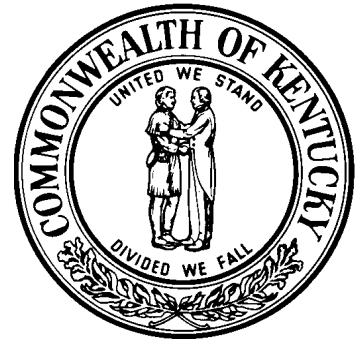


# ***ADMINISTRATIVE REGISTER OF KENTUCKY***



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 42, NUMBER 9  
TUESDAY, MARCH 1, 2016

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

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#### **MEETING NOTICE: ARRS**

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet March 7, 2016, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **2467-2468** of this Administrative Register.

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

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

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

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**VOLUME 42, NUMBER 9 – MARCH 1, 2016**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, MARCH 7, 2016, at 1:00 p.m., Room 149 Capitol Annex**

**FINANCE AND ADMINISTRATION CABINET  
Teachers' Retirement System**

**General Rules**

- 102 KAR 1:060. Refunds.
- 102 KAR 1:070. Application for retirement.
- 102 KAR 1:320. Qualified domestic relations orders.

**Department of Revenue**

- 103 KAR 3:030 & E. Property and severance forms manual. ("E" expires 6/4/2016.)(Deferred from February)

**Kentucky Retirement Systems**

**General Rules**

- 105 KAR 1:370. Kentucky Retirement Systems personnel policies.

**GENERAL GOVERNMENT CABINET  
Board of Pharmacy**

**Board**

- 201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).

**Real Estate Commission**

**Real Estate Commission**

- 201 KAR 11:350. Seller's disclosure of property conditions form. (Not Amended After Comments)

**Board of Nursing**

**Board**

- 201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.
- 201 KAR 20:271. Repeal of 201 KAR 20:270 and 201 KAR 20:290.
- 201 KAR 20:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.
- 201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.
- 201 KAR 20:320. Standards for curriculum of prelicensure nursing programs.
- 201 KAR 20:340. Students in prelicensure registered nurse and practical nurse programs.
- 201 KAR 20:350. Educational facilities and resources for prelicensure registered nurse and practical nurse programs.
- 201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.
- 201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

**Board of Prosthetics, Orthotics, and Pedorthics**

**Board**

- 201 KAR 44:050. Per diem of board members.
- 201 KAR 44:080. Renewals.
- 201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013.
- 201 KAR 44:100. Inactive status.
- 201 KAR 44:110. Licensure by endorsement.
- 201 KAR 44:120. Post residency registration.

**Board of Licensed Diabetes Educators**

**Board**

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

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

**Game**

- 301 KAR 2:132. Elk quota hunts, elk depredation permits, landowner cooperator permits, and voucher cooperator permits.
- 301 KAR 2:172. Deer hunting seasons, zones, and requirements.
- 301 KAR 2:178. Deer hunting on wildlife management areas, state parks, other public lands, and federally controlled areas.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Driver Licensing**

**Administration**

- 601 KAR 2:030 & E. Ignition interlock. ("E" expires 3/31/2016) (Amended After Comments) (Deferred from January)

**COMMUNITY AND TECHNICAL COLLEGE SYSTEM  
Kentucky Fire Commission**

**Commission on Fire Protection Personnel Standards and Education**

- 739 KAR 2:100. Volunteer firefighter requirements. (Deferred from February)
- 739 KAR 2:110. Acceptance of out of state and military training and service. (Deferred from February)
- 739 KAR 2:120. Notification of merger or splitting of volunteer fire districts. (Deferred from February)
- 739 KAR 2:130. Thermal vision grant application process. (Deferred from February)

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**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Community Alternatives**

**Medicaid Services**

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

**Division of Policy and Operations**

**Medicaid Services**

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

907 KAR 1:835. Michelle P. waiver services and reimbursements. (Amended After Comments)(Deferred from December)

**Occupational, Physical, and Speech Therapy**

907 KAR 8:005. Definitions for 907 KAR Chapter 8. (Deferred from February)

**Division of Community Alternatives**

**Supports for Community Living Waiver**

907 KAR 12:010. New Supports for Community Living Waiver Service and coverage policies. (Amended After Comments)(Deferred from December)

907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver Services. (Not Amended After Comments)(Deferred from December)

**REMOVED FROM MARCH 2016 AGENDA**

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems**

**General Rules**

105 KAR 1:145 & E. Voluntary cessation of participation by employers. ("E" expires 6/29/2016) (Comments Received, SOC ext.)

**GENERAL GOVERNMENT  
Board of Medical Licensure**

**Board**

201 KAR 9:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. (Not Amended After Comments) (Deferred from February)

**Board of Social Work**

**Board**

201 KAR 23:070. Qualifying education and qualifying experience under supervision. (Comments Received)

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections**

**Office of the Secretary**

501 KAR 6:030. Kentucky State Reformatory. (Deferred from February)

**PUBLIC PROTECTION CABINET  
Office of Occupations and Professions  
Board of Home Inspectors**

**Board**

815 KAR 6:010. Home inspector licensing requirements and maintenance of records. (Comments Received)

815 KAR 6:040. Home inspector preclicensing providers. (Comments Received)

815 KAR 6:080. Continuing education provider. (Comments Received)

815 KAR 6:090. Procedures for complaints and administrative hearings. (Comments Received)

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

**Health Services and Facilities**

902 KAR 20:091. Facilities specifications, operation and services; community mental health center. (Amended After Comments) (Deferred from May)

**Health Services and Facilities**

902 KAR 20:275. Mobile health services. (Comments Received, SOC ext.)

**Office of Inspector General**

906 KAR 1:190 & E. Kentucky national background check program. ("E" expires 6/16/2016) (Comments Received, SOC ext.)

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

**Occupational, Physical, and Speech Therapy**

907 KAR 8:040. Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities. (Comments Received, SOC ext.)

907 KAR 8:045. Reimbursement of occupational therapy, physical therapy, and speech-language pathology provided by various entities. (Comments Received, SOC ext.)

**Department for Behavioral Health, Developmental and Intellectual Disabilities  
Division for Behavioral Health**

**Mental Health**

908 KAR 2:065. Community transition for individuals with serious mental illness. (Comments Received)

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

**Filing and Publication**

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

**Public Hearing and Public Comment Period**

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

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

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

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

**Review Procedure**

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

**VOLUME 42, NUMBER 9 – MARCH 1, 2016**  
**EMERGENCY ADMINISTRATIVE REGULATIONS**

None

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary  
(As Amended at ARRS, February 8, 2016)

200 KAR 5:021. Manual of policies and procedures.

RELATES TO: KRS Chapter 45A  
STATUTORY AUTHORITY: KRS 45A.045(2)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

Section 1. A state agency shall follow the procurement requirements in the Finance and Administration Cabinet Manual of Policies and Procedures.

Section 2. Incorporation by Reference. (1) "Finance and Administration Cabinet Manual of Policies and Procedures", [(revised February 2016 ~~July 2015~~), (January 2006)] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of Policy and Audit, Policy Branch, Room 493[468], Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the Finance and Administration Cabinet's Web site, [www.finance.ky.gov/services/policies/Pages/default.aspx](http://www.finance.ky.gov/services/policies/Pages/default.aspx).

Lori Flanery, Secretary

APPROVED BY AGENCY: November 12, 2015

FILED WITH LRC: November 13, 2015 at 11 a.m.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, Department of Revenue, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, February 8, 2016)

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 ~~submitting to~~[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. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. ~~That is~~[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 ~~the APRN's~~[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 44.] 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.

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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.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Licensed Diabetes Educators  
(As Amended at ARRS, February 8, 2016)**

**201 KAR 45:130. Continuing education.**

RELATES TO: KRS 309.337, **309.339**

STATUTORY AUTHORITY: KRS 309.331

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.337 requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for

licensed diabetes educators.

Section 1. Accrual of Continuing Education Hours. (1)(a) The annual continuing education accrual period shall be from November 1 of each year to October 31 of the next year.

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

(2) More than fifteen (15) hours of continuing education shall not be carried over into the next continuing education period.

(3) It shall be the responsibility of each licensee to finance the costs of continuing education.

Section 2. Methods of Acquiring Continuing Education Hours.

(1) Continuing education hours for license renewal shall be applicable to diabetes and presented at a professional level that enhances the quality and effectiveness of diabetes self-management education.

(2) A licensee shall obtain continuing education courses from any of the following continuing education providers or programs approved by the providers:

- (a) American Association of Diabetes Educators (AADE);
- (b) American Diabetes Association (ADA);
- (c) Academy of Nutrition and Dietetics (AND);
- (d) Accreditation Council for Pharmacy Education (ACPE);
- (e) Accreditation Council for Continuing Medical Education (ACCME-AMA);
- (f) American Nurses Credentialing Center (ANCC);
- (g) American Academy of Family Physicians (AAFP);
- (h) American Academy of Nurse Practitioners (AANP);
- (i) American Academy of Optometry (AAO);
- (j) American Academy of Physician Assistants (AAPA);
- (k) American Association of Clinical Endocrinologists (AACE);
- (l) American College of Endocrinology (ACE);
- (m) American College of Sports Medicine (ACSM);
- (n) American Medical Association (AMA) or its Kentucky affiliate;
- (o) American Nurses Association (ANA);
- (p) American Occupational Therapy Association (AOTA);
- (q) American Physical Therapy Association (APTA);
- (r) American Psychological Association (APA);
- (s) Commission on Dietetic Registration (CDR);
- (t) Council on Continuing Medical Education (CCME-AOA);
- (u) Council on Podiatric Medical Education (CPME-APMA);
- (v) International Diabetes Federation (IDF);
- (w) National Association of Clinical Nurse Specialists (NACNS);
- (x) National Association of Social Workers (NASW);
- (y) Kentucky Board of Nursing (KBN);
- (z) Kentucky Board of Pharmacy;
- (aa) Kentucky Board of Medical Licensure; or
- (bb) Kentucky Nurses Association (KNA).

Section 3. Recordkeeping of Continuing Education Hours. (1) A licensee shall maintain a record of all continuing education courses attended for at least two (2) years after attending the course.

(2) Appropriate documentation to be kept shall include:

- (a) Proof of attendance;
- (b) Date of activity;
- (c) Description of activity;
- (d) Total hours of instruction, excluding breaks; and
- (e) Names and professional qualifications of the presenters.

(3)(a) Each licensee shall sign a statement on the Renewal Application form incorporated by reference in 201 KAR 45:120, indicating compliance with the continuing education requirements.

(b) A license shall not be renewed without the licensee signing this sworn statement.

Section 4. Reconsideration. (1) A licensee may request the board to reconsider its denial of a continuing education course. The request shall be filed[by filing a written request] with the board in writing.

(2)(a) A licensee shall file the request for reconsideration pursuant to KRS Chapter 13B within thirty (30) calendar days of notification of the denial.

(b) The request will be reviewed by the board at its next regularly scheduled meeting.

Section 5. Auditing of Continuing Education. (1) In January following the renewal period, the board shall annually conduct a random audit of up to fifteen (15) percent of licensees and permit holders from the preceding renewal period.

(2) Each licensee or permit holder selected for audit shall submit documentation of completion of continuing education units from the preceding renewal period to the board within forty-five (45) days of the date of the request.

(3) A licensee or permit holder who fails to comply with the audit request or the continuing education requirements shall be subject to the disciplinary action established in this subsection.

(a) For the first offense, the licensee or permit holder shall be fined fifty (50) dollars.

(b) For the second offense, the licensee or permit holder's license or permit shall be suspended for thirty (30) days.

1. The licensee or permit holder shall have thirty (30) days to submit proof of completion of the continuing education requirements established in Section 1 of this administrative regulation.

2. If the licensee or permit holder does not comply with subparagraph 1. of this paragraph, the licensee or permit holder's license or permit shall expire[disciplinary action, which may include fines, suspension, or revocation of the license or permit].

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: October 21, 2015

FILED WITH LRC: October 21, 2015 at 3 p.m.

CONTACT PERSON: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5380.

#### PUBLIC PROTECTION CABINET

##### Horse Racing Commission

(As Amended at ARRS, February 8, 2016)

**811 KAR 2:190. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund.**

RELATES TO: KRS 138.510, 230.215, 230.225, 230.443, 230.445

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.445

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.215 and 230.260 authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.445 establishes the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund and requires the commission to promulgate administrative regulations to carry out the purpose of the statute and to administer the development fund in a manner to promote and aid in the development of the horse industry in Kentucky; upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of purses and payments in these races.

Section 1. Definitions. (1) "Broodmare" means a mare that conceives and carries her genetic foal to term.

(2) "Donor mare" means the mare from which an embryo is harvested for the purpose of performing an embryo transfer.

(3) "Fund" means the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund established by KRS 230.445.

(4) "Historical horse race handle" means monies wagered at a licensed Kentucky association on historical horse races as defined in 811 KAR 2:010, Section 1(37).

(5) "Inter-state wagering" means monies wagered at a Kentucky racing association on Quarter Horse, Paint Horse, Appaloosa, or Arabian races conducted outside of Kentucky.

(6) "Intra-state wagering" means monies wagered at a Kentucky racing association on Quarter Horse, Paint Horse, Appaloosa, or Arabian races conducted at another Kentucky association.

(7) "Kentucky bred" means ~~for purposes of this administrative regulation,~~ a horse that meets the requirements of this administrative regulation and is:

(a) A Quarter Horse registered with the American Quarter Horse Association, or its successor;

(b) An Appaloosa registered with the Appaloosa Horse Club, or its successor;

(c) An Arabian registered with the Arabian Horse Association Registry, or its successor; or

(d) A Paint Horse registered with the American Paint Horse Association, or its successor.

(8) "Live racing handle" means the monies wagered by individuals present on association grounds on Quarter Horse, Paint Horse, Appaloosa, or Arabian races physically conducted on that association's grounds.

(9) "Mare" means a broodmare, donor mare, or recipient mare.

(10) "Nonlive racing handle" means the monies wagered at an association located in Kentucky on Quarter Horse, Paint Horse, Appaloosa, or Arabian races not physically conducted on that association's grounds.

(11) "Recipient mare" means a mare of any breed **who:**

**(a) Is** implanted with an embryo from a donor mare;

**(b) [as defined by this administrative regulation, and who] Carries the non-genetic foal to term; and**

**(c) Is; A recipient mare shall be** implanted with an electronic horse identification microchip that accurately identifies the horse and is compliant with international standards ISO 11784.

Section 2. Advisory Committee. The fund advisory committee shall consist of five (5) members, all of whom shall be Kentucky residents, to be appointed by the chairman of the commission by July 1 of each year. The committee shall consist of the following:

(1) One (1) member of the commission;

(2) One (1) officer or director of a licensed racing association in Kentucky conducting Quarter Horse, Paint Horse, Appaloosa, or Arabian racing;

(3) One (1) owner of a horse nominated to the fund;

(4) One (1) owner of a mare registered with the fund; and

(5) One (1) member of the Kentucky Quarter Horse Racing Association recommended by that organization's board of directors.

Section 3. Mare Eligibility. (1) In order for a foal to be eligible to earn money from the fund, the broodmare or both the donor and recipient mares shall be registered with the fund on or before February 15 of the year of conception. Late registration may be made on or before June 15 of the year of conception as provided by subsection (3) of this section.

