentucky while providing reasonable and ample recreational opportunity for deer hunters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and the methods to take wildlife. KRS 150.170 exempts certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits that are issued by the department. KRS 150.390 prohibits the taking of deer in any manner contrary to any provisions of Chapter 150 and Title 301 KAR.

(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 establishing the seasons, zones, limits, procedures, and requirements authorized by the statutes.

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

(a) How the amendment will change this existing administrative regulation: The amendment adjusts Hardin, Marion, and Webster Counties to a more liberal harvest zone. It also clarifies the definition of an antlered deer.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to increase doe harvest Hardin, Marion, and Webster Counties to a more liberal harvest zone. It also better defines the definition of an antlered deer.

(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: For the 2015 -16 deer season there were approximately 274,171 resident and 24,588 non-resident Kentucky deer hunters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters in Hardin and Webster Counties will have to abide by harvest restrictions for Zone 1. Hunters in Marion County will have to abide by the harvest restrictions for Zone 2.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The increase in doe harvest for Hardin, Marion and Webster Counties will slightly lower or maintain current deer numbers and thus balance the needs and desires of the hunting and non-hunting constituents of the counties.

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

(a) Initially: There will be no additional cost to the department to implement this administrative regulation.

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

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

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

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

(9) TIERING: Is tiering applied? No. All deer hunters are subject to the same seasons, bag limits, and zone requirements for hunting.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), KRS 150.170, KRS 150.175 and KRS 150.390(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Direct revenue from the sale of all deer permits is estimated to be between $3.5 and $4.0 million based on recent years' sales.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue during subsequent years is dependent on the number of permits sold, which has been stable to slightly decreasing in recent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

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

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

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

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

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

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

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

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

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

(8) "Wildlife management area" or "WMA" means a tract of land:

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

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

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

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

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

(a) During a quota hunt; or

(b) The Grayson Lake WMA open youth deer hunt.

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

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

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

(a) The Grayson Lake WMA open youth hunt;

(b) West Kentucky WMA firearms hunts; or

(c) Any WMA either-sex quota hunt.

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

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

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season;

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

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

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

(a) Attaching a tree stand or climbing a tree shall not use a:

1. Nail;

2. Spike;

3. Screw-in device;

4. Wire; or

5. Tree climber;

(b) May use a portable stand or climbing device that shall not injure a tree;

(c) 1. Shall not place a portable stand in a tree more than two (2) weeks before opening day; and

2. Shall remove it within one (1) week following the last day of each hunting period;

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

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

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

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

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

(b) One (1) assistant, who shall not be required to have applied for the quota hunt, may accompany a[~~mobility-impaired~~] hunter who was drawn to hunt, but shall check in and out as established in Section 5 of this administrative regulation.

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

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

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

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

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

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

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

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

(a) A deer quota hunt; and

(b) The no-hunt option.

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

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

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

(6) If applying as a party:

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

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

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

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

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

(a) The West Kentucky WMA firearms season;

(b) WMA quota hunts in Zone 1; and

(c) State Park quota hunts in Zone 1, except as established in Section 8[~~7~~] of this administrative regulation.

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

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

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

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

(3) Select:

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

(b) The no-hunt option;

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

(a) Electronic funds transfer;

(b) Visa Card;

(c) Master Card; or

(d) Discover Card;

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

(6) Not apply as a group of more than five (5) persons; and
(7) Not be eligible to participate in a quota hunt unless:
(a) Selected pursuant to this administrative regulation; or
(b) Accompanying a drawn[~~mobility-impaired~~] hunter.

