

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 42, NUMBER 11
SUNDAY, MAY 1, 2016

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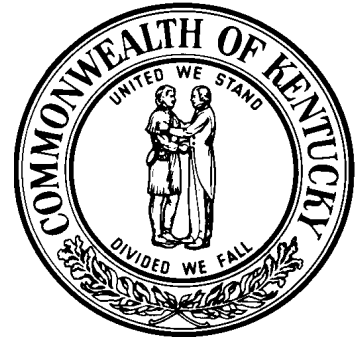
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ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 42, NUMBER 11
SUNDAY, MAY 1, 2016

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

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet May 10, 2016, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **2699-2700** 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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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, MAY 10, 2016, at 1:00 p.m., Room 149 Capitol Annex**

**HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services**

Kentucky Higher Education Assistance Authority

11 KAR 4:080. Student aid applications.

KHEAA Grant Programs

11 KAR 5:145. CAP grant award determination procedure.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue**

Forms

103 KAR 3:050. Miscellaneous Taxes Forms manual.

**GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Licensure for Ophthalmic Dispensers**

Board

201 KAR 13:040. Licensing; application; examination; experience; renewal; and inactive status.

201 KAR 13:050. Apprentices.

Board of Nursing

Board

201 KAR 20:240. Fees for applications and for services.

201 KAR 20:520. Telehealth.

Board of Social Work

Board

201 KAR 23:070. Qualifying education and qualifying experience under supervision. (Amended After Comments) (Deferred From April)

Board of Respiratory Care

Board

201 KAR 29:015. Fees.

Board of Prosthetics, Orthotics and Pedorthics

Board

201 KAR 44:021. Repeal of 201 KAR 44:020 and 201 KAR 44:030.

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

Office of the Secretary

501 KAR 6:020. Correction policies and procedures.

501 KAR 6:170. Green River Correctional Complex.

501 KAR 6:999. Corrections secured policies and procedures.

**LABOR CABINET
Department of Workers' Claims**

Department

803 KAR 25:010. Procedure for adjustments of claims.

803 KAR 25:014. Repeal of 803 KAR 25:009.

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

Quotas

804 KAR 9:040. Quota retail package licenses.

**Office of Occupations and Professions
Board of Home Inspectors**

Board

815 KAR 6:010. Home inspector licensing requirements and maintenance of records. (Amended After Comments) (Deferred from April)

815 KAR 6:040. Home inspector prelicensing providers. (Not Amended After Comments) (Deferred from April)

815 KAR 6:080. Continuing education provider. (Not Amended After Comments) (Deferred from April)

815 KAR 6:090. Procedures for complaints and administrative hearings. (Amended After Comments) (Deferred from April)

**Department of Housing, Buildings and Construction
Division of Building Code Enforcement**

Building Code

815 KAR 7:120. Kentucky building code.

815 KAR 7:125. Kentucky residential code.

Division of Heating, Ventilation and Air Conditioning

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:095. Vehicle identification.

Division of Plumbing

Plumbing

815 KAR 20:084. Storage and installation of cross-linked polyethylene piping.

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**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 2015)

**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 2015)

Division of Policy and Operations

Medicaid Services

907 KAR 1:046. Community mental health center primary care services. (Amended After Comments) (Deferred from May 2015)

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

Child Welfare

922 KAR 1:320 & E. Service appeals for Title 922 KAR Chapters 1, 3, and 5.

Division of Child Care

Day Care

922 KAR 2:020 & E. Child Care Assistance Program (CCAP) improper payments, claims, and penalties.

922 KAR 2:160 & E. Child Care Assistance Program.

922 KAR 2:260 & E. Child care service appeals.

**REMOVED FROM THE MAY AGENDA
GENERAL GOVERNMENT CABINET
Board of Licensed Diabetes Educators**

Board

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

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
601 KAR 2:030E

This emergency administrative regulation establishes the guidelines and requirements for the implementation and use of ignition interlock devices. It is filed to address the risk to public safety associated with driving under the influence. This emergency administrative regulation replaces the current emergency regulation that expires on March 31 and differs substantially by clarifying the definition for ignition interlock service provider in Section 1(11). This emergency administrative regulation will be replaced by an ordinary administrative regulation which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
GREG THOMAS, Acting Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Emergency Amendment)