(2) In order to be eligible to be registered with the fund, a mare, whether a broodmare, donor mare, or recipient mare, shall reside in Kentucky continuously from conception or embryo transfer implantation until foaling unless one (1) of the **[following] exceptions established in this subsection** is met. **Is:**

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the owner of the mare desires to have an expert located outside of Kentucky conduct the procedure;

2. The owner of the mare files with the commission a Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky no later than fourteen (14) days after the mare leaves Kentucky and provides

information related to the procedure as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky, other than the time during which she is traveling to and from Kentucky;

5. The mare returns to Kentucky following the medical procedure for which her departure was authorized; and

6. The mare is in Kentucky for foaling and documentation establishing that fact to the satisfaction of the commission is provided;

(b) Racing.

1. The owner of the mare desires to race the mare in a sanctioned pari-mutuel race held outside of Kentucky;

2. The owner of the mare files with the commission a Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the race outside of Kentucky as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare returns to Kentucky within ten (10) days after the running of the approved race; and

5. The mare is in Kentucky for foaling and documentation establishing that fact to the satisfaction of the commission is provided; or

(c) Auction.

1. The owner of the mare desires to enter her for sale at a catalogued auction for her breed held outside of Kentucky;

2. The owner of the mare files with the commission a Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the auction as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare returns to Kentucky no later than thirty (30) days after the auction; and

5. The mare is in Kentucky for foaling and documentation establishing that fact to the satisfaction of the commission is provided.

**(3)(d)** The owner of a mare approved to leave the state under **subsection (2) of this section shall [this subsection is required to] provide the commission with written notification of the mare's return within forty-eight (48) hours of her return.**

**(4)(3)** A mare shall be registered with the fund by:

(a) Completing and filing with the commission a Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Mare Registration Form;

(b) Providing the commission with a photocopy of the mare's official breed registration papers from the American Quarter Horse Association, American Paint Horse Association, Appaloosa Horse Club, the Arabian Horse Association Registry, or The Jockey Club or their respective successors, or documentation regarding a recipient mare's electronic horse identification microchip; and

(c) Paying the registration fee as follows:

1. A twenty-five (25) dollar fee for registrations postmarked no later than February 15 of the year of conception; or

2. A \$200 late fee for registrations postmarked no later than June 15 of the year of conception.

**(5)(3.)** Registration postmarked after June 15 of the year of conception shall not be accepted.

Section 4. Nomination. (1) Except as set forth in subsection **(5)(4)** of this section, in order for a horse to be eligible to earn money from the fund, it shall be a Kentucky bred as defined in this administrative regulation and it shall be nominated to the fund on or before December 31 of its yearling year by:

(a) Completing and filing with the commission a Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Nomination Form;

(b) Providing the commission with a photocopy of the horse's official breed registration papers from the American Quarter Horse Association, American Paint Horse Association, Appaloosa Horse Club, or the Arabian Horse Association Registry, or their respective successors; and

(c) Paying the nomination fee as follows:

1. A twenty-five (25) dollar fee for nominations postmarked no later than December 31 of the weanling year; or
2. A \$100 late fee for nominations postmarked no later than December 15 of the yearling year.

(2)/(3.7) Except as provided in subsection (5)/(4) of this section, nominations postmarked after December 15 of the yearling year shall not be accepted.

(3)/(2) In order for a foal that is the product of an embryo transfer to be eligible to earn monies from the fund, the donor mare and the recipient mare shall be registered as provided in Section 3 of this administrative regulation and shall meet the other requirements of this administrative regulation.

(4)/(3) If a registered donor mare produces more than one (1) foal in one (1) breeding season, two (2) genetic foals may be nominated to the fund as determined by the owner of the donor mare.

(5)/(4) A horse born in 2016 or before shall be eligible to be nominated to the fund and to participate in races offering monies from the fund. A horse shall be nominated by:

(a) Completing and filing with the commission a Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Nomination Form;

(b) Paying a nomination fee of \$300; and

(c) Including the following with the nomination form:

1. A photocopy of the official breed registration papers from the American Quarter Horse Association, American Paint Horse Association, Appaloosa Horse Club, or the Arabian Horse Association Registry, or their respective successors;
2. Registration papers showing ownership and demonstrating that the horse was foaled in Kentucky;
3. An official breed registry shipped semen report or a stallion breeders certificate demonstrating that the horse was conceived in Kentucky; and
4. A signed affidavit from the owner of the mare at the time of her pregnancy stating that the mare resided in Kentucky during the entirety of her pregnancy.

(6)/(5) Nothing in this section shall prevent a registered mare from being eligible to race for monies from the fund.

Section 5. Monies Earned. (1) One (1) live association.

(a) Live racing handle. An association conducting live racing shall earn monies to be deposited in the fund account for that association in the amount of one (1) percent of the total live racing handle pursuant to KRS 138.510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn monies to be deposited in the fund account for that association in the amount of two (2) percent of the total non-live racing handle pursuant to KRS 138.510(2).

(2) More than one (1) live association. Unless there is a commission approved agreement among the associations conducting live racing to the contrary, if two (2) or more associations are conducting live Quarter Horse, Paint Horse, Appaloosa, or Arabian races on the same day, the monies earned from the handle for that day shall be divided as established in this subsection. [follows:]

(a) Live racing handle. An association conducting Quarter Horse, Paint Horse, Appaloosa, or Arabian races shall earn monies to be deposited in the fund account for that association in the amount of one (1) percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) The intra-state wagering monies shall be allocated to that association on which the wagering is placed for purposes of calculating that association's fund earnings.

(c) Inter-state wagering monies originating from an association conducting live Quarter Horse, Paint Horse, Appaloosa, or Arabian races shall be allocated to that association for purposes of calculating that association's fund earnings.

(d) Inter-state wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live races.

(3) Historical horse race handle. An association offering wagering on historical horse races shall earn monies to be deposited in the fund account for that association as provided in KRS 138.510(1).

Section 6. Distribution of Funds. (1) Each association shall submit a request to the advisory committee, including the proposed races eligible to receive monies from the fund and the proposed purse structure for those races, at least forty-five (45) days prior to the opening day of the live racing meet.

(2) Unless there is a commission approved proposal to the contrary, the proposed purse structure shall not exceed the total dollars generated by that breed to the association's fund account.

(3) The advisory committee shall review the proposed eligible races and purse structure and make a recommendation whether to approve the proposed races and purse structure to the commission based upon the best interests of Kentucky racing.

(4) Two (2) or more associations conducting Quarter Horse, Paint Horse, Appaloosa, or Arabian racing may request permission from the advisory committee to combine their respective fund monies to supplement purses at one (1) of the associations. The advisory committee shall recommend to the commission whether to approve the request.

Section 7. Reconciliation. (1) Each association shall file with the commission a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report. These reports shall be filed weekly.

(2) Each association shall report to the commission the actual purse distribution no later than fifteen (15) calendar days after the last day of a live race meeting.

(3) The commission shall on a monthly basis reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits.

(4) If, at the close of a live race meet, an association has a balance of monies earned for that meet, which has not been distributed in actual fund purse distribution, then the association may choose one (1) of the following options to distribute the remaining balance, subject to the recommendation of the advisory committee and the approval of the commission:

(a) Use fund monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use fund monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) If, at the close of a live race meet, an association offering wagering on historical horse races has a balance of fund monies earned from historical horse race wagers, which has not been distributed in actual fund purse distribution, then the association may choose one (1) of the following options to distribute a portion of the balance, subject to the recommendation of the advisory committee and the approval of the commission:

(a) Use the historical horse race fund monies previously earned to supplement purses at future live racing meets held by that association;

(b) Use historical horse race fund monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations; or

(c) Use historical horse race fund monies previously earned to supplement purses at another licensed Kentucky racetrack.

(6) Reasonable and customary administrative charges for time spent reconciling the account may be charged to each association by the commission based on the percentage of funds generated by each association for the previous calendar year.

(7) Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to reimbursement of any funds.

Section 8. Consent to Investigate. The filing of a registration

form shall authorize the advisory committee and commission to investigate and verify information provided by the applicant, including conducting site visits to verify the residency of a registered mare.

Section 9. Penalties. (1) An applicant who provides incorrect, false, or misleading information concerning the registration of a mare or the nomination of a foal or horse, or who violates this administrative regulation in any other manner shall be subject to the following penalties:

- (a) A fine of not more than \$5,000;
- (b) Denial or revocation of the registration of the mare or the nomination of the foal or horse with the fund; or
- (c) A bar from registering mares to the fund or from being eligible to receive monies from the fund for a period of one (1) to five (5) years, based on the seriousness of the violation.
- (2) In addition to the penalties provided in subsection (1) of this section, a second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant from being eligible to register mares with the fund or to receive monies from the fund.

(3) In addition to the penalties provided in subsection (1) of this section, the commission may deny or revoke the registration of a mare or nomination of a foal or horse or the purse money earned by the foal or horse if the applicant is charged or convicted of a crime, offense, or other criminal or civil violation involving cruelty, mistreatment, abuse, or neglect of any horse. A person charged, but not convicted of any crime, offense, or other criminal or civil violation as provided in this subsection may petition the commission for reinstatement. The commission shall reinstate the registration or purse upon submission of proof satisfactory to the commission that the charges were dismissed and the facts forming the basis of the charges were false.

(4) The advisory committee may recommend, and the commission may impose, one (1) or more of the penalties provided in subsection (1) of this section.

(5) Any penalty imposed under this section shall be subject to appeal and adjudication in accordance with 811 KAR 2:105 and KRS Chapter 13B.

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

- (a) "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Mare Registration Form", [F] KHRC 190-1, 12/15;
- (b) "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Nomination Form", [F] KHRC 190-2, 12/15; and
- (c) "Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund Application to Move Mare Outside of Kentucky", KHRC 190-3, 12/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at <http://khrc.ky.gov>. ["Donor mare" means the mare from which an embryo is harvested for the purpose of performing an embryo transfer.

(2) "Kentucky bred" means a horse that meets the other requirements of this administrative regulation and is:

- (a) A quarter horse or appaloosa, whose sire is a quarter horse, appaloosa, or thoroughbred currently registered with the KQHAADF;
- (b) A quarter horse or appaloosa whose dam is a quarter horse, appaloosa, or thoroughbred currently registered with the KQHAADF; or
- (c) An Arabian whose sire and dam are Arabians currently registered with the KQHAADF.
- (3) "Kentucky Quarter Horse, Appaloosa, and Arabian Development Fund" or "KQHAADF" means the trust and revolving fund established by KRS 230.445.
- (4) "Kentucky Quarter Horse Racing Association Stallion

Auction" means the auction of stallion seasons offered by the Kentucky Quarter Horse Racing Association.

Section 2. Advisory Committee. (1) The proposed distribution of money for KQHAADF funded races shall be reviewed and addressed annually, not later than December 31 of each calendar year, by an advisory committee consisting of at least one (1) representative of each of the following:

- (a) The racing commission;
- (b) The licensed racing associations in Kentucky that host quarter horse, appaloosa, or Arabian racing;
- (c) The owner of a stallion registered with the KQHAADF, that resides in Kentucky;
- (d) The owner of a mare registered with the KQHAADF, that resides in Kentucky; and
- (e) One member of the Kentucky Quarter Horse Racing Association that resides in Kentucky, selected by that organization's board of directors.

(2) The final determination regarding the distribution of money from the KQHAADF shall be made by the commission.

Section 3. Stallion Eligibility. (1) In order for a stallion's progeny to be eligible to earn KQHAADF money, the stallion shall be registered with the KQHAADF on or before December 31 of the year prior to the breeding year.

(2) In order to be eligible to be registered with the KQHAADF, a stallion shall:

- (a) Be domiciled in Kentucky continuously from its first cover of the breeding season until its last cover of the breeding season; or
- (b) Have a breeding season purchased through the Kentucky Quarter Horse Racing Association Stallion Auction.
- (3) If a KQHAADF registered stallion leaves Kentucky to breed a mare, his registration for that year shall be revoked and his progeny shall not be eligible to register with the KQHAADF.
- (4) A stallion shall be registered with the KQHAADF by:
  - (a) Completing and filing with the commission a Quarter Horse/Appaloosa/ Arabian Stallion Registration, KHRC 190-1 (5/11); and
  - (b) Paying a registration fee of \$100.

Section 4. Broodmare Eligibility. (1) In order for a broodmare's progeny to be eligible to earn KQHAADF money, the broodmare shall be registered with the KQHAADF on or before December 31 of the year prior to the breeding year.

(2) In order to be eligible to be registered with the KQHAADF, a broodmare shall be domiciled in Kentucky continuously from December 31 of the year prior to the breeding year until delivery of her foal.

- (3) A broodmare shall be registered with the KQHAADF by:
  - (a) Completing and filing with the commission a Quarter Horse/Appaloosa/Arabian Broodmare Registration, KHRC 190-2 (2/11); and
  - (b) Paying a registration fee of twenty-five (25) dollars.
- (4) Broodmares that have competed in a race during the breeding year and are registered with the Kentucky Quarter Horse Racing Association as racing stock shall be registered as breeding stock prior to being bred. The registration shall be accompanied by a registration fee of twenty-five (25) dollars.

Section 5. Racing Stock Nomination. (1) Except as set forth in subsection (3) of this section, in order for racing stock to be eligible to earn KQHAADF money, it shall be nominated to the KQHAADF on or before December 31 of its three (3) year-old year by:

- (a) Completing and filing with the commission a Quarter Horse/Appaloosa/Arabian Racing Stock Nomination, KHRC 190-3 (2/11); and
- (b) Paying a nomination fee of twenty-five (25) dollars if nominating as a weanling, fifty (50) dollars if nominating as a yearling, or \$100 if nominating as a two (2) or three (3) year-old.
- (2) Foals that are the product of an embryo transfer may be nominated to the KQHAADF if the recipient mare is domiciled in Kentucky as set forth in Section 4 of this administrative regulation. If a donor mare produces more than one (1) foal in a breeding

season, only the first born foal may be nominated to the KQHAADF.

(3) Until December 31, 2012, racing stock of any age shall be eligible to be nominated to the KQHAADF and to participate in races, a part of the purse for which is provided by money from the KQHAADF. A horse shall be nominated by:

(a) Completing and filing with the commission a Quarter Horse/Appaloosa/Arabian Racing Stock Nomination, KHRC 190-3 (2/11);

(b) Paying a nomination fee of fifty (50) dollars; and

(c) Including the following with the nomination:

1. DNA parentage verification;

2. Registration papers showing ownership and demonstrating that the horse was foaled in Kentucky;

3. An American Quarter Horse Association shipped semen report or a stallion breeders certificate demonstrating that the horse was bred in Kentucky; and

4. Mare pregnancy verification and care records from a licensed veterinarian showing that the dam was domiciled in Kentucky during the entirety of her pregnancy.

Section 6. Kentucky Quarter Horse Racing Association Stallion Auction. (1) A stallion not domiciled in Kentucky continuously from its first cover of the breeding season until its last cover of the breeding season shall become eligible to be registered with the KQHAADF if its ownership donates one (1) breeding season to the Kentucky Quarter Horse Racing Association Stallion Auction and that breeding season is sold at the auction. The eligibility shall pertain only to the year in which the breeding season is donated.