Section 5. Quota Hunt Participant Requirements. Except as otherwise established in this administrative regulation, a person selected to participate in a quota hunt shall:
(1) Possess, unless exempted pursuant to KRS 150.170:
(a) A valid annual Kentucky hunting license; and
(b) A deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;
(2) Hunt on the assigned dates and in assigned areas selected by a random drawing of applicants if applicable;
(3) Comply with hunting equipment restrictions specified by the type of hunt;
(4) Check in at the designated check station prior to hunting:
(a) Either:
1. On the day before the hunt, between noon and 8 p.m. local time; or
2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and
(b) With documentation of the participant's:
1. Social Security number or draw confirmation number; and
2. Purchase of a current license or permit which allows or includes statewide deer hunting privileges;
(5) Check out at the designated check station:
(a) If finished hunting;
(b) If the hunter's bag limit is reached; or
(c) By 8 p.m. Eastern time on the final day of the hunt;
(6) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested;
(7) Be declared ineligible to apply for the next year's drawing if the hunter or the hunter's assistant fails to check out properly; and
(8) Comply with all species quota hunt requirements or be ineligible to apply for any quota hunt or no-hunt option for these species the following year.

Section 6. Wildlife Management Area Requirements. (1) Dr. Norman and Martha Adair WMA. The crossbow season shall be open pursuant to statewide requirements.
(2) Ballard WMA.
(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.
(b) On the main tract, the archery, crossbow, and youth firearm seasons shall be open pursuant to statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting.
(c) The crossbow, modern firearm, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements only on the 400 acre tract south of Sallie Crice Road.
(d) A hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.
(e) A quota hunt participant shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.
(3) Barren River WMA. The area shall be open pursuant to statewide requirements except that on the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt deer with a modern firearm.
(4) Beaver Creek WMA.
(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.
(b) The limit shall be one (1) antlered deer during the quota hunt.
(c) The crossbow season shall be open pursuant to statewide requirements.
(5) Big Rivers WMA.
(a) The[~~crossbow and~~] youth firearms season[~~seasons~~] shall be open pursuant to statewide requirements.[~~; and~~]
(b) The crossbow season shall be open pursuant to statewide requirements, except that it shall be closed during the archery and crossbow quota hunt as established in paragraph (d) of this subsection.
(c) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.
(d) There shall be an archery and crossbow quota hunt beginning the Monday following the second Saturday in October and continuing through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (c) of this subsection.
(6) Boatwright WMA. The area shall be open pursuant to statewide requirements, except that:
(a) On the Swan Lake Unit the archery and crossbow season shall be open pursuant to statewide requirements through October 14; and
(b) The October youth deer season shall be open pursuant to statewide requirements.
(7) Cedar Creek Lake WMA. The crossbow season shall be open pursuant to statewide requirements.
(8) Clay WMA.
(a) On the main tract, crossbow, muzzleloader, and youth firearm seasons shall be open pursuant to statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.
(b) The remainder of the WMA shall be open pursuant to statewide requirements for the archery, crossbow, muzzleloader, and youth seasons, except during the quota deer hunt.
(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.
(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in.
(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.
(9) Dewey Lake WMA.
(a) The crossbow and youth firearm seasons shall be open pursuant to statewide requirements.
(b) The use of firearms shall be prohibited for deer hunting on the:
1. Western side of the lake north of the Terry Boat Ramp; and
2. Eastern side of the lake, north of the ridge that begins across the lake from the Terry Boat Ramp, and extends eastward to the WMA boundary.
(c) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.
(d) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in December.
(e) There shall be a one (1) deer limit during the quota hunt.
(10) Dix River WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements.
(11) Fishtrap Lake WMA.
(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.
(b) The limit for the quota hunt shall be one (1) deer.
(c) The crossbow and youth firearm season shall be open pursuant to statewide requirements.
(12) Grayson Lake WMA.
(a) An open youth hunt shall:
1. Be the first Saturday in November for two (2) consecutive days; and
2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.
(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:
1. Travel through the WMA on an established public road; or
2. Use an area designated as open by signs.
(c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October.
(d) The crossbow hunt shall be from the first Saturday in September through the third Monday in January, except during the November open youth hunt.
(e) The statewide youth firearm season shall be open pursuant to statewide requirements.
(f) The December muzzleloader season shall be open pursuant

to statewide requirements.

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

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

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

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

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

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

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

(15) Higginson-Henry WMA.