601 KAR 2:030E. Ignition interlock[devices;—the surrendering of license plates].

RELATES TO: KRS 45A, 186.010, 186.440, 186.442, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.240, 189A.250, 189A.340, 189A.345, 189A.400, 189A.410, 189A.420, 189A.440, 189A.500, 205.712, 18 U.S.C. 2721[57 C.F.R. 11772-11787]

STATUTORY AUTHORITY: KRS 189A.500[189A.085(1)(b); 189A.340(4)(f)]

EFFECTIVE: March 29, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.500 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant charged with a violation of KRS 189.010 to obtain an ignition interlock device and license[KRS 189A.085 states that, after a license plate suspension by a judge pursuant to that provision, the circuit court clerk shall transmit surrendered plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(f) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing registration information on a convicted violator to the court, approving interlock device manufacturers, installers, and servicing entities and making an approved list available to the public].

Section 1. Definitions. (1) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(2) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(3) "Defendant" means an individual who is determined to be eligible and who is ordered by the court to drive only motor

vehicles that have certified ignition interlock devices installed.

(4) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(5) "Device" means a breath alcohol ignition interlock device.

(6) "Fail-point" means the level at which the breath alcohol concentration is at or above .02 percent.

(7) "Ignition interlock certification of installation" is defined by KRS 189A.005(3).

(8) "Ignition interlock device" is defined by KRS 189A.005(2).

(9) "Ignition interlock device provider" or "device provider" is defined by KRS 189A.005(4).

(10) "Ignition interlock license" is defined by KRS 189A.005(5).

(11) "Ignition interlock service provider" or "service provider" means a certified supplier, installer, service provider, and, if applicable, manufacturer of the certified ignition interlock devices.

(12) "Lockout" means the ability of the ignition interlock device to prevent a motor vehicle's engine from starting.

(13) "Manufacturer" means the actual maker of the ignition interlock device that assembles the product and distributes it to device providers.

(14) "Medical accommodation" means non-standard calibration of a device that has been adjusted to detect the breath alcohol level of defendants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(15) "Motor vehicle" is defined by KRS 186.010(4).

(16) "NHTSA" means the National Highway Traffic Safety Administration.

(17) "Provider representative" means a device provider employee who provides oversight of the provider's ignition interlock operations within the Commonwealth of Kentucky.

(18) "Retest" means an additional opportunity to provide a breath sample.

(19) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(20) "Rolling retest" means a test of the defendant's breath alcohol concentration required at random intervals during operation of the motor vehicle.

(21) "Service facility" means the physical location where the service provider's technicians install, calibrate, or remove ignition interlock devices.

(22) "Service facility inspection" means the process of determining that a service provider and its technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(23) "Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device.

(24) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

(25) "Violation" means:

(a) A breath test indicating an alcohol concentration at the fail-point or above upon initial startup and retest during operation of the motor vehicle;

(b) Altering, concealing, hiding, or attempting to hide one's identity from the ignition interlock system's camera while providing a breath sample;

(c) Failure to provide a minimum of fifty (50) breath samples within a thirty (30) day period;

(d) Tampering that breaches the guidelines for use of the interlock device; or

(e) Failure to pay provider fees as established in Section 2(17) of this administrative regulation.

Section 2. Ignition Interlock Device Applications. (1) The requirements established in this administrative regulation shall not be applied retroactively to ignition interlock devices in use prior to the effective date of this administrative regulation.

(2)(a) Upon arraignment of an offense under KRS 189A.010 resulting in pretrial license suspension, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Pretrial

Application to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 189A.200.

(b) Upon conviction of an offense under KRS 189A.010 resulting in license revocation, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Application to Court Upon Conviction for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.12, pursuant to KRS 189A.070.

(c) Upon judicial finding of a refusal under KRS 189A.107(2) and an acquittal of charges brought under KRS 186.010, the court may authorize the defendant to submit a completed Post-Acquittal Application for Authorization to Apply for an Ignition Interlock License and Device, AOC 495.10.

(d) An eligible defendant in compliance with KRS Chapters 186 and 205 shall receive an Order Upon Acquittal Authorizing Ignition Interlock License and Device, AOC