(2) A breeding season shall bring no less than fifty (50) percent of its advertised value in order to sell at the stallion auction.

(3) Any foal that is the result of breeding an eligible mare with a stallion that had a breeding season purchased through the Kentucky Quarter Horse Racing Association Stallion Auction Program shall be eligible to be nominated to the KQHAADF, if all other criteria described in this administrative regulation are satisfied.

Section 7. Compliance. (1) The commission shall be the official registrar for the KQHAADF.

(2) Questions as to eligibility, registration, nomination, or breeding of a Kentucky bred horse shall be decided exclusively by the commission.

(3) The commission may demand and inspect the records pertaining to any horse registered with or nominated to the KQHAADF and may conduct on-site visits to verify the domicile of the horse.

(4) Any person who knowingly fails to disclose or knowingly falsifies any information required in the registration process for the KQHAADF may be disqualified and excluded from participation in the fund.

Section 8. Distribution of Funds. (1) At least forty-five (45) days prior to the opening day of the live racing meet, each association offering quarter horse, appaloosa, or Arabian racing shall submit to the advisory committee established by Section 2 of this administrative regulation:

(a) The conditions and rules for KQHAADF funded races for the upcoming year; and

(b) A plan for the distribution of funds for KQHAADF funded races for the upcoming year.

(2) The advisory committee shall review the proposed conditions, rules, and plan for distribution of funds for KQHAADF funded races and make a recommendation to the commission regarding approval based upon the best interests of Kentucky racing.

(3) At one (1) of its scheduled meetings, the commission shall, based upon the advice of the advisory committee:

(a) Approve the conditions and rules for the KQHAADF funded races;

(b) Approve the distribution of funds for KQHAADF funded races for the upcoming year; and

(c) Authorize expenditures at a time it designates.

(4) The racing dates for KQHAADF funded races shall be issued after the track has established its race dates.

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

(a) "Quarter Horse/Appaloosa/Arabian Stallion Registration", KHRC 190-1, 2/11;

(b) "Quarter Horse/Appaloosa/Arabian Broodmare Registration", KHRC 190-2, 5/11; and

(c) "Quarter Horse/Appaloosa/Arabian Racing Stock Nomination", KHRC 190-3, 2/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site, [www.khrc.ky.gov](http://www.khrc.ky.gov).]

ROBERT M. BECK, JR., Chairman

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: December 1, 2015

FILED WITH LRC: December 3, 2015 at 3 p.m.

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## CABINET FOR HEALTH AND FAMILY SERVICES

### Department for Medicaid Services

#### Division of Community Alternatives

(As Amended at ARRS, February 8, 2016)

### 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(4) 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:

(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)[(4)] "Advanced practice registered nurse[practitioner]" or "APRN[ARNP]" is defined by KRS 314.011(7)[means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042].

(7)[(6)] "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 non-duplicative[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)[(24)] "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 include:

1. [including] Orthopedically prescribed devices or other devices, surgical dressings or bandages, or protective helmets;~~or~~

2. Other methods that involve the physical holding of a person for the purpose of:

a. 1.] Conducting routine physical examinations or tests;

b. 2.] Protecting the person from falling out of bed; or

c. 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)][(34)] "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 participant's~~[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)~~~~(44)~~ "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 choose~~[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 report required~~[by/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. The~~[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 participant~~[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 participant~~[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) 1. Shall:~~

~~a. Prior to hiring an individual, f:~~

~~1. Shall] obtain:~~

~~(i) The results [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;~~

~~(ii) [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; and~~

~~(iii) [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~~

~~b. [d.] 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

(g) 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 participant or participant's[recipient or recipient's] 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) 1. Fiscal reports regarding services provided, service records regarding services provided, and incident reports regarding services provided. These reports shall be retained:

a. [4.] At least six (6) years from the date that a covered service is provided; or

b. [2.] For a minor, three (3) years after the recipient reaches the age of majority under state law, whichever is longest.

**2. If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in subparagraph 1. of this paragraph, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.**

(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, Waiver Services Physician's Recommendation; MAP 109, Plan of Care/Prior Authorization for Waiver Services; ~~f, j~~ 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;

5.[4.] Include respite care services pursuant to paragraph (g) of this subsection;

6.[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-language pathologist;
- l. A certified social worker;
- m. A licensed clinical social worker;
- n. A nutritionist;
- o.[n.] A health aide;
- p.[e.] 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.[(f)] 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 services[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 be 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 Consumer Directed Option (CDO)/Participant [-]/Directed Services (PDS);

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 Consumer Directed Option (CDO)/Participant [-]/Directed Services (PDS) 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 threatens or intimidates[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 for an immediate termination as provided in subsection (7) of this section if a participant is to be terminated[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 Consumer Directed Option (CDO)/Participant [-]/Directed Services (PDS) 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 Consumer Directed Options/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 excluded from providing services in accordance with Section 2(3)(q) of this administrative regulation[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)(1) 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)(a) and (b) 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 ~~if provided that~~ the determination confirms that the individual is ~~still~~ eligible for HCB waiver services version 2.

(3)(a) The provisions and requirements established in this administrative regulation shall become null and void at the time that the next level-of-care determination has been performed regarding each participant currently receiving services via this administrative regulation.

(b) Next level-of-care determinations shall occur in accordance with 907 KAR 7:010, Section 4(2)[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

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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 Consumer Directed Option (CDO)Participant ~~[Consumer]~~ Directed Services (PDS)Option (CDO)", June 2015[2007, edition];~~

~~(k) "MAP-10, Waiver Services Physician's Recommendation", June 2015[August 2014][March 2007 edition]; and~~

~~(l) Kentucky Consumer Directed Options/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.

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

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Community Alternatives (As Amended at ARRS, February 8, 2016)

#### 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 payment 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)[(40)] "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)[(41)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.~~

~~(11)[(42)] "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).~~

~~(12)[(14)](15) "Occupational therapy assistant" is defined by KRS 319A.010(4).~~

~~(13)[(15)] "Participant" means a recipient who meets the:  
(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 1:160, Section 4[of this administrative regulation].~~

~~(14)[(16)] "Physical therapist" is defined by KRS 327.010(2).~~

~~(15)[(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.~~

~~(16)[(18)] "Quality improvement organization" or "QIO" is defined in 42 C.F.R. 475.101.~~

~~(17)[(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).~~

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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 limit/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 <u>Rate</u> 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 31, not to exceed \$4,000 per calendar year)	1 hour
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 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 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 meets[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 DD ADHC 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 a participant~~[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)(a) The provisions and requirements established in this administrative regulation shall become null and void at the time that the next level-of-care determination has been performed regarding each participant currently receiving services via this administrative regulation.
- (b) Next level-of-care determinations shall occur in accordance with 907 KAR 7:010, Section 4(2)~~[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.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Community Alternatives**  
**(As Amended at ARRS, February 8, 2016)**

**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 (K-HAT).

(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(4).~~

(11) ~~"Center for independent living" is defined by 42 U.S.C. 796a(1).~~

~~(12) ~~"Certified nutritionist" is defined by KRS 310.005(12).~~~~

~~(13) ~~"Certified social worker" means an individual who meets the requirements established in KRS 335.080.~~~~

~~(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.~~

~~(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.~~

~~(16) ~~"DAIL" means the Department for Aging and Independent Living.~~~~

~~(17) ~~"DCBS" means the Department for Community Based Services.~~~~

~~(18) ~~"Department" means the Department for Medicaid Services or its designee.~~~~

~~(19) ~~"Electronic signature" is defined by KRS 369.102(8).~~~~

~~(20) ~~"Experimental goods or services" means goods or services that are serving the ends of or used as a means of experimentation.~~~~

~~(21) ~~"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.~~

~~(22) ~~"Extended family member" means a relative of an individual by blood or marriage beyond the individuals included in the definition of "immediate family member."~~~~

~~(23) ~~"Home and community based waiver services" or "HCB waiver services" means home and community based waiver services:~~~~

~~(a) Covered by the department pursuant to this administrative regulation; and~~

~~(b) For individuals who meet the requirements of Section 4 of this administrative regulation.~~

~~(24) ~~"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.~~

~~(25) ~~"Home delivered meal provider" means a food service establishment as defined by KRS 217.015(21).~~~~

~~(26) ~~"Home health agency" means an agency that is:~~~~

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

~~(b) Medicare and Medicaid certified.~~

~~(27) ~~"Illicit drug" means:~~~~

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

~~(b) A prohibited drug.~~

~~(28) ~~"Immediate family member" is defined by KRS 205.8451(3).~~~~

~~(29) ~~"Informed choice" means a choice among options based on accurate and thorough knowledge and understanding to the participant regarding:~~~~

~~(a) The services and supports to be received; and~~

~~(b) From whom services and supports will be received.~~

~~(30) ~~"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 and/who provides care to the child;~~

~~2. Is the guardian of a minor child and/who provides care to the child; or~~

~~3. Is a spouse of a participant.~~

~~(31) ~~"Licensed clinical social worker" means an individual who meets the requirements established by KRS 335.100.~~~~

~~(32) ~~"Licensed dietitian" is defined by KRS 310.005(11).~~~~

~~(33) ~~"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.~~

~~(34) ~~"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.~~

~~(35) ~~"Licensed social worker" means an individual who meets the requirements established by/in KRS 335.090.~~~~

~~(36) ~~"MWMA [portal]" means the Kentucky Medicaid Waiver Management Application internet portal located at http://chfs.ky.gov/dms/mwma.htm.~~~~

~~(37) ~~"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.~~~~

~~(38) ~~"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.~~

~~(39) ~~"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 meets the:

~~(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.

~~(44)~~~~(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.

**(45)~~(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 and 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.**

~~(46)~~~~(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:

**1.** Orthopedically prescribed devices or other devices, surgical dressings or bandages, or protective helmets;~~[f.]~~ or

**2.** Other methods that involve the physical holding of a person for the purpose of:

**a.**~~[1.]~~ Conducting routine physical examinations or tests;

**b.**~~[2.]~~ Protecting the person from falling out of bed; or

**c.**~~[3.]~~ Permitting the person to participate in activities without the risk of physical harm.

~~(47)~~~~(48)~~~~(42)~~ "Physician assistant" or "PA" is defined by KRS 311.840(3).

~~(48)~~~~(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.

~~(49)~~~~(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).~~

~~(50)~~~~(51)~~~~(45)~~ "Public health department" means an agency

recognized by the Department for Public Health pursuant to 902 KAR Chapter 8.

~~(51)~~~~(52)~~~~(46)~~ "Recipient" is defined by KRS 205.8451(9).

~~(52)~~~~(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.

~~(53)~~~~(54)~~~~(48)~~ "Representative" is defined by KRS 205.5605(6).

~~(54)~~~~(55)~~~~(49)~~ "Service advisor" is defined by KRS 205.5605(7).

~~(55)~~~~(56)~~~~(50)~~ "Sex crime" is defined by KRS 17.165(1).

~~(56)~~~~(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).

~~(57)~~~~(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 version 2, 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 of this administrative regulation 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. 902 KAR 20:081 if the provider is a home health agency; and

6. This administrative regulation;

(b) Shall not enroll a participant for whom the provider cannot provide HCB waiver services;

(c) Shall choose[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 and service records regarding services provided; and
- ~~3. Critical; and~~ incident reports regarding services provided.

(b) A case record shall:

1. Be maintained in the MWMA ~~portal~~;
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 critical 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) 1. Fiscal reports regarding services provided, service records regarding services provided, and critical incident

reports ~~[regarding services provided]~~ shall be retained:

a.[1.] At least six (6) years from the date that a covered service is provided unless the participant is a minor; or

b.[2.] If the participant is a minor, the longer of:

(i)[a.] Three (3) years after the participant reaches the age of majority under state law; or

(ii)[b.] Six (6) years from the date that a covered service is provided.

**2. If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in subparagraph 1. of this paragraph, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.**

(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;

(a) At least:

(a) once every twelve (12) months; ~~and/or~~

(b) More often if there is[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 documentation of eligibility [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 personal[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 current version of the Dietary Guidelines for Americans published by United States Department of Agriculture and the United States Department of Health and Human Services;
- (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, on behalf of the participant, 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 excluded from providing services in accordance with Section 2(3)(k) of this administrative regulation~~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 Consumer Directed Options Participant ~~[-J]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 ~~(c)~~~~(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 Consumer Directed Option (CDO) Participant ~~[-J]Directed Services (PDS)~~~~[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 Consumer Directed Option (CDO) Participant ~~[-J]Directed Services (PDS)~~~~[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 Consumer Directed Option (CDO)/Participant ~~[-]~~Directed Services (PDS)/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 the:
    - 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 Consumer Directed Option (CDO)/Participant ~~[-]~~Directed Services (PDS)/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 PDS/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 appropriate~~[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; and

2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;

(g)1. Include the participant's participation, 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; and

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 incident 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 ~~if [provided that]~~ the determination confirms that the individual is ~~[still]~~ eligible for HCB waiver services version 2.

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 ~~[4]~~ 2015;
- (e) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;
- (f) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant ~~[-]~~ Directed Services (PDS)", June 2015;
- (g) ~~["MAP-10, Waiver Services Physician's Recommendation", June 2015;~~
- ~~{h}]~~ "Kentucky Consumer Directed Options/Participant ~~[-]~~ Directed Services Employee/Provider Contract", June 2015; and
- ~~{h}{#}]~~ "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.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Community Alternatives**  
**(As Amended at ARRS, February 8, 2016)**

**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.~~

~~(2)](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.~~

~~(3)](4)] "Department" means the Department for Medicaid Services or its designee.~~

~~(4)](5)] "Fixed upper payment limit" means the maximum amount the department shall reimburse per unit.~~

~~(5)](6)] "HCB" means home and community based waiver.~~

~~(6)](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.~~

~~(7)](9)] "Recipient" is defined by KRS 205.8451(9).~~

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 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 <u>except for specialized respite, which shall be \$10.00 per unit for Level II</u>	Fifteen (15) minutes	200 units per week
Specialized respite	\$4.00 per unit <u>for Level I; \$10.00 per unit for Level II</u>	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 per participant.

(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 provider's/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>.

**VOLUME 42, NUMBER 9 – MARCH 1, 2016**

LISA LEE, Commissioner

VICKI YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 14, 2016

FILED WITH LRC: January 14, 2016 at 4 p.m.

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

**VOLUME 42, NUMBER 9 – MARCH 1, 2016**

**ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS**

NONE



## PROPOSED AMENDMENTS

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)**

**103 KAR 3:010. General Administrative Forms Manual.**

RELATES TO: KRS 42.470, 61.870-61.884, 64.012, 131.010(9), 131.020, 131.030, 131.041, 131.051, 131.061, 131.081, 131.110, 131.130, 131.150, 131.155, 131.170, 131.181, 131.183, 131.190, 131.240, 131.340, 131.500, 131.510(1), (2)(a), (2)(b), 131.530, 131.540, 132.020, 132.130-132.160, 132.180, 132.190, 132.200, 132.220, 132.227, 132.230, 132.260, 132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.330, 133.240, 134.420, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 138.448, 138.885, 139.185, 139.200, 139.240, 139.330, 139.390, 139.550, 141.0401(5),(6), 141.050(4), 141.210, 141.235, 141.340(2), 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 155.170, 160.613-160.617, 160.6154(3), 205.745, 209.160, 224.1-310(1), 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

Section 1. Administrative - Required Forms. (1) Revenue Form 10A001, Request to Inspect Public Records, shall be completed by the public to request access to public records specified on the form.