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

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

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

(17) Kentucky River WMA.

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

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

(18) Kleber WMA.

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

(b) The quota hunts shall be for:

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

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

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

(19) Knobs State Forest WMA. The crossbow and youth seasons[~~season~~] shall be open pursuant to statewide requirements.

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

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

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

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

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

(23) Mill Creek WMA.

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

(b) The quota hunt shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) Paintsville Lake WMA.

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

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

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

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

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

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

(29) Peabody WMA.

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

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

(30) Pennyrile State Forest-Tradewater WMA.

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

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

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

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

(a) Shall not use a modern firearm;

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

(c) Shall not use a scope;

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

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

(32) Redbird WMA.

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

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

(33) Dr. James R. Rich WMA.

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

(b) The quota hunts shall be for:

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

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

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

(34) Robinson Forest WMA.

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

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

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

(36) Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth firearm seasons shall be open pursuant

to statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open pursuant to statewide requirements through the end of modern firearm season.

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

(37) South Shore WMA.

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

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

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

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

(40) Taylorsville Lake WMA.

(a) There shall be a quota hunt for:

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

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

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

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

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

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

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

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

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

(43) Veteran's Memorial WMA.

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

(b) There shall be a quota hunt for:

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

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

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

(44) West Kentucky WMA.

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

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

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

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

(e) The firearms season shall:

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

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

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

a. When finished hunting; or

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

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

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

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

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

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

(g) All persons shall check in daily at the designated check-in locations before entering the "A" tracts.

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

(i) A participant in the quota hunt or open firearms season shall:

1. Sign in for the hunting tract of his or her choice at check-in prior to each day's hunt; and

2. Except after noon, not hunt outside of that tract.

(45) Yatesville WMA.

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

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

(46) Yellowbank WMA. The crossbow and youth firearm deer seasons shall be open pursuant to statewide requirements.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of firearm hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) A state park shall be open to deer hunting as established in this subsection and Section 8 of this administrative regulation.

(a) Lake Barkley State Resort Park. Deer hunting shall be permitted on the second[~~first~~] Tuesday of January for two (2) consecutive days.

(b) Greenbo Lake State Resort Park. Deer hunting shall be permitted on the second[~~first~~] Tuesday of January for two (2) consecutive days.

(c) Green River Lake State Park.

1. Archery and crossbow deer hunting shall be permitted beginning the second Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be permitted beginning the third Thursday of December for four (4) consecutive days.

3. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.

(d) Yatesville Lake State Park. Muzzleloading firearm, archery, and crossbow deer hunting shall be permitted pursuant to statewide deer requirements on the second Monday of December for three (3) consecutive days.

(e) Jenny Wiley State Resort Park.

1. Deer hunting shall be permitted on the first[~~second~~] Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

5. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.

Section 8. State Park Deer Hunt Requirements. (1) Except for the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park, a person shall not hunt on a state park unless:

(a) Selected by a random drawing as established in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's hunting party; or

(c) The person was selected as part of a process administered

by the Department of Parks, pursuant to Section 7 of this administrative regulation.

(2) A person participating in a state park hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification;

(c) Check in:

1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the provisions of 301 KAR 2:172; and

(b) Check harvested deer daily at the designated park check station, except that deer taken in the Green River Lake State Park quota hunts and the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park shall be telechecked or checked in on the department's Web site at fw.ky.gov, pursuant to 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than two (2) deer in a quota hunt, only one (1) of which may be antlered;

(b) Hunt over bait;

(c) Injure a tree by using:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a firearm within 100 yards of a maintained road or building; or

(f) Hunt:

1. In an area posted as closed by signs; or

2. Outside park boundaries.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department administered state park quota hunt, may take up to two (2) bonus deer per hunt that shall not count toward the statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer per license year; and

(b) Obtains the valid bonus deer tag from the state park hunt administrators.

Section 9. Other Public Lands. (1) On Daniel Boone National Forest, Jefferson National Forest, and Land Between the Lakes, a person shall not use bait, feed, minerals, or other attractants.

(2) The areas established in paragraphs (a) through (g) of this subsection may schedule a firearm, crossbow, or archery deer hunting season between September 1 and January 31:

(a) Big South Fork National River and Recreation Area;

(b) Clark's River National Wildlife Refuge;

(c) Daniel Boone National Forest;

(d) Jefferson National Forest;

(e) Land Between the Lakes National Recreation Area;

(f) Ohio River Islands National Wildlife Refuge; and

(g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(4) At Land Between the Lakes, a person:

(a) Shall not take more than:

1. Two (2) deer during archery hunts; and

2. One (1) deer during quota hunts;

(b) Who is a quota deer hunter shall:

1. Apply in advance at Land Between the Lakes; and

2. Only hunt from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset; and

(c) Who harvests a deer shall:

1. Check in the carcass pursuant to U.S. Forest Service requirements; and

2. Affix a game check card pursuant to U.S. Forest Service requirements.

(5) At Reelfoot National Wildlife Refuge:

(a) Zone 1 bag limits shall apply during the open archery season;

(b) A person shall not take more than two (2) deer by firearm, only one (1) of which shall be antlered;

(c) A quota hunt participant shall:

1. Tag deer with a tag issued by the Refuge; and

2. Comply with the Refuge check-in requirements; and

(d) A person who is archery hunting shall:

1. Only take deer using the appropriate statewide or additional deer permit; and

2. Check harvested deer through the department's telephone or online check-in systems.

(6) At Otter Creek Outdoor Recreation Area:

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

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

(7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during odd-numbered years for mobility-impaired persons.

(8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during even-numbered years for mobility-impaired persons.

Section 10. Special Areas under Federal Control. (1) The areas established in paragraphs (a) through (e) of this subsection may schedule a firearm, archery, or crossbow deer hunting season between September 1 and January 31:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Hidden Valley Training Center; and

(e) Wendell Ford Regional Training Center.

(2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:

(a) Obtain a permit from the area before hunting;

(b) Only hunt on assigned dates;

(c) Remain in assigned areas;

(d) Tag deer with tags issued on the area, unless otherwise established in this section;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.

(5) At Fort Knox, a person shall not take an antlered deer whose outside antler spread is less than twelve (12) inches.

(6) At Hidden Valley Training Area, a person shall not use a firearm to hunt deer.

Section 11. Incorporation by Reference. (1) "Quota Hunt Application: Deer Quota Hunt Form", March 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky

40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: January 6, 2016

FILED WITH LRC: January 13, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016, 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 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 February 29, 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) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov**.**

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the deer hunting seasons, limits, and equipment restrictions under which deer may be taken on wildlife management areas, state parks, and other lands controlled by state or federal government agencies.

(b) The necessity of this administrative regulation: To establish deer hunting seasons, limits, and methods of taking deer to control and manage deer populations and hunting pressure on wildlife management areas, state parks, and other public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or its administrative regulations. KRS 150.620 authorizes the department to manage public lands for hunting and fishing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statute by establishing requirements for effectively managing deer herds on Wildlife Management Areas (WMAs), state parks, and other public lands, including the establishment of requirements to ensure safe, orderly hunting practices on public lands.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes youth firearm deer hunting opportunity on the Knobs State Forest and WMA, opens the Grayson Lake WMA for the late muzzleloader season, increases the deer bag limit on Higginson-Henry WMA, reduces archery deer hunting pressure during October and November on the Big Rivers WMA, creates the ability for drawn quota hunters to bring an assistant (or a non-hunting youth observer) along on their hunt, and adjusts for calendar shifts in the Lake Barkley and Greenbo Lake State Resort Park (and January Jenny Wiley State Resort Park Mobility-impaired hunt), and the January Taylorsville Lake WMA Quota Deer Hunts.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maximize hunter opportunity without harm to the deer resource.