(2) Revenue Form 10A020, Waiver of Appeal Rights, shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(3) Revenue Form 10A070, Authorization Agreement for Electronic Funds Transfer, shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment for taxes.

(4) Revenue Form 10A071, EFT Bank Change, shall be completed by taxpayers who are registered as EFT ACH Debit filers to notify the department of a bank account change.

(5) Revenue Form 10A100(P), Kentucky Tax Registration Application and Instructions, shall:

(a) Be used by taxpayers to voluntarily apply for tax registration of the following accounts:

1. Employer's Kentucky withholding tax;
2. Corporation income tax;
3. Sales and use tax;
4. Consumer's use tax;
5. Motor vehicle tire fee;
6. Transient room tax;
7. Limited liability entity tax;
8. Utility Gross Receipts License tax;
9. Telecommunications tax;
10. Coal severance and processing tax; or
11. Coal Seller/Purchaser Certificate ID Number; and

(b) Provide the department the necessary information to properly register the taxpayer for all applicable tax accounts, including the legal business name, federal employer identification number (FEIN), address and other demographic information for the business, and each responsible party's information including full name, social security number, and residential address.

(6) Revenue Form 10A100-CS(P), Kentucky Tax Registration Application and Instructions, shall:

(a) Be sent by the department's Division of Registration and Data Integrity to non-compliant taxpayers for the taxpayers to apply for tax registration of the following accounts:

1. Employer's Kentucky withholding tax;
2. Corporation income tax;
3. Sales and use tax;
4. Consumer's use tax;
5. Motor vehicle tire fee;
6. Transient room tax;
7. Limited liability entity tax;
8. Utility Gross Receipts License tax;
9. Telecommunications tax;
10. Coal severance and processing tax; or
11. Coal Seller/Purchaser Certificate ID Number; and

(b) Provide the department the necessary information to properly register the taxpayer for all applicable tax accounts, including the legal business name, federal employer identification number (FEIN), address and other demographic information for the business, and each responsible party's information including full name, social security number, and residential address.

(7) Revenue Form 10A104, Update or Cancellation of Kentucky Tax Account(s), shall:

(a) Be used by the taxpayer to update business information or to cancel accounts for the following taxes:

1. Employer's Kentucky withholding tax;
2. Corporation income tax;
3. Sales and use tax;
4. Consumer's use tax;
5. Motor vehicle tire fee;
6. Transient room tax;
7. Limited liability entity tax;
8. Utility Gross Receipts License tax;
9. Telecommunications tax; or
10. Coal severance and processing tax; and

(b) Provide the department the necessary information to properly update and maintain demographic information of the business for all applicable tax accounts, including the legal business name, federal employer identification number (FEIN), address and other demographic information for the business, and each responsible party's information including full name, social security number, and residential address.

(8) Revenue Form 10A104-I, Instructions Update or Cancellation of Kentucky Tax Account(s), shall provide instructions for the proper completion of Revenue Form 10A104.

(9) Revenue Form 10A106, Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax, shall be used to establish a taxpayer administrator and authorized users for use of the Kentucky Online Tax System.

(10) Revenue Form 10A2000, Request for Return/Information, shall be used to request information from the disclosure office as an inter-agency request or as a request from an outside agency.

(11) Revenue Form 10F060, Electronic Funds Transfer Program: ACH Credit Guide, shall provide information on the specific requirements of the Department of Revenue's Credit Method of tax remittance for the Electronic Funds Transfer Program.

(12) Revenue Form 10F061, Electronic Funds Transfer Program: Debit Guide, shall provide instructions to the taxpayer on how to authorize the Department of Revenue to electronically debit a taxpayer controlled account in an Automated Clearing House participating financial institution for the amount which the taxpayer reports to the state's data collection service.

(13) Revenue Form 10F100, Your Rights As a Kentucky

Taxpayer, shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133, and 134.

(14) Revenue Form 12A012, Receipt of Seized Property, shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(15) Revenue Form 12A018, Kentucky Department of Revenue Offer in Settlement Application, shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectability or doubt as to liability.

(16) Revenue Form 12A104, Notice of Seizure, shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the Commonwealth.

(17) Revenue Form 12A107, Notice of Sale, shall be presented to the owner of seized property, published in the newspaper with the highest circulation for that area, and posted at the courthouse, at three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(18) Revenue Form 12A109-1, Release of Bank Levy, shall be presented to the bank on which the levy was served for the purpose of releasing the seized property.

(19) Revenue Form 12A109-2, Release of Levy, shall be presented to the party on which the levy was served for the purpose of releasing the seized property.

(20) Revenue Form 12A109-3, Release of Levy, shall be presented to the party on which the levy was served for the purpose of releasing the seized property related to child support.

(21) Revenue Form 12A110, Release of Levy on Wages, Salary, and Other Income, shall be presented to an employer for the purpose of releasing a wage levy.

(22) Revenue Form 12A110-1, Release of Levy on Wages, Salary, and Other Income, shall be presented to an employer for the purpose of releasing a wage levy related to child support.

(23) Revenue Form 12A500, Certificate of Partial Discharge of Tax Lien, shall be presented to anyone who makes a proper application for a lien release on a specific piece of property if the Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(24) Revenue Form 12A501, Certificate of Subordination of Kentucky Finance and Administration Tax Lien, shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(25) Revenue Form 12A502, Application for Certificate of Subordination of Kentucky Tax Lien, shall be presented to anyone who requests to have the Department of Revenue subordinate its lien position to a new mortgage.

(26) Revenue Form 12A503, Application for Specific Lien Release, shall be presented to anyone who requests that the Department of Revenue release its tax lien so that a specific piece of property may be sold.

(27) Revenue Form 12A504, Personal Assessment of Corporate Officer or LLC Manager, shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(28) Revenue Form 12A505, Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager, shall be presented to the corporate officers or LLC managers for the purpose of entering into a payment agreement to pay the trust taxes owed to the Commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers or LLC managers.

(29) Revenue Form 12A506, Waiver Extending Statutory Period for Collection, shall be presented to the taxpayer for the purpose of extending the period in which the liability may be collected.

(30) Revenue Form 12A507, Table for Figuring the Amount Exempt From Levy on Wages, Salary, and Other Income, shall be

presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(31) Revenue Form 12A508-1, Notice of Tax Due, shall be presented for the purpose of assessing an officer of a corporation who is personally liable for trust taxes owed to the Commonwealth.

(32) Revenue Form 12A508-2, Notice of Tax Due, shall be presented for the purpose of assessing an officer of a corporation who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(33) Revenue Form 12A508-3, Notice of Tax Due, shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for trust taxes owed to the Commonwealth.

(34) Revenue Form 12A508-4, Notice of Tax Due, shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(35) Revenue Form 12A514, Questionnaire for Persons Relative to a Notice of Assessment, shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(36) Revenue Form 12A517, Notice of Lien, shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(37) Revenue Form 12A517-1, Notice of Child Support Lien, shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(38) Revenue Form 12A517-2, Notice of Lien, shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(39) Revenue Form 12A517-3, Notice of Lien, shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(40) Revenue Form 12A517-4, Notice of Lien, shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(41) Revenue Form 12A518, Certificate of Release of Lien, shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(42) Revenue Form 12A518-1, Certificate of Release of Child Support Lien, shall be presented to the county clerk and to the taxpayer against whom the child support lien is filed for the purpose of releasing the lien and notifying the obligor of the release.

(43) Revenue Form 12A518-2, Certificate of Release of Lien, shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(44) Revenue Form 12A518-3, Certificate of Release of Lien, shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(45) Revenue Form 12A518-4, Certificate of Release of Lien, shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(46) Revenue Form 12A638, Statement of Financial Condition for Individuals, shall be presented to individuals requesting to make

payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(47) Revenue Form 12A638(I), Instructions for Completing Statement of Financial Condition for Individuals, shall provide instructions for completing Revenue Form 12A638.

(48) Revenue Form 12A639, Statement of Financial Condition for Businesses, shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(49) Revenue Form 12A639(I), Instructions for Completing Statement of Financial Condition for Businesses, shall provide instructions for completing Revenue Form 12A639.

(50) Revenue Form 12B019, Notice of Levy on Wages, Salary, and Other Income, shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(51) Revenue Form 12B019-1, Notice of Levy on Wages, Salary, and Other Income, shall be presented to employers for the purpose of levying wages from an employee who owes child support.

(52) Revenue Form 12B020, Notice of Levy, shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(53) Revenue Form 12B020-2, Notice of Levy, shall be presented to banks for the purpose of levying bank accounts of obligors who owe child support.

(54) Revenue Form 21A020, Request for Copy of Tax Refund Check, shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(55) Revenue Form 30A005, Temporary Vendor's Sales Tax Permit, shall be presented to temporary and transient vendors who do not have a permanent place of business for the purpose of remitting tax on a non-permit basis, as required by 103 KAR 25:060.

(56) Revenue Form 30A006-ASH[30A006], Temporary Vendor Sales and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(57) Revenue Form 30A006-BG, Temporary Vendor Sales and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(58) Revenue Form 30A006-CKY, Temporary Vendor Sales and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(59) Revenue Form 30A006-COR, Temporary Vendor Sales and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(60) Revenue Form 30A006-HOP, Temporary Vendor Sales and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(61) Revenue Form 30A006-LOU, Temporary Vendor Sales and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(62) Revenue Form 30A006-NKY, Temporary Vendor Sales and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(63) Revenue Form 30A006-OWEN, Temporary Vendor Sales and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(64) Revenue Form 30A006-PAD, Temporary Vendor Sales and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(65) Revenue Form 30A006-PIKE, Temporary Vendor Sales

and Use Tax Return/Processing Document, shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(66) Revenue Form 30A872, Record of Money Receipt Issued, shall be used by Department of Revenue Field personnel to provide written documentation of acceptance of cash payments.

(67)[(68)] Revenue Form 31A001, Vendor Contact Authorization, shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his or her vendors concerning the issuance of exemption certificates.

(68)[(69)] Revenue Form 31A004, Auditor Record of Money Receipt Issued, shall be used by the auditor to acknowledge payment from taxpayers of taxes found to be tentatively due when there is an audit.

(69)[(60)] Revenue Form 31A011-ASH, Taxpayer Data Questionnaire, shall be used by auditors at the Ashland Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(70)[(64)] Revenue Form 31A011-BG, Taxpayer Data Questionnaire, shall be used by auditors at the Bowling Green Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(71)[(62)] Revenue Form 31A011-CKY, Taxpayer Data Questionnaire, shall be used by auditors at the Central Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(72)[(63)] Revenue Form 31A011-COR, Taxpayer Data Questionnaire, shall be used by auditors at the Corbin Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(73)[(64)] Revenue Form 31A011-HOP, Taxpayer Data Questionnaire, shall be used by auditors at the Hopkinsville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(74)[(65)] Revenue Form 31A011-LOU, Taxpayer Data Questionnaire, shall be used by auditors at the Louisville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(75)[(66)] Revenue Form 31A011-NKY, Taxpayer Data Questionnaire, shall be used by auditors at the Northern Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(76)[(67)] Revenue Form 31A011-OWEN, Taxpayer Data Questionnaire, shall be used by auditors at the Owensboro Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(77)[(68)] Revenue Form 31A011-PAD, Taxpayer Data Questionnaire, shall be used by auditors at the Paducah Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(78)[(69)] Revenue Form 31A011-PIKE, Taxpayer Data Questionnaire, shall be used by auditors at the Pikeville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(79)[(70)] Revenue Form 31A012, Interstate Sales/Income Tax Questionnaire, shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(80)[(74)] Revenue Form 31A014, SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire, shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina,

Tennessee, Virginia and West Virginia.

(81)[(72)] Revenue Form 31A020, Office of Field Operations Request for Copy of Tax Return(s), shall be used by Department of Revenue representatives to obtain permission from a taxpayer to release tax returns.

(82)[(73)] Revenue Form 31A050, Electronic Transmittal Authorization, shall be used by auditors to seek permission from a taxpayer to transmit audit results electronically.

(83)[(74)] Revenue Form 31A110, Office of Field Operations Estimated Assessment Request, shall be used for Taxpayer Service Centers to request approval to submit estimated assessments.

(84)[(75)] Revenue Form 31A114, Property Audit Request, shall be used by PVAs to submit audit requests for property tax.

(85)[(76)] Revenue Form 31A115, Agreement Fixing Test Periods, shall be used by auditors to establish certain test periods when conducting an audit.

(86)[(77)] Revenue Form 31A149, Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax, shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(87)[(78)] Revenue Form 31A150, Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax, shall be used by auditors to establish taxable periods to be held open for audit and date of assessment.

(88)[(79)] Revenue Form 31A151, Agreement Fixing Period of Limitation Upon Assessment of Sales or Use for Authorized EDP Holders, shall be used to document an agreement fixing a period of audit for sales or use tax field audits for EDP holders.

(89)[(80)] Revenue Form 31A200, Reporting Agreement, shall be used to document an agreement between the Department of Revenue and taxpayer regarding sales tax.

(90)[(81)] Revenue Form 31A685, Authorization to Examine Bank Records, shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(91)[(82)] Revenue Form 31A725, Statute of Limitations Agreement, shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(92)[(83)] Revenue Form 31A800, IIT Review History Document, shall be used to record interaction with the taxpayer during an individual income tax review conducted by compliance officers.

(93)[(84)] Revenue Form 31F006, Southeastern States Information Exchange Program, shall be used to provide information to taxpayers concerning the information exchange program between the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia, and West Virginia.

(94)[85] Form 31F010, Kentucky's Computer Assisted Audit Program, shall be the brochure used as instructions for taxpayers who submit tax records in an electronic format.