(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: For the 2014-15 deer season, there were 271,812 resident and 21,568 non-resident Kentucky deer hunters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt deer on WMAs and state parks must comply with the individual hunt requirements for those sites, as listed in the fall hunting guide produced by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to hunters as a result of this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Deer hunters will benefit from the increased hunting opportunities that will be created and also from the expansion (and improvement) of existing opportunity.

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

(a) Initially: There will be no additional cost to the agency to implement this regulation.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not used because all persons who hunt deer on WMAs, state parks, or other public lands are required to abide by these guidelines.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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' Wildlife and Law Enforcement Divisions will be affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 148.029(5), 150.025(1), 150.390(1) and 150.620.

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

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

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

for the first year.

(d) How much will it cost to administer this program for subsequent years? There will no additional costs 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:

NEW ADMINISTRATIVE REGULATIONS

GENERAL GOVERNMENT CABINET
Board of Nursing
(Repealer)

201 KAR 20:271. Repeal of 201 KAR 20:270 and 201 KAR 20:290.

RELATES TO: KRS 314.111
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: The content of 201 KAR 20:270 and 201 KAR 20:290 are being moved to other administrative regulations. Therefore, this administrative regulation repeals 201 KAR 20:270 and 201 KAR 20:290.

Section 1. The following administrative regulations are hereby repealed:
(1) 201 KAR 20:270, Programs of nursing site visits; and
(2) 201 KAR 20:290, Standards for prelicensure registered nurse and practical nurse secondary sites.

GAIL WISE, President
APPROVED BY AGENCY: December 11, 2015
FILED WITH LRC: January 7, 2016 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2016 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 end of day, (11:59 p.pm), February 29, 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 repeals 201 KAR 20:270 and 201 KAR 20:290.
(b) The necessity of this administrative regulation: The two repealed administrative regulations are no longer needed. The relevant content has been moved to other administrative regulations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: By repealing unneeded regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By repealing unneeded regulations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: N/A
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There is no additional cost.
(b) On a continuing basis: There is no additional cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is needed.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
(c) How much will it cost to administer this program for the first year? No additional cost.
(d) How much will it cost to administer this program for subsequent years? No additional cost.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of January 11, 2016

Members: Senators, Julie Raque-Adams; Perry Clark, Ernie Harris, Alice Forgy Kerr and Representatives Marylou Marzian, Tommy Turner.

LRC Staff: Sarah Amburgey, Ange Bertholf, Emily Caudill, Betsy Cupp, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

Guests: Leanne Diakov, Board of Medical Licensure; Ava Eaves, Nicole Biddle, Board of Licensure and Certification for Dietitians and Nutritionists,; Brian Judy, Board of Licensure for Pastoral Counselors; Steve Beam, Karen Waldrop, David Wicker, Department of Fish and Wildlife; Sean Alteri, William Gooch, Division for Air Quality; Amy Barker, Renee Craddock, Jamie Mosley; Department of Corrections; Laura Begin, Paula Goff, Jeremy Hart, Department for Public Health; Emily Anderson, Stephanie Brammer Barnes, Robert Brawley, Maria Dalbey, Department for Public Health; Stephanie Hold, Jill Lee, John McGuire, Office of the Inspector General.

Administrative Regulations Reviewed by the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Medical Licensure: Board

201 KAR 9:470. Standardized medical order for scope of treatment form. Leanne Diakov, 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 citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 2 to establish that it shall be acceptable and prevailing medical practice for a licensee to use the standardized MOST, Medical Orders for Scope of Treatment form; and (4) to amend Section 3 to incorporate by reference the standardized MOST, Medical Orders for Scope of Treatment form. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure and Certification for Dietitians and Nutritionists: Board

201 KAR 33:015. Application; approved programs. Ava Eaves, chair, and Nicole Biddle, assistant attorney general, represented the board.

201 KAR 33:020. Renewals.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify that there was an exception to the expiration of a license or certificate in Section 2 for a late renewal within the grace period; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to clarify that this administrative regulation applied to the renewal of a license and a certificate; (3) to amend Section 5 to establish: (a) that the requirement to update an address change also applied to a certificate holder; and (b) a notification requirement for changes to other contact information, such as a change of name, email, or phone number; (4) to amend Section 6 to update the edition dates of the Renewal Application and Reinstatement Application; and (5) to update the material incorporated by reference to correct citations and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 33:030. Continuing education requirements for licensees and certificate holders.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to clarify how to report continuing education credit hours for authorship of a scholarly publication if there is only one (1) author; (2) to amend Section 7 to establish that the board's decision to grant an extension or a waiver of continuing education requirements shall be based upon the verification document signed by a licensed physician; (3) to amend Section 8 to clarify what constitutes past due continuing education requirements; and (4) to amend Sections 1, 2, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Pastoral Counselors: Board

201 KAR 38:070. Renewal of licenses and continuing education. Brian Judy, assistant attorney general, represented the board.

In response to questions by Co-Chair Harris, Mr. Judy stated that this administrative regulation applied to licensed counselors with a faith-based education and background. Most had a master's degree in pastoral counseling or a related degree. Licensees were ordained and provided counseling with or without a fee.

Senator Kerr stated that this administrative regulation was the result of a bill that she sponsored. Pastoral counselors usually had extensive training, and this program allowed them to apply for applicable insurance coverage.

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 the administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:122. Seasons, methods, and limits for small game. Steve Beam, wildlife division director, and David Wicker, general counsel, represented the department.

301 KAR 2:221 & E. Waterfowl seasons and limits.

In response to a question by Co-Chair Marzian, Mr. Beam stated that this administrative regulation and 301 KAR 2:222 were filed as emergency administrative regulations because the season was already in progress. These administrative regulations were based on the federal framework, which was not final until the season had already begun.

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

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. Sean Alteri, director, represented the division.

In response to a question by Co-Chair Harris, Mr. Alteri stated that in 2000 U.S. EPA required new motor vehicles to have on-board emissions control; therefore, emissions control at individual gasoline dispensing devices was no longer as necessary.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7, 9, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Class D and Class C Felons

501 KAR 2:020. Definitions for 501 KAR Chapter 2. Amy Barker, assistant general counsel, represented the department. Renee Craddock, executive director, and Jamie Mosley, Laurel County jailer, represented the Kentucky Jailers' Association.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) include regional jails in the definition of "jail"; and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 2:060. Procedures for housing of Class D and Class C felons.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 8, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Full-service Facilities

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) revise the definition of "jail" to include regional jails; and (2) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:020. Administration; management.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:030. Fiscal management.

501 KAR 3:040. Personnel.

In response to a question by Senator Raque Adams, Ms. Barker stated that this administrative regulation impacted twenty (20) jails and required some increased staffing, which may increase costs. Additionally, thirteen (13) jails would be required to reorganize staffing schedules.

501 KAR 3:050. Physical Plant.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 8 and 9 to clarify waiver and exemption procedures; (2) to amend Section 12 to adjust the minimum: (a) number of bathrooms required for diversion holding areas; and (b) space requirements for multipurpose rooms in conformity with the Jail Construction, Expansion, and Renovation Guidelines; (3) to amend Section 15 and the construction guidelines to update references to the Kentucky Building Code; and (4) to amend Sections 1, 3, 6, 10, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:060. Security; control.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:070. Safety; emergency procedures.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:080. Sanitation; hygiene.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:090. Medical services.

In response to a question by Co-Chair Marzian, Ms. Craddock stated that nurses could not prescribe, but could disburse, medication. The jail facility to which the prisoner was transferred would do a medical assessment upon the prisoner's arrival. Because that assessment may result in different prescription medication, the prescription medication limit deletion reduced waste. Mr. Mosley stated that this administrative regulation was being amended to delete the requirement that a three (3) day supply of prescription medication was required if a prisoner was transferred to another facility.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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.