(95) Revenue Form 20A001, Kentucky Department of Revenue Acknowledgement of Confidentiality, shall be completed by all employees of the department, employees of other government agencies or institutions that have an exchange of information agreement with the department, any persons or entities contracted to provide services for the department, or any other person permitted access to the department's records and files to acknowledge that they have read and understand the confidentiality provisions as provided in the Kentucky Revised Statutes and the Internal Revenue Code.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form 10A001, "Request to Inspect Public Records", February 1997;

(b) Revenue Form 10A020, "Waiver of Appeal Rights", January 2001;

(c) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", January 2008;

(d) Revenue Form 10A071, "EFT Bank Change", June 2009;

(e) Revenue Form 10A100(P), "Kentucky Tax Registration Application and Instructions", October 2015[April 2015];

(f) Revenue Form 10A100-CS(P), "Kentucky Tax Registration Application and Instructions", October 2015[April 2015];

(g) Revenue Form 10A104, "Update or Cancellation of Kentucky Tax Account(s)", October 2015[April 2015];

(h) Revenue Form 10A104-I, "Instructions Update or Cancellation of Kentucky Tax Account(s)", October 2015[April 2015];

(i) Revenue Form 10A106, "Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax", May 2010;

(j) Revenue Form 10A2000, "Request for Return/Information", October 2011;

(k) Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide", April 2006;

(l) Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", December 2008;

(m) Revenue Form 10F100, "Your Rights as a Kentucky Taxpayer", July 2014;

(n) Revenue Form 12A012, "Receipt of Seized Property", November 2006;

(o) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", August 2012;

(p) Revenue Form 12A104, "Notice of Seizure", October 1982;

(q) Revenue Form 12A107, "Notice of Sale", January 2000;

(r) Revenue Form 12A109-1, "Release of Bank Levy", September 2004;

(s) Revenue Form 12A109-2, "Release of Levy", January 2000;

(t) Revenue Form 12A109-3, "Release of Levy", January 2008;

(u) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", September 2004;

(v) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", January 2008;

(w) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", June 2006;

(x) Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", June 2006;

(y) Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", October 2006;

(z) Revenue Form 12A503, "Application for Specific Lien Release", October 2006;

(aa) Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", June 2003;

(bb) Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", June 2003;

(cc) Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", June 2003;

(dd) Revenue Form 12A507, "Table for Figuring the Amount Exempt from Levy on Wages, Salary, and Other Income", November 2006;

(ee) Revenue Form 12A508-1, "Notice of Tax Due", January 2008;

(ff) Revenue Form 12A508-2, "Notice of Tax Due", January 2008;

(gg) Revenue Form 12A508-3, "Notice of Tax Due", November 2008;

(hh) Revenue Form 12A508-4, "Notice of Tax Due", November 2008;

(ii) Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", August, 1996;

(jj) Revenue Form 12A517, "Notice of Lien", November 2011;

(kk) Revenue Form 12A517-1, "Notice of Child Support Lien", August 2014;

(ll) Revenue Form 12A517-2, "Notice of Lien", August 2014;

(mm) Revenue Form 12A517-3, "Notice of Lien", December

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2014;  
 (nn) Revenue Form 12A517-4, "Notice of Lien", December 2014;  
 (oo) Revenue Form 12A518, "Certificate of Release of Lien", November 2008;  
 (pp) Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", August 2014;  
 (qq) Revenue Form 12A518-2, "Certificate of Release of Lien", August 2014;  
 (rr) Revenue Form 12A518-3, "Certificate of Release of Lien", December 2014;  
 (ss) Revenue Form 12A518-4, "Certificate of Release of Lien", December 2014;  
 (tt) Revenue Form 12A638, "Statement of Financial Condition for Individuals", July 2004;  
 (uu) Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", August 2004;  
 (vv) Revenue Form 12A639, "Statement of Financial Condition for Businesses", August 2004;  
 (ww) Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", August 2004;  
 (xx) Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", September 2004;  
 (yy) Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", September 2011;  
 (zz) Revenue Form 12B020, "Notice of Levy", September 2004;  
 (aaa) Revenue Form 12B020-2, "Notice of Levy", January 2008;  
 (bbb) Revenue Form 21A020, "Request for Copy of Tax Refund Check", November 2011;  
 (ccc) Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", September 1998;  
 (ddd) Revenue Form 30A006-ASH[30A006], "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015[2006];  
 (eee) Revenue Form 30A006-BG, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;  
 (fff) Revenue Form 30A006-CKY, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;  
 (ggg) Revenue Form 30A006-COR, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;  
 (hhh) Revenue Form 30A006-HOP, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;  
 (iii) Revenue Form 30A006-LOU, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;  
 (jii) Revenue Form 30A006-NKY, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;  
 (kkk) Revenue Form 30A006-OWEN, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;  
 (lll) Revenue Form 30A006-PAD, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;  
 (mmm) Revenue Form 30A006-PIKE, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;  
 (nnn) Revenue Form 30A872, "Record of Money Receipt Issued", October 2000;  
 (ooo)[(fff)] Revenue Form 31A001, "Vendor Contact Authorization", July 2006;  
 (ppp)[(ggg)] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July 2006;  
 (qqq)[(hhh)] Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", December 2011;  
 (rrr)[(iii)] Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", December 2011;  
 (sss)[(jjj)] Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", December 2011;  
 (ttt)[(kkk)] Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", December 2011;  
 (uuu)[(lll)] Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", December 2011;  
 (vvv)[(mmm)] Revenue Form 31A011-LOU, "Taxpayer Data

Questionnaire", December 2011;  
 (www)[(nnn)] Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", December 2011;  
 (xxx)[(ooo)] Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", December 2011;  
 (yyy)[(ppp)] Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", December 2011;  
 (zzz)[(qqq)] Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", December 2011;  
 (aaa)[(rrr)] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July 2006;  
 (bbb)[(sss)] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July 2006;  
 (ccc)[(ttt)] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July 2006;  
 (ddd)[(uuu)] Revenue Form 31A050, "Electronic Transmittal Authorization", March 2011;  
 (eee)[(vvv)] Revenue Form 31A110, "Office of Field Operations Estimated Assessment Request", June 2014;  
 (fff)[(www)] Revenue Form 31A114, "Property Audit Request", November 2011;  
 (ggg)[(xxx)] Revenue Form 31A115, "Agreement Fixing Test Periods", April 2008;  
 (hhh)[(yyy)] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July 2006;  
 (iii)[(zzz)] Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", May 2008;  
 (jii)[(aaaa)] Revenue Form 31A151, "Agreement Fixing Period of Limitation Upon Assessment of Sales or Use for Authorized EDP Holders", June 2013;  
 (kkk)[(bbb)] Revenue Form 31A200, "Reporting Agreement", November 2011;  
 (lll)[(eee)] Revenue Form 31A685, "Authorization to Examine Bank Records", May 1985;  
 (mmm)[(ddd)] Revenue Form 31A725, "Statute of Limitations Agreement", July 2014;  
 (nnn)[(eee)] Revenue Form 31A800, "IIT Review History Document", November 2011;  
 (ooo)[(fff)] Revenue Form 31F006, "Southeastern States Information Exchange Program", March 2012;  
 (ppp)[(ggg)] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program", May 2010; and  
 (qqq) Revenue Form 20A001, "Kentucky Department of Revenue Acknowledgement of Confidentiality", February 2016.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: February 12, 2016

FILED WITH LRC: February 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24, 2016 at 10:00 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on March 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-9826, fax (502) 564-2541.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects the existing regulation to add new or update existing Department of Revenue forms.

(b) The necessity of the amendment to this administrative regulation: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. Any addition of new forms or a change to existing forms must result in an amendment of the associated regulation to keep it current.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the current version of the forms listed herein.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of all forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

(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: See 1a and 1b above

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will have to be taken by the taxpayers or local governments to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There would be no cost incurred by the taxpayer or local government.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Access to current forms and

instructions will enable taxpayers to comply with tax laws.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue 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: This administrative regulation does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue within the Finance and Administration Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(3).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Board of Nursing

(Amendment)

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.470

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS

Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) For RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c) For licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) For renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) For licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) For retired licensure status, Application for Retired Status;

(g) For APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky); or

(h) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of license.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever

comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

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

(a) "Application for Licensure", 1/2016[06/2015], Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 1/2016[06/2015], Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 1/2016[06/2015], Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 1/2016[06/2015], Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 1/2016[06/2015], Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

(g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 1/2016[06/2015], Kentucky Board of Nursing; and

(h) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

GAIL WISE, President

APPROVED BY AGENCY: December 11, 2015

FILED WITH LRC: February 4, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 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.), March 31, 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 incorporates by reference the various applications used for licensure.

(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 incorporating the applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By incorporating the applications.

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

(a) How the amendment will change this existing administrative regulation: Several of the applications have been updated and

some of the questions have been reworded.

(b) The necessity of the amendment to this administrative regulation: There was some confusion over several of the questions.

(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 applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: applicants for licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will use the new applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost, other than the required fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

RELATES TO: KRS 314.035, 314.089, 314.091, 314.137, 314.991

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board.

(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.

(3) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.

(4) "Dialysis technician trainee" means an individual who is enrolled in an approved dialysis technician training program.

(5) "Supervision" means:

(a) Initial and ongoing direction, procedural guidance, observation, and evaluation by a registered nurse or physician; and

(b) While a patient is being dialyzed the registered nurse or physician is in the immediate clinical area.

#### Section 2. Requirements for Dialysis Technician Credential.

(1)(a) An individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:

1. File with the board the completed Application for Dialysis Technician Credential;

2. Have completed a dialysis technician training program or an out-of-state dialysis training program pursuant to paragraph (b) of this subsection. Program approval shall be based on criteria established in the Dialysis Technician Training Program Guide;

3. Pay the fee established in Section 12 of this administrative regulation;

4. Provide a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential;

5. Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the submission date of the Application for Dialysis Technician Credential;

6. Provide to the board a certified copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for:

a. Traffic-related misdemeanors (other than DUI); or

b. Misdemeanors older than five (5) years; and

7. Provide to the board a letter of explanation that addresses each conviction identified pursuant to subparagraph 6. of this paragraph.

(b)1. If the dialysis technician applicant has completed an out-of-state dialysis technician training program, the applicant shall submit the training program curriculum and evidence of completion to the board.

2.a. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as established in Section 7 of this administrative regulation.

b. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of



Section 7 of this administrative regulation.

3.[2.] A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall be required to complete that portion of a board-approved dialysis technician training program related to specific portions of the legal and ethical aspects of practice as established in the Dialysis Technician Training Program Guide.

4.[3.] An applicant shall submit evidence to the board of successful completion of the following sections of the Dialysis Technician Training Program Guide:

- a. State and Federal Regulations Governing Dialysis;
- b. The Principles and Legal Aspects of Documentation, Communication and Patient Rights;
- c. The Roles of the Dialysis Technician and other Multidisciplinary Team Members; and
- d. Principles Related to Patient Safety.

5.[4.] A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit the completed Checklist for Dialysis Technician Competency Validation signed by the applicant's immediate supervisor in Kentucky. The Checklist for Dialysis Technician Competency Validation shall be filed after the submission of the Application for Dialysis Technician Credential.

6.[5.] A dialysis technician applicant who has completed an out-of-state dialysis technician training program shall submit evidence of:

- a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program; or
- b. Dialysis technician certification issued within the past two (2) years by the Nephrology Nursing Certification Commission, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization.

(2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval, pursuant to subsection (1) of this section, of the Application for Dialysis Technician Credential, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(4)(a) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:

1. Receipt by the board of the Application for Dialysis Technician Credential; and
2. Meeting the requirements of subsection (6) of this section.

(b) The dialysis technician applicant shall only practice dialysis care as an applicant until:

1. The credential is issued; or
2. The application is denied by the board.

(5) An Application for Dialysis Technician Credential submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.

(6) A felony or misdemeanor conviction shall be reviewed to determine, based on Section 6(2)(c) of this administrative regulation, if:

(a) The Application for Dialysis Technician Credential shall be processed with no further action; or

(b) The Application for Dialysis Technician Credential shall be processed only after:

1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or
2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board.

(7) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)5 of this section and any conviction is addressed by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1)

month prior to the expiration date of the credential:

(a) The completed Application for Renewal of the Dialysis Technician Credential; and

(b) The fee established in Section 12 of this administrative regulation.

(2) Upon approval of the Application for Renewal of the Dialysis Technician Credential, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialing period.

(3) A dialysis technician shall report to the board at renewal the name of the national certification program that has issued the technician's certification and provide a copy of the certification certificate to the board.

Section 4. Reinstatement. (1) Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section. If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential. The reinstatement shall be accomplished by:

(a) Submitting the completed Application for Dialysis Technician Credential;

(b) Paying the fee established in Section 12 of this administrative regulation; and

(c) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential.

(2) If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may reinstate the credential. The reinstatement shall be accomplished by:

(a) Completing a dialysis technician training program approved by the board pursuant to the criteria established in the Dialysis Technician Training Program Guide before submitting the Application for Dialysis Technician Credential. While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee;

(b) Submitting the completed Application for Dialysis Technician Credential;

(c) Paying the fee established in Section 12 of this administrative regulation;

(d) Submitting the Checklist for Dialysis Technician Competency Validation signed by the individual's immediate supervisor;

(e) Providing a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential; and

(f) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is dated within six (6) months of the submission date of the Application for Dialysis Technician Credential.

(3) An Application for Dialysis Technician Credential submitted for reinstatement shall be valid for six (6) months from the date of receipt by the board.

(4) Upon approval of the Application for Dialysis Technician Credential pursuant to Section 2(1) of this administrative regulation, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(5) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (2)(f) of this section and any conviction is addressed by the board.

Section 5. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse or a physician:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering, or discontinuing dialysis care;

(c) Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced registered nurse practitioner. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician; and

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 6. Discipline of a Dialysis Technician. (1) A dialysis technician, an employer of dialysis technicians, or any person having knowledge of facts shall report to the board a dialysis technician who may have violated any provision of this administrative regulation.

(2) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a dialysis technician as established in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as established in Section 5 of this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. A "conviction" shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Personal misuse or misappropriation for use of others of any drug placed in the custody of the dialysis technician for administration;

(g) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(i) Practicing without filing an Application for Dialysis Technician Credential or without holding a dialysis technician credential;

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license;

(m) Violating any lawful order or directive previously entered by

the board;

(n) Violating any applicable requirement of 201 KAR Chapter 20;

(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(p) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(3) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure established in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the Application for Dialysis Technician Credential.

(4) The board shall follow the procedures established in and have the authority established in KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(5) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

Section 7. Dialysis Technician Training Program Standards. (1) Program administrator. Each dialysis technician training program shall have a registered nurse who holds a current Kentucky license, temporary work permit, or multistate privilege, with at least one (1) year of experience in dialysis care, who shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program.

(a) The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board.

(b) A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications.

(a) The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter.

(b) The name, title, and credentials identifying the educational and professional qualifications of each didactic and clinical instructor shall be provided to the board.

(3) The dialysis technician training program shall be based upon the Dialysis Technician Training Program Guide.

(4) The dialysis technician training program syllabus shall include:

(a) Prerequisites for admission to the program;

(b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner; supportive content identified;

(c) Content. The content shall be described in outline format with corresponding time frame and testing schedules;

(d) Teaching methods. The activities of both instructor and learner shall be specified. These activities shall be congruent with stated objectives and content and shall reflect application of adult learning principles;

(e) Instructional or reference materials. All required instructional reference materials shall be identified; and

(f) Evaluation. There shall be:

1. Clearly defined criteria for evaluating the learner's achievement of program outcomes; and

2. A process for annual program evaluation by trainees, program administrator, faculty, and employers.

(5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board pursuant to the criteria established in the Dialysis Technician Training Program Guide.

(6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only

under the supervision of a faculty member or the faculty member's designee.

(7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.

(8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified.

(a) The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination.

(b) The final examination shall be administered only during the final forty (40) hours of the training program.

(c) There shall be a statement of policy regarding a trainee who fails to successfully complete the training program.

(9) The program shall establish a written records retention plan describing the location and length of time records shall be maintained. At a minimum, the following records shall be maintained by the program:

(a) Provider name, dates of program offerings, and sites of the training program;

(b) The program code number issued by the board; and

(c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of program administrator.

(11) The program shall submit the List of Dialysis Technician Training Program Graduates within three (3) working days of the program completion date.