501 KAR 3:100. Food services.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:140. Prisoner rights.

In response to a question by Co-Chair Harris, Ms. Barker stated that a prisoner in transit from one (1) facility to another was not entitled to a phone call because of security risks. This did not affect phone call rights before or after the transit period. Ms. Craddock stated that this requirement conformed to the corresponding federal prohibition against a phone call during transit for security reasons. Transporters who transported prisoners for the state and federal government would then have one (1) standard requirement.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:160. Training.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Restricted Custody Center Facilities

501 KAR 7:010. Definitions for 501 KAR Chapter 7.

In response to a question by Co-Chair Harris, Mr. Mosley stated that 501 KAR Chapter 7 addressed restricted custody center facilities, which were a separate inmate housing area within a larger jail facility.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:020. Administration; management.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:030. Fiscal management.

In response to a question by Co-Chair Harris, Ms. Barker stated that the audits were performed by the county auditor's office.

501 KAR 7:050. Physical plant.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 8, 9, and 11 to clarify waiver and exemption procedures; and (2) to amends Sections 1, 3, 6, 10, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:070. Safety; emergency procedures.

In response to a question by Senator Clark, Ms. Barker stated that a backup generator, while not necessarily available in the restricted custody area, may still be available in the larger jail facility. Mr. Mosley stated that, depending on the size of the jail facility, a backup generator may be available in the jail even if not specifically in the restricted custody area.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

501 KAR 7:080. Sanitation; hygiene.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Life Safety Facilities

501 KAR 13:010. Life safety issues.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Maternal and Child Health: Maternal and Child Health

902 KAR 4:030. Newborn screening program. Laura Begin, regulation coordinator; Paula Goff, branch manager; and Jeremy Hart, MD, laboratory services division director, represented the division.

Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:200. Tuberculosis (TB) testing for residents in long-term care settings. Emily Anderson, TB program manager; Stephanie Brammer – Barnes, regulation coordinator; Robert Brawley, MD, infectious disease branch chief; and Maria Dalbey, TB program nurse, represented the division.

In response to questions by Co-Chair Harris, Dr. Brawley stated that these administrative regulations were being amended upon request by the division's long – term care facility partners. The changes were not significant, but the previous versions were not thoroughly enforced; therefore, facilities needed time to comply with these 2005 requirements from the Centers for Disease Control.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 12 to increase the time for compliance from ninety (90) days to 180 days after the effective date of the administrative regulation; and (3) to amend Section 14 to delete the TB-4, Kentucky Department for Public Health Tuberculosis (TB) Risk Assessment form. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:205. Tuberculosis (TB) testing for health care workers.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 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.

Division of Audits and Investigations: Controlled Substances

902 KAR 55:015. Schedule I substances. Stephanie Brammer – Barnes, regulation coordinator; Stephanie Hold, acting inspector general; Jill Lee, pharmacist consultant; and John McGuire, manager, represented the division.

In response to a question by Senator Clark, Mr. McGuire stated that the division worked with law enforcement using national trends to develop these administrative regulations. Senator Clark stated that synthetic cannabinoids, unlike the natural counterpart, were dangerous and needed to be classified.

In response to a question by Co-Chair Harris, Mr. McGuire stated that controlled substances administrative regulations often lagged regarding synthetic drugs such as Flakka because synthetic drug makers could easily reformulate to avoid enforcement as a controlled substance. These administrative regulations were being reorganized to reduce synthetic drug makers' ability to avoid regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 3 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 55:020 & E. Schedule II substances.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7: (a) for clarity; and (b) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 55:025. Schedule III substances.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 55:030. Schedule IV substances.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 55:035. Schedule V substances.

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 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.

The following administrative regulations were deferred to the February 8, 2016, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Purchasing

200 KAR 5:021. Manual of policies and procedures.

GENERAL GOVERNMENT CABINET: Board of Licensed Diabetes Educators: Board

201 KAR 45:110. Supervision and work experience.

201 KAR 45:130. Continuing education.

TRANSPORTATION CABINET: **Department of Vehicle Regulation**: **Division of Driver Licensing**: **Administration**

601 KAR 2:030 & E. Ignition interlock.

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.