(12)(a) The program shall notify the board in writing within thirty (30) days of a training program closure.

(b) The notification shall include:

1. The date of closing;

2. A copy of the program trainee roster from the date of the last renewal to the date of closing;

3. The location of the program's records as established in subsection (9) of this section; and

4. The name and address of the custodian of the records.

(13) A dialysis technician training program that conducts either the didactic portion or the clinical portion in this state shall be required to be approved by the board pursuant to the criteria established in the Dialysis Technician Training Program Guide, and the program shall meet the requirements of this section.

**Section 8. Dialysis Technician Training Program Initial Approval.** (1) To receive initial approval, a dialysis technician training program shall:

(a) File a completed Application for Dialysis Technician Training Program Approval; and

(b) Pay the fee established in Section 12 of this administrative regulation.

(2) Board approval for a dialysis technician training program that meets the requirements of this administrative regulation shall be granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

**Section 9. Continued Board of Approval of a Dialysis Technician Training Program.** (1) To receive continued approval, a dialysis technician training program shall:

(a) File a completed Application for Dialysis Technician Training Program Approval;

(b) Submit an annual program evaluation summary report and any actions taken as a result of the evaluation as required by Section 7(4)(g) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor;

(d) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

(e) Pay the fee established in Section 12 of this administrative regulation.

(2) The completed Application for Dialysis Technician Training Program Approval shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards established in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

**Section 10. Reinstatement of Dialysis Technician Training Programs.** A program with lapsed approval that seeks to reinstate that approval shall:

(1) File a completed Application for Dialysis Technician Training Program Approval; and

(2) Pay the fee established in Section 12 of this administrative regulation.

**Section 11. Board Actions on Dialysis Technician Training Programs.** (1) A representative of the board may make a site visit to a dialysis technician training program to evaluate compliance with 201 KAR Chapter 20.

(2) The board shall prepare a report of the site visit, identifying deficiencies for the training program if applicable, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board shall grant approval, continue approval, continue approval with stipulations, or propose to deny or withdraw approval of the program.

(5) A dialysis technician training program administrator may request a review of a board decision concerning approval. A review shall be conducted using the following procedure:

(a) 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 that the dialysis technician training program administrator contests.

(b) The board, or the board's designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.

(c) The dialysis technician training program administrator shall be notified of the board's decision.

(6) The board shall deny or withdraw approval of a program after an administrative hearing conducted pursuant to KRS Chapter 13B.

**Section 12. Fees.** (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be seventy (70) dollars.

(3) The credential reinstatement fee shall be \$100.

(4) The dialysis technician training program initial approval fee shall be \$950.

(5) The dialysis technician training program continued approval fee shall be \$800.

(6) The dialysis technician training program reinstatement fee shall be \$950.

(7) An additional fee of twenty-five (25) dollars shall be charged for an Application for Renewal of Dialysis Technician Credential that is filed after the deadline for filing.

(8) An additional fee of \$150 shall be charged for an Application for Dialysis Technician Training Program Approval that is filed after the deadline for continued approval filing.

(9) A fee of ten (10) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee that is

returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(11) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form that is issued due to the failure to maintain a current mailing address as required by Section 13 of this administrative regulation.

(13) A fee of thirty five (35) dollars shall be charged for a name change and the issuance of a new credential.

(14) All fees shall be nonrefundable.

Section 13. Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2)(a) Holding a credential shall constitute consent by the dialysis technician to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.

(b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3)(a) Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction. A conviction shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime.

(b) Upon learning of any failure to notify the board pursuant to this subsection, the board shall initiate an action for immediate temporary suspension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal of continuance is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a chemical dependency evaluation or a mental or physical examination by a practitioner it designates.

(a) Holding a credential shall constitute:

1. Consent by the dialysis technician to a chemical dependency evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the technician is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or examination reports on the grounds of privileged communication.

(b) The dialysis technician shall bear the cost of chemical dependency evaluation, mental examination, or physical examination ordered by the board.

(c) Upon failure of the dialysis technician to submit to a chemical dependency evaluation, mental examination, or physical examination ordered by the board, unless due to circumstances beyond the person's control, the board shall initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(d) If a chemical dependency evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or

drugs, the dialysis technician shall be subject to disciplinary procedures as established in Section 6 of this administrative regulation.

Section 14. Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

Section 15. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", Kentucky Board of Nursing, 6/2006;

(b) "Application for Dialysis Technician Credential", Kentucky Board of Nursing, 1/2016[42/09];

(c) "Application for Renewal of Dialysis Technician Credential", Kentucky Board of Nursing, 1/2016[9/07];

(d) "Checklist for Dialysis Technician Competency Validation", Kentucky Board of Nursing, 9/2007;

(e) "Dialysis Technician Training Program Guide", August 14, 2001, Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates", Kentucky Board of Nursing, 9/2007.

(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 a.m. to 4:30 p.m.

GAIL WISE, President

APPROVED BY AGENCY: December 11, 2015.

FILED WITH LRC: February 4, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 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.) March 31, 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 dialysis training programs and credentialing requirements.

(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 and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and requirements.

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

(a) How the amendment will change this existing administrative regulation: Several of the applications have been updated and some of the questions have been reworded.

(b) The necessity of the amendment to this administrative regulation: There was some confusion over several of the

questions.

(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 applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: applicants for credentialing as a dialysis technician, 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 use the new applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost, other than the required fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Medical Imaging and Radiation Therapy (Amendment)

##### 201 KAR 46:020. Fees.

RELATES TO: KRS 311B.050, 311B.100(2), 311B.110, 311B.120, 311B.130, 311B.140, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.010, 311B.050, 311B.120,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.010 and 311B.050 require the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to regulate medical imaging, radiation therapy, and related occupations. KRS 311B.120 requires the board to promulgate administrative regulations to establish fees and penalties. This administrative regulation establishes fees for the licensure of an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, and a limited x-ray machine operator.

Section 1. Initial Application and License Fee. A non-refundable initial application and license fee shall be \$100.

Section 2. Renewal License Fee. A non-refundable renewal fee shall be fifty (50) dollars per year.

Section 3. Temporary Application and License Fee. A non-refundable fee for a temporary license shall be \$100.

Section 4. Provisional Training License Fee. A non-refundable fee for a provisional training license for a radiation therapist and a nuclear medicine technologist shall be fifty (50) dollars per twenty-four (24) month training period.

Section 5. Temporary Limited X-ray Machine Operator Application and License Fee. A non-refundable, non-transferrable fee for a license shall be \$100.

Section 6. Duplicate License Fee. A non-refundable fee for a duplicate license shall be twenty (20) dollars.

Section 7. Reinstatement Fee. A reinstatement fee shall be \$100.

Section 8. Name Change Fee. A non-refundable fee for a new printed license with a name change shall be twenty (20) dollars.

Section 9. Limited X-ray Machine Operator Examination Fee. A non-refundable fee for the limited x-ray machine operator examination shall be \$150.

Section 10. Home Study Course Fee. A non-refundable administrative fee for the independent study course for a limited x-ray machine operator shall be \$500.

Section 11. Insufficient Funds Fee. A fee for returned check or denied online banking (ACH) payment shall be fifty (50) dollars.

Section 12. Written Verification of Qualifications Fee. The fee for completion of written verification documents shall be twenty-five (25) dollars per document.

Section 13. Continuing Education Approval Fee. (1) Individual continuing education program fee shall be ten (10) dollars. (2) Annual sponsoring institution fee shall be \$100.

Section 14. Late Fee. (1) An individual who fails to renew a license by the expiration date shall be assessed a late fee according to the following schedule based upon the expiration date:

(a) One (1) to five (5) days late – no penalty;

(b) Six (6) to thirty (30) days late – Twenty (20) dollars per

calendar day; and

(c) More than thirty (30) days late – \$750 flat fee.

(2) The late fee, if applicable, shall be in addition to the renewal fee required under 201 KAR 46:040, Section 6, and 201 KAR 46:081, Section 12, and the reinstatement fee required under 201 KAR 46:040, Section 7, and 201 KAR 46:081, Section 13.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: February 15, 2016

FILED WITH LRC: February 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2016, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on March 31, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees to be assessed to licensees and applicants.

(b) The necessity of this administrative regulation: The necessity of this regulation is to advise the public, licensee and applicant of fees to be assessed.

(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 establishing fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the fees to be assessed from applications, renewals, late filings, reinstatement, name change, and various other programs and services provided by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes late fees for untimely renewal applications.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish a late fee schedule for untimely renewal applications.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of fees.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will notify the public of the late fee schedule for untimely renewal applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The state health care organization, licensees and applicants will have to demonstrate compliance with the requirements set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment to the administrative regulation establishes new fees and increases other fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulations place applicants and licensees on clear notice of the fees associated with licensure and procedures.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional Cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees established by this regulation and paid by licensees and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment to the administrative regulation establishes new fees and increases other fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.010 to 311B.190

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be \$81,260 additional revenue dollars for the Board of Medical Imaging and Radiation Therapy. Some of these revenues will be used to cover personnel needs within the board office. Some of these revenues will be passed to other government agencies who will provide support to the board. There will be approximately \$80,000 dollars in additional expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 \$236,000 will be required for year one (1).

(d) How much will it cost to administer this program for subsequent years? Approximate cost will be \$400,000. This will allow the board to hire a second permanent position in the office to ensure continuity of operations, contract with other state agencies to provide licensee inspections, allow follow-up inspections by board representatives for sites that have failed to meet standards

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

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

**GENERAL GOVERNMENT CABINET  
Board of Medical Imaging and Radiation Therapy  
(Amendment)**

**201 KAR 46:070. Violations and enforcement.**

RELATES TO: KRS 311B.100, 311B.120, 311B.150, 311B.160, 311B.170, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050, 311B.120, 311B.180, 311B.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050 requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.120 and 311B.190 require the board to promulgate administrative regulations to establish appropriate fees and penalties for violations. KRS 311B.180 requires the board to assess penalties against an individual or licensee who performs diagnostic or therapeutic procedures without a valid license. This administrative regulation establishes uniform enforcement procedures regarding the licensure of an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator and penalties for violation of licensure requirements.

Section 1. Denial, Revocation, and Suspension of Licenses. (1) The board may deny, revoke, or suspend the license of a licensee in accordance with KRS 311B.160.

(2) A licensee shall comply with an order of the board.

(3) An order of the board in subsection (2) of this section shall include items such as discovery orders, requests for information, subpoenas, requests for attendance before the board, and responses to complaints.

Section 2. Hearings. (1) The board shall notify the licensee in accordance with KRS 311B.170(1) and (2).

(2) A licensee to whom a notice or order is directed shall comply with KRS 311B.170(3) to avoid license revocation.

(3) The board shall issue the licensee a notice of proposed action in accordance with 201 KAR 46:090.

(4) A licensee may request a conference and appeal the board's action in accordance with KRS 311B.170(5) and 201 KAR 46:090.

Section 3. Penalties. (1) The board shall assess civil penalties in accordance with KRS 311B.180 and 311B.190 against an individual or licensee who performs diagnostic or therapeutic procedures without valid licensure.

(2) An individual who performs a diagnostic or therapeutic procedure shall be assessed a civil penalty of fifty (50) dollars per day that the procedure occurs~~Civil penalties shall be assessed against individuals who perform diagnostic or therapeutic procedures without valid licensure as follows:~~

(a) ~~Failure to apply for initial licensure by an individual who is fully qualified for licensure at the time the violation is discovered, or failure to apply for renewal by an individual who would be eligible for renewal of a license, but who would not currently qualify due to insufficient continuing education at the time the violation is discovered shall be assessed a civil penalty of twenty-five (25) dollars per day until the application has been approved.~~

(b) ~~Failure of a licensee to renew the license by the expiration date shall be assessed a late fee according to the following schedule based upon the expiration date:~~

- ~~1. One (1) to five (5) days late — no penalty;~~
- ~~2. Six (6) to fifteen (15) days late — Ten (10) dollars per~~

~~calendar day; or~~

~~3. Sixteen (16) to thirty (30) days late — Twenty (20) dollars per calendar day.~~

~~(c) A licensee who has not renewed after thirty (30) days shall:~~

~~1. Pay a civil penalty of \$750;~~

~~2. Submit an initial application for license, as incorporated by reference in 201 KAR 46:040; and~~

~~3. Pay the new application fee, as established in 201 KAR 46:020.~~

~~(d) Performance of a diagnostic or therapeutic procedure requiring a license by an individual who is not qualified for licensure at the time the violation is discovered shall be assessed a civil penalty of \$100 per day until the application has been approved].~~

(3) Civil penalties double the amount assessed against the licensee or individual shall be assessed against the employer of the individual without a valid license pursuant to KRS 311B.180 and subsection (3) of this section.

(4) Any person assessed a civil penalty may request a hearing as specified in Section 2 of this administrative regulation and 201 KAR 46:090.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: February 15, 2016

FILED WITH LRC: February 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2016, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on March 31, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for the board imposing a civil monetary penalty when an individual performs a diagnostic or therapeutic procedure without a license; and the administrative hearing process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process for the board to impose a civil penalty; and the administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to authority delegated in KRS 311B.050(2) and KRS 311B.050(7).

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation establishes the process for the board handling complaints and due process to licensees who are subjected to disciplinary action; and imposing a civil monetary penalty.

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

(a) How the amendment will change the existing administrative regulation: The amendment to the regulation will remove different

amounts assessed to individuals and impose a flat \$50 civil monetary penalty for each day; and removes the late fee provision.

(b) The necessity of the amendment to this administrative regulation: The amendment clarifies the question concerning late fees and imposes the same civil penalty for performing a diagnostic and therapeutic procedure without a license.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for issuing a civil monetary penalty.

(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes guidelines for issuing a civil monetary penalty against someone who is not licensed to perform diagnostic and therapeutic procedures and establish a uniform amount.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will impact the approximate 8,100 individuals currently licensed by the board.

(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: This regulation will establish the complaint and disciplinary hearing processes that have not been promulgated by the board.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) are provided an opportunity to respond to any complaint filed and due process if evidence is found to support a violation of state law.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: No new costs are associated with the changes to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the regulation, the individuals identified in question (3) will be provided with due process in the complaint process.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The Kentucky Board of Medical Imaging and Radiation Therapy is funded from fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: 311B.050(2) and (7), KRS 311B.160, and KRS 311B.170.

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A.

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:



NEW ADMINISTRATIVE REGULATIONS

**TOURISM, ARTS AND HERITAGE CABINET**  
**Department of Fish and Wildlife Resources**  
**(New Administrative Regulation)**

**301 KAR 3:005. Public use of newly acquired or newly managed lands.**

RELATES TO: KRS 150.010, 150.170, 150.175, 150.390  
STATUTORY AUTHORITY: KRS 150.025(1), 150.620  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make administrative regulations apply to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes the requirements for the department to close seasons on newly acquired or managed properties or to establish requirements that are different from statewide season requirements or methods of take until the department can subsequently amend administrative regulations within the first year a property is acquired or managed.

Section 1. (1) Upon acquiring or managing new public land, the department may close the area to all hunting or trapping or for certain game species during the first year of ownership or management if an imminent risk is present regarding:

- (a) Human safety;
- (b) A negative impact to wildlife populations; or
- (c) Inadvertent trespassing on adjacent private land by hunters due to a lack of adequate boundary marking.

(2) If there is any deviation from statewide hunting or trapping seasons during the first year of ownership or management, as established in subsection (1) of this section, the department shall inform the public by:

- (a) Conspicuously posting the requirements on signage at major access points on the area; and
- (b) Posting the area requirements on the department's Web site at fw.ky.gov.

Section 2. (1) Upon acquiring or managing new public land, the department may establish during the first year of ownership or management on the area, weapons restrictions for deer hunting that differ from statewide requirements if an imminent risk is present regarding:

- (a) Human safety; or
  - (b) A negative impact on the area's deer population.
- (2) If there is any deviation from statewide requirements regarding methods of take as established in subsection (1) of this section, the department shall inform the public as established in Section 1(2) of this administrative regulation.

Section 3. A hunter or trapper shall comply with the area requirements on newly acquired or managed lands as established in Sections 1 and 2 of this administrative regulation.

GREGORY K. JOHNSON, Commissioner  
DON PARKINSON, Secretary

APPROVED BY AGENCY: February 10, 2016

FILED WITH LRC: February 12, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held March 21, 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 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 March 31, 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 department to close seasons on newly acquired or managed properties or to establish requirements that are different than statewide seasons or methods of take for deer until the department can amend administrative regulations and they subsequently become effective.

(b) The necessity of this administrative regulation: This regulation is necessary for the department to properly manage newly acquired or managed lands prior to amending regulations that are different than statewide requirements.

(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 methods of take, and to make administrative regulations apply to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the effective administration of the statutes by providing the department with necessary ability to properly manage hunting and trapping on newly acquired or managed properties.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A. See (a).

(c) How the amendment conforms to the content of the authorizing statutes: N/A. See (a).

(d) How the amendment will assist in the effective administration of the statutes: N/A. See (a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Sportsmen and sportswomen who use department owned or managed lands are possibly affected. It is unknown how many people use department owned or managed lands.

(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: Hunters who wish to hunt on a newly acquired or managed area must adhere to any requirements that are different from statewide regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any costs associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit hunters by allowing the department to better manage the

area's wildlife populations for future hunting endeavors, by helping to reduce safety risks sometimes associated with newly acquired or managed areas, and reducing accidental trespassing incidents if the area's boundaries have not yet been adequately marked.

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

(a) Initially: There will be no cost to the department to implement this administrative regulation initially.

(b) On a continuing basis: There will be no 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. An increase in fees or funding will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were increased directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied since all hunters will be treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 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 during the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of February 8, 2016

**Members:** Senators Julie Raque-Adams, Perry Clark, Ernie Harris, Alice Forgy Kerr and Representatives Linda Belcher and Marylou Marzian.

**LRC Staff:** Sarah Amburgey, Ange Bertholf, Emily Caudill, Betsy Cupp, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

**Guests:** Kathryn Gabhart, Executive Branch Ethics Commission; David Gordon, Steve Washing, Department of Revenue; Pat McGee, Finance and Administration Cabinet; Nathan Goldman, Paula Schenk, Board of Nursing; Nicole Biddle, Larry Disney, Real Estate Appraisers Board; Matt James, Board of Licensed Diabetes Educators; Jamie Eads, Marc Guilfoil; Horse Racing Commission; Deborah Anderson, Leslie Hoffmann, Stuart Owen, Department for Medicaid Services; David Allgood, Center for Accessible Living; Bill Dolan, Malicia Hitch, Protection and Advocacy; Mary Hass; Advocate; Joyce Lewis, Darlene Litteral, John Woodard, Professional Home Health Care Agency Inc., Reverend Steven Rudy, Parent Advocate; MaryLee Underwood, Commonwealth Council on Developmental Disabilities; Kelly Upchurch, Kentucky Association of Adult Day Care; Rich Wilcke, Kentucky Quarter Horse Racing Association; David Wickstrom, Independence Place, Russ Woodward, Kentucky Society of CPA's.

**The Administrative Regulation Review Subcommittee met on Monday, February 8, 2016, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission: Commission**

9 KAR 1:025. Guidance on prohibited conduct and conflicts of interest. Kathryn Gabhart, executive director, represented the commission.

**Department of Revenue: Forms**

103 KAR 3:040 & E. Income tax forms manual. David Gordon, executive director of property valuation; Sherman Nave, director of corporation tax division; and Steve Washing, director of income tax division, represented the department.

**Office of the Secretary: Purchasing**

200 KAR 5:021. Manual of policies and procedures. Patrick McGee, attorney, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend the material incorporated by reference to: (a) correct citations; (b) make a technical correction; and (c) clarify procedures for obtaining a title opinion, a title insurance commitment, and a final title insurance policy. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Board of Nursing: Board**

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses. Nathan Goldman, general counsel, and Paula Schenk, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 9, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Real Estate Appraisers Board: Board**

201 KAR 30:030. Types of appraisers required in federally related transactions; certification and licensure. Nicole Biddle, assistant attorney general, and Larry Disney, executive director, represented the board.

In response to questions by Co-Chair Harris, Mr. Disney stated that all appraisers completed the course once; however, in the past

there was no need for appraisers to repeat the course. Due to federal changes, the board has amended this administrative regulation to provide for repeated courses. The initial federal statute governing this administrative regulation became effective in 1989. The board amends 201 KAR 30:040 each year to update the manual incorporated by reference to comply with federal changes.

201 KAR 30:040. Standards of practice.

**Board of Licensed Diabetes Educators: Board**

201 KAR 45:130. Continuing education. Matt James, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 5 to clarify disciplinary action for failure to comply with continuing education requirements. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Horse Racing Commission: Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing**

811 KAR 2:190. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund. Jamie Eads, director of incentives, and Marc Guilfoil, executive director, represented the commission. Rich Wilcke, sprint racing coordinator, Kentucky Quarter Horse Association, appeared in support of this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, 5, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Community Alternatives: Medicaid Services**

907 KAR 1:160. Home and community based waiver services Version 1. Deborah Anderson, commissioner, Department for Aging and Independent Living; Leslie Hoffmann, director of behavior-al health and community alternatives; and Stuart Owen, regulation coordinator, represented the department. David Allgood, director of advocacy, Center for Accessible Living; MaryLee Underwood, advocate parent and executive director, Commonwealth Council on Developmental Disabilities; Kelly Upchurch, president, Kentucky Association of Adult Day Care; and David Wickstrom, executive director, Independence Place, appeared in support of these administrative regulations. Bill Dolan and Malicia Hitch, Department for Protection and Advocacy, appeared in support of these administrative regulations but requested confirmation of a specific issue. Mary Hass, advocate parent, and Reverend Steven Rudy, advocate parent, appeared in opposition to these administrative regulations. Joyce Lewis, president; Darlene Litteral, general counsel; and John Woodard, attorney, Professional Home Health Care Agency, Incorporated, appeared in opposition to these administrative regulations.

Mr. Allgood stated that the Center for Accessible Living supported these administrative regulations, which would greatly improve services for the physically disabled. The cabinet worked well with stakeholders and were welcoming of input during the development of these administrative regulations. The waiver program should save money in addition to helping people.

Mr. Wickstrom stated that Independence Place served thousands of people and supported these administrative regulations. These administrative regulations would help those with physical disabilities remain independent and stay in their communities, especially through funding construction modifications. Time allotment flexibility would help people grocery shop, obtain employment, etc. Services would not be lost under this waiver program.

Mr. Upchurch stated that the Kentucky Association of Adult Day Care ran 118 adult day centers across Kentucky. The new waiver program would prevent premature admission to long-term care centers, but did not prohibit a participant from opting for a long-term care center. These administrative regulations created a support system for care givers. The waiver program included independent assessments and case providers, while also helping to address provider gaps, especially in rural areas.

Ms. Underwood stated that the new waiver expands time allotments so that caregivers have more employment options. Transportation services were enhanced; transportation has been identified as the number one need. The independent assessment was a positive step. The cabinet offered many opportunities for stakeholder input. A portion of providers were supportive of these administrative regulations moving forward through the process.

Representative Belcher stated that she appreciated the many emails and input she received related to this new waiver program.

In response to a question by Co-Chair Marzian, Ms. Anderson stated that funding was accomplished through a provider tax increase and reallocation of funds.

Mr. Woodard stated that Professional Home Health Care Agency, Incorporated was opposed to these administrative regulations and believed that they violated KRS 205.5605, which required that each consumer be allocated a monthly budget allowance based on a needs assessment. He stated that these administrative regulations established a fixed fee with a cap, rather than a monthly budget based on a needs assessment. The new waiver program expanded the scope of options and reduced oversight that was previously built in to the budget determination process. Recipients may not receive the correct combination of services to prevent institutionalized care. Mr. Owen stated that the budgetary requirements of KRS 205.5605 were not restated in these administrative regulations because they were already established by statute, but that the budget requirements did apply and were being enforced. Each recipient received a monthly budget based on need.

In response to a question by Representative Belcher, Ms. Anderson stated that the new waiver was participant directed but was based on federal Labor Department requirements. If the state directly established the fee, the state would become the de facto employer; therefore, these administrative regulations established a cap per unit. The budget was then determined based on the rate and how many units were needed according to a needs assessment.

Ms. Hitch stated that the Department of Protection and Advocacy was concerned regarding continuity of speech, physical, and occupational therapy. Mr. Dolan, also with the Department of Protection and Advocacy, expressed the same concern and wanted verification that there would be no lapse or gap in therapy during the transition to the new waiver program. Mary Hass, parent advocate, expressed the same concerns. Ms. Anderson stated that there would not be a lapse. CMS would not grant waiver approval until all participants were fully transitioned; therefore, a lapse was not possible.

Reverend Steven Rudy stated that he was father and legal guardian of his daughter, Stephanie, who was a recipient of the home and community-based waiver program. Through the previous waiver program, Rev. Rudy was able to employ an agency to provide services to Stephanie at the rate of \$19.00 per hour. Pursuant to the new waiver program, there would be a cap of \$11.50 per hour, so that Stephanie would be unable to continue with her current agency at the current rate. Her care would be greatly compromised. A personal, in-home care agency could not be procured at the proposed cap. Additionally, the quality of individual employees procured at this rate were unlikely to possess the training, expertise, trustworthiness, and professionalism required. Because Stephanie had multiple disabilities, she could not be left alone for any length of time. Rev. Rudy asked the Subcommittee to reconsider the price cap.

In response to Rev. Rudy, Ms. Anderson stated that \$11.50 was the net cap. Taxes would be added, making the cap effectively more like \$13.50. The figure was developed by determining the average cost of a typical home health associate. The rate was not

intended to cover the full cost of care directly from a company. Stephanie's situation may be better addressed by allowing a traditional provider subcontracted from a company.

Co-Chair Marzian stated that this new waiver program seemed to provide the most benefit to the most people and should move forward through the process. There were concerns about specific situations, but it was generally beneficial to keep people in communities as much as possible.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 3, 5, 6, 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A.; (2) to amend Section 1 to include in the definition of "ADHC services" a reference to the need for respite services; (3) to amend Section 3 to reference federal regulatory provisions establishing a longer document retention period; and (4) to amend Sections 6 and 10 to correct the names of two (2) forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:170. Reimbursement for home and community based waiver services Version 1.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Certified Provider Requirements**

907 KAR 7:010. Home and community based waiver services Version 2.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 10, 12, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 3 to reference federal regulatory provisions establishing a longer document retention period; and (3) to amend Sections 6 and 14 to correct the names of two (2) forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with the agreement of the agency, the amendments were approved.

**The following administrative regulations were deferred to the March 7, 2016, meeting of the Subcommittee:**

#### **FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms**

103 KAR 3:030 & E. Property and severance forms manual. David Gordon, executive director of property valuation; Sherman Nave, director of corporation tax division; and Steve Washing, director of income tax division, represented the department. Russ Woodward, Kentucky Society of CPAs, appeared in opposition to this administrative regulation.

Mr. Woodward stated that the Kentucky Society of CPAs was concerned that a form change may actually result in a policy change with tax implications. The instructions for one (1) form included a statement that custom tax software was taxable, which would result in a tax increase. Mr. Gordon stated that this form change was a clarification and that all tax software, including custom tax software, has been considered taxable.

In response to questions by Senator Raque Adams, Mr. Woodward stated that the Kentucky Society of CPAs was just now bringing this concern because the issue was initially overlooked due to the volume of forms involved. A CPA member had told Mr. Woodward that this would result in a one (1) million dollar tax increase for a specific client.

In response to a question by Co-Chair Harris, Mr. Gordon stated that the department agreed to defer consideration of this

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administrative regulation to the March 7, 2016, meeting of the Subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

**GENERAL GOVERNMENT CABINET: Board of Medical Licensure: Board**

201 KAR 9:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

**Board of Licensed Diabetes Educators: Board**

201 KAR 45:110. Supervision and work experience.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

501 KAR 6:030. Kentucky State Reformatory.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration**

601 KAR 2:030 & E. Ignition interlock.

**COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Fire Commission: Commission on Fire Protection Personnel Standards and Education**

739 KAR 2:100. Volunteer firefighter requirements.

739 KAR 2:110. Acceptance of out of state and military training and service.

739 KAR 2:120. Notification of merger or splitting of volunteer fire districts.

739 KAR 2:130. Thermal vision grant application process.

**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.

**Occupational, Physical, and Speech Therapy**

907 KAR 8:005. Definitions for 907 KAR Chapter 8.

**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 3:10 p.m. until March 7, 2016, at 1 p.m.**

**OTHER COMMITTEE REPORTS**

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

None

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates

I - 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

I - 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

I - 28

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

I - 29

The Subject Index is a general index of administrative regulations published in VOLUME 42 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
<b>VOLUME 41</b>					
The administrative regulations listed under VOLUME 41 are those administrative regulations that were originally published in Volume 41 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2015 Kentucky Administrative Regulations Service</i> was published.					
<b>SYMBOL KEY:</b>			31 KAR 4:180	2689	See 42 Ky.R.
* Statement of Consideration not filed by deadline			101 KAR 2:102		
** Withdrawn before being printed in Register			Amended	2113	
**** Emergency expired after 180 days			As Amended	2538	7-6-15
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))			101 KAR 2:105		
(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.			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	See 42 Ky.R.
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>					
(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.)					
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.			
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>					
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.			