Department for Medicaid Services: 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.

907 KAR 1:835. Michelle P. waiver services and reimbursements.

Division of Community Alternatives: Supports for Community Living Waiver

907 KAR 12:010. New Supports for Community Living Waiver Service and coverage policies.

907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver Services.

The Subcommittee adjourned at 1:40 p.m. until February 8, 2016, at 2 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 REVIEW ON HEALTH AND WELFARE
December 16, 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 December 16, 2015, having been referred to the Committee on December 2, 2015, pursuant to KRS 13A.290(6):

201 KAR 2:220
201 KAR 21:015
201 KAR 22:020
201 KAR 22:040
201 KAR 22:070
201 KAR 25:011
201 KAR 25:021
201 KAR 25:031
201 KAR 26:121
201 KAR 26:175
201 KAR 26:200
201 KAR 32:025
201 KAR 32:035
201 KAR 32:045
201 KAR 32:060
900 KAR 6:055
900 KAR 6:090
910 KAR 1:240

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 16, 2015 meeting, which are hereby incorporated by reference.

SENATE STANDING COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS
Meeting of January 12, 2016

The following administrative regulation was available for consideration and placed on the agenda of the Senate Standing Committee on Licensing, Occupations, and Administrative Regulations for its meeting of Tuesday, January 12, 2016, having been referred to the Committee on January 6, 2016, pursuant to KRS 13A.290(6):

201 KAR 19:087

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 regulation is reflected in the minutes of the Tuesday, January 12, 2016 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **H - 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 **H - 14**

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 **H - 26**

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 **H - 27**

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 before being printed in Register
**** Emergency expired after 180 days
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	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		
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900 KAR 2:050		
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900 KAR 5:020		
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900 KAR 7:030		
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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		
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902 KAR 10:021		
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902 KAR 10:022*(r)*	2468	9-4-15
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902 KAR 20:320		
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902 KAR 20:400		
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902 KAR 45:011*(r)*	2469	9-4-15
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902 KAR 45:130		
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907 KAR 1:350		
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907 KAR 10:830	2182	See 42 Ky.R.
907 KAR 15:080	2507	See 42 Ky.R.
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908 KAR 2:230		
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921 KAR 3:070		
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SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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13 KAR 2:045		See 41 Ky.R.
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31 KAR 4:180E		See 41 Ky.R.
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101 KAR 2:210E	1084	9-15-15
103 KAR 3:030E	1996	12-7-15
103 KAR 3:040E	2007	12-7-15
105 KAR 1:145E	2017	12-3-15
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
Replaced	1466	12-4-15
201 KAR 11:175E	236	6-29-15
Replaced	1468	12-4-15
201 KAR 11:235E	238	6-29-15
Replaced	1473	11-13-15
201 KAR 11:240E	240	6-29-15
Replaced	1475	12-4-15
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
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201 KAR 35:055E	1100	8-25-15
201 KAR 35:060E	1102	8-25-15
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301 KAR 2:222E	1701	11-3-15
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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
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787 KAR 2:040E	6	5-21-15
804 KAR 4:015E	256	6-23-15
804 KAR 4:400E	258	6-23-15
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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
906 KAR 1:190E	2022	11-20-15
921 KAR 3:060E		See 41 Ky.R.
Replaced	1214	11-6-15
921 KAR 3:070E		See 41 Ky.R.
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921 KAR 3:090E		7-2-15

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11 KAR 16:060		
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16 KAR 2:110		
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16 KAR 9:040		
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31 KAR 4:180		See 41 Ky.R.
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105 KAR 1:145	2293	
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SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the *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 to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

‡ - Pursuant to KRS 13A.320(e), this indicates a technical change was made to this administrative regulation during the promulgation process.

Regulation Number	Amendment Date
13 KAR 2:025	7/15/2015
101 KAR 3:015	9/21/2015
‡ 103 KAR 3:040	1/21/2016
805 KAR 1:100	8/20/2015

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