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Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
201 KAR 46:060	2452	See 42 Ky.R.	AmComments	2236	See 42 Ky.R.
201 KAR 46:070			703 KAR 5:225		
Amended	2308	See 42 Ky.R.	Amended	2037	
201 KAR 46:081			AmComments	2240	See 42 Ky.R.
Amended	2309		703 KAR 5:240		
202 KAR 7:701			Amended	2042	See 42 Ky.R.
Amended	2313	See 42 Ky.R.	704 KAR 3:370		
301 KAR 1:122		See 42 Ky.R.	Amended	2342	See 42 Ky.R.
Amended	2614	See 42 Ky.R.	704 KAR 5:070		
301 KAR 2:049		See 42 Ky.R.	Amended	2351	8-10-15
Amended	2615	See 42 Ky.R.	705 KAR 4:250		
301 KAR 2:132			Amended	1144	
Amended	1868	6-5-15	AmComments	1672	
301 KAR 2:172			As Amended	2223	6-5-15
Amended	1873		725 KAR 1:061		
AmComments	2092	6-5-15	Amended	2353	7-13-15
301 KAR 2:178			803 KAR 1:035		
Amended	1878		Amended	2045	
As Amended	2212	6-5-15	As Amended	2550	7-6-15
301 KAR 2:300			804 KAR 1:060		
Amended	2318	9-4-15	Repealed	2696	9-4-15
301 KAR 3:132			804 KAR 1:061(r)	2696	9-4-15
As Amended	2208		804 KAR 4:370		
302 KAR 20:110			Amended	2630	See 42 Ky.R.
Amended	2027		804 KAR 7:010		
As Amended	2217	6-5-15	Repealed	2180	7-6-15
302 KAR 20:120			804 KAR 7:011(r)	2180	7-6-15
Amended	2030		804 KAR 10:010		
As Amended	2219	6-5-15	Amended	2632	See 42 Ky.R.
402 KAR 3:010			804 KAR 10:020		
Amended	2619	See 42 Ky.R.	Amended	2633	See 42 Ky.R.
402 KAR 3:030			804 KAR 10:025	2697	See 42 Ky.R.
Amended	2621	9-3-15	805 KAR 1:100		
402 KAR 3:050	2694	See 42 Ky.R.	Amended	2355	See 42 Ky.R.
500 KAR 13:020			805 KAR 1:130		
Amended	2623	See 42 Ky.R.	Amended	2361	See 42 Ky.R.
501 KAR 1:080			805 KAR 1:140		
Amended	2032		Amended	2364	See 42 Ky.R.
501 KAR 6:020			805 KAR 1:170		
Amended	1887	See 42 Ky.R.	Amended	2366	See 42 Ky.R.
503 KAR 1:060			808 KAR 6:015	2462	See 42 Ky.R.
Amended	326		808 KAR 6:105		
As Amended	747	10-31-14	Amended	2369	See 42 Ky.R.
503 KAR 1:080			808 KAR 9:010		
Amended	591		Amended	2634	See 42 Ky.R.
As Amended	1056	12-5-15	808 KAR 12:020		
503 KAR 1:100			Amended	2636	See 42 Ky.R.
Amended	595		808 KAR 12:021		
As Amended	1057	12-5-15	Amended	2638	See 42 Ky.R.
503 KAR 1:110			808 KAR 12:110	2698	See 42 Ky.R.
Amended	2626	See 42 Ky.R.	810 KAR 1:027		
503 KAR 1:120			Amended	612	
Amended	327		As Amended	1066	12-5-15
As Amended	747	10-31-14	810 KAR 1:090		
601 KAR 1:112	1725		Amended	2371	See 42 Ky.R.
AmComments	2095		810 KAR 1:300	2699	See 42 Ky.R.
Withdrawn		7-8-2015	811 KAR 1:300	2701	See 42 Ky.R.
601 KAR 9:135			811 KAR 2:300	2702	See 42 Ky.R.
Amended	2321	See 42 Ky.R.	815 KAR 6:010		
601 KAR 14:020		See 42 Ky.R.	Amended	2641	See 42 Ky.R.
603 KAR 5:155	2453	See 42 Ky.R.	815 KAR 35:015		
603 KAR 10:002	2456	See 42 Ky.R.	Amended	2645	See 42 Ky.R.
603 KAR 10:010			900 KAR 2:050		
Amended	2325	See 42 Ky.R.	Amended	2133	
603 KAR 10:021	2458	See 42 Ky.R.	As Amended	2551	6-17-15
702 KAR 3:320	1728		900 KAR 5:020		
AmComments	2012		Amended	2649	See 42 Ky.R.
As Amended	2220	6-5-15	900 KAR 7:030		
703 KAR 5:200			Amended	1891	6-5-15
Amended	2034		900 KAR 10:010		

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Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
Amended	2651	See 42 Ky.R.	AmComments	2268	
900 KAR 10:020			As Amended	2556	7-6-15
Amended	2658	See 42 Ky.R.	907 KAR 1:350		
900 KAR 10:040	2464	See 42 Ky.R.	Amended	2136	
900 KAR 10:050			As Amended	2559	7-6-15
Amended	2664	See 42 Ky.R.	907 KAR 3:017	1943	
900 KAR 10:100			As Amended	2224	6-5-15
Amended	2667	See 42 Ky.R.	907 KAR 9:005		
900 KAR 10:110	2704	See 42 Ky.R.	Amended	2417	See 42 Ky.R.
900 KAR 4:040			907 KAR 9:010		
Repealed	2051	6-5-15	Amended	2425	See 42 Ky.R.
902 KAR 4:041(r)	2051	6-5-15	907 KAR 9:015	2475	See 42 Ky.R.
902 KAR 10:020			907 KAR 9:020	2487	See 42 Ky.R.
Repealed	2468	9-4-15	907 KAR 10:014		
902 KAR 10:021			Amended	2428	See 42 Ky.R.
Repealed	2468	9-4-15	907 KAR 10:016		
902 KAR 10:022(r)	2468	9-4-15	Amended	2442	See 42 Ky.R.
902 KAR 20:091			907 KAR 10:020	2491	See 42 Ky.R.
Amended	1896		907 KAR 10:025	2503	See 42 Ky.R.
AmComments	2245		907 KAR 10:825		
902 KAR 20:160			Repealed	2181	10-1-15
Amended	2374	See 42 Ky.R.	907 KAR 10:826(r)	2181	10-1-15
902 KAR 20:180			907 KAR 10:830	2182	See 42 Ky.R.
Amended	2383	See 42 Ky.R.	907 KAR 15:080	2507	See 42 Ky.R.
902 KAR 20:320			907 KAR 15:085	2515	10-2-15
Amended	2393	See 42 Ky.R.	908 KAR 2:220		
902 KAR 20:400			Amended	1925	
Amended	1905		AmComments	2273	
AmComments	2256	See 42 Ky.R.	As Amended	2560	6-17-15
902 KAR 45:010			908 KAR 2:230		
Repealed	2469	9-4-15	Amended	1929	
902 KAR 45:011(r)	2469	9-4-15	AmComments	2277	
902 KAR 45:030			As Amended	2562	6-17-15
Repealed	2469	9-4-15	908 KAR 2:260	1945	
902 KAR 45:040			AmComments	2280	
Repealed	2469	9-4-15	As Amended	2565	6-17-15
902 KAR 45:050			910 KAR 1:140		
Repealed	2469	9-4-15	Amended	2138	
902 KAR 45:060			As Amended	2568	6-17-15
Repealed	2469	9-4-15	910 KAR 1:170		
902 KAR 45:110			Amended	2143	
Amended	2414	See 42 Ky.R.	As Amended	2573	See 42 Ky.R.
902 KAR 45:120			910 KAR 1:210		
Amended	2672	See 42 Ky.R.	Amended	2150	
902 KAR 45:130			As Amended	2578	6-17-15
Repealed	2469	9-4-15	910 KAR 1:220		
902 KAR 45:160	2470	See 42 Ky.R.	Amended	2157	
907 KAR 1:044			As Amended	2583	6-17-15
Amended	1910		921 KAR 2:015		
AmComments	2261		Amended	1932	6-5-15
As Amended	2553	7-6-15	921 KAR 3:045		
907 KAR 1:045			Amended	2177	7-15-15
Amended	1915		921 KAR 3:060		
907 KAR 1:046	1940		Amended	2682	See 42 Ky.R.
AmComments	2266		921 KAR 3:070		
907 KAR 1:055			Amended	2685	See 42 Ky.R.
Amended	2674	See 42 Ky.R.			
907 KAR 1:102					
Amended	1920				

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Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
<b>VOLUME 42</b>					
<b>SYMBOL KEY:</b>			921 KAR 3:070E		See 41 Ky.R.
* Statement of Consideration not filed by deadline			Replaced	1216	11-6-15
** Withdrawn before being printed in Register			921 KAR 3:090E		7-2-15
**** Emergency expired after 180 days			<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>		
(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.			9 KAR 1:025	2292	
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			11 KAR 15:090		
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Amended	44	
			As Amended	1121	10-12-15
			11 KAR 15:100	627	See 41 Ky.R.
			As Amended	1124	10-12-15
			11 KAR 16:060		
			Amended	449	
			As Amended	1125	10-12-15
			13 KAR 2:045		See 41 Ky.R.
			As Amended	9	7-13-15
			16 KAR 2:020		
			Amended	72	
			As Amended	660	9-14-15
			16 KAR 2:100		
			Amended	794	
			As Amended	1446	12-4-15
			16 KAR 2:110		
			Amended	796	
			As Amended	1447	12-4-15
			16 KAR 2:140		
			Amended	797	
			As Amended	1447	12-4-15
			16 KAR 2:150		
			Amended	799	
			As Amended	1448	12-4-15
			16 KAR 2:160		
			Amended	801	
			As Amended	1449	12-4-15
			16 KAR 2:170		
			Amended	803	
			As Amended	1450	12-4-15
			16 KAR 2:200		
			Amended	805	12-4-15
			16 KAR 3:030		
			Amended	807	
			As Amended	1451	12-4-15
			16 KAR 3:040		
			Amended	809	
			As Amended	1452	12-4-15
			16 KAR 4:030		
			Amended	74	
			As Amended	661	9-14-15
			16 KAR 9:030		
			Amended	811	
			As Amended	1453	12-4-15
			16 KAR 9:040		
			Amended	812	
			As Amended	1454	12-4-15
			30 KAR 7:010	628	See 41 Ky.R.
			As Amended	1126	11-6-15
			31 KAR 3:040		
			As Amended	270	9-4-15
			31 KAR 4:120		See 41 Ky.R.
			As Amended	271	9-4-15
			31 KAR 4:180		See 41 Ky.R.
			As Amended	271	
			Reprinted	658	9-4-15
			101 KAR 1:325		
			Amended	1582	
			101 KAR 2:020		
			Amended	76	10-2-15
13 KAR 2:045		See 41 Ky.R.			
Replaced	9	7-13-15			
31 KAR 4:180E		See 41 Ky.R.			
Replaced	658	9-4-15			
101 KAR 2:210E	1084	9-15-15			
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			
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301 KAR 2:221E	1699	11-3-15			
301 KAR 2:222E	1701	11-3-15			
301 KAR 2:225E	1111	8-21-15			
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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			
Replaced	527	11-6-15			
804 KAR 4:410E	259	7-10-15			
Replaced	1177	11-6-15			
902 KAR 20:420E	261	6-25-15			
Replaced	1202	11-6-15			
902 KAR 55:020E	1706	11-4-15			
906 KAR 1:190E	2022	11-20-15			
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101 KAR 2:046			As Amended	1131	11-6-15
Amended	83		Amended	2414	
As Amended	662	10-2-15	201 KAR 5:030		
101 KAR 2:056			Amended	824	
Amended	85	10-2-15	As Amended	1460	11-18-15
101 KAR 2:066			201 KAR 5:110		
Amended	86		Amended	826	
As Amended	663	10-2-15	As Amended	1461	11-18-15
101 KAR 2:120			201 KAR 6:070		
Amended	88	10-2-15	Amended	828	
101 KAR 2:210			As Amended	1462	11-18-15
Amended	1278	1-4-16	201 KAR 9:270		
101 KAR 3:045			Amended	1907	
Amended	91		201 KAR 9:305		
As Amended	664	10-2-15	Amended	460	
102 KAR 1:060			As Amended	1464	11-18-15
Amended	2405		201 KAR 9:310		
102 KAR 1:070			Amended	461	
Amended	2407		As Amended	1464	11-18-15
102 KAR 1:320			201 KAR 9:470	1668	
Amended	2408		As Amended	2323	
103 KAR 3:010		See 41 Ky.R.	201 KAR 11:170		
As Amended	12	7-31-15	Amended	463	
Amended	2505		AmComments	1219	
103 KAR 3:030			As Amended	1466	12-4-15
Amended	2226		201 KAR 11:175		
103 KAR 3:040			Amended	466	
Amended	2237		As Amended	1468	12-4-15
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105 KAR 1:200			As Amended	1469	12-4-15
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105 KAR 1:370			Amended	468	
Amended	2412		As Amended	1469	12-4-15
106 KAR 3:010			201 KAR 11:230		
Amended	814		Amended	469	
As Amended	1455	12-4-15	As Amended	1469	12-4-15
200 KAR 5:021			201 KAR 11:232	632	
Amended	1906		AmComments	1221	
As Amended	2471		As Amended	1472	12-4-15
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Amended	456		AmComments	1223	
As Amended	1130	11-6-15	As Amended	1473	11-13-15
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Amended	817		Amended	473	
As Amended	1456	12-4-15	As Amended	1475	12-4-15
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Amended	819		Amended	2247	
As Amended	1457	12-4-15	201 KAR 11:460		
201 KAR 1:064			Amended	476	
Repealed	1068	12-4-15	As Amended	1477	12-4-15
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201 KAR 1:140			As Amended	1132	11-6-15
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201 KAR 1:150			As Amended	2030	
Amended	823		201 KAR 18:104		
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201 KAR 2:015			As Amended	1478	12-4-15
Amended			201 KAR 18:142		
As Amended	272	9-4-15	Amended	833	
201 KAR 2:220			As Amended	1479	12-4-15
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Amended	480		Amended	2251	
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201 KAR 20:057			Amended	1289	
Amended	1910		As Amended	1713	12-16-15
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As Amended	2471		Amended	1289	
201 KAR 20:061			As Amended	1714	12-16-15
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201 KAR 20:062			Amended	1292	
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Amended	488		As Amended	1716	12-16-15
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201 KAR 20:110			Amended	505	
Amended	490		AmComments	1549	
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Amended	1914		Amended	507	
Withdrawn		12-23-15	As Amended	1719	12-16-15
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Amended	496		Amended	95	
As Amended	1145		As Amended	668	10-2-15
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201 KAR 20:271(r)			AmComments	1551	
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201 KAR 20:310			Amended	837	
Amended	2422		AmComments	1553	
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201 KAR 20:340			Amended	840	
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201 KAR 20:350			As Amended	1722	12-16-15
Amended	2429		201 KAR 32:060		
201 KAR 20:360			Amended	509	
Amended	2430		AmComments	1557	
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201 KAR 35:050			201 KAR 45:110		
Amended	1312		Amended	855	
As Amended	2042		201 KAR 45:130		
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As Amended	2043		As Amended	2474	
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Amended	1921		As Amended	2341	
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302 KAR 29:040			Amended	1952	
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302 KAR 29:050			Amended	1953	
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302 KAR 29:060			Amended	1956	
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Amended	859		Amended	907	
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Amended	884		As Amended	2105	
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401 KAR 42:045			Amended	99	
Amended	1610		As Amended	668	10-2-15
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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>.

Regulation Number	Amendment Date
13 KAR 2:025	7/15/2015
101 KAR 3:015	9/21/2015
‡ 103 KAR 3:010	2/16/2016
‡ 103 KAR 3:030	2/16/2016
‡ 103 KAR 3:040	1/21/2016
‡ 103 KAR 3:040	2/17/2016
103 KAR 3:050	2/17/2016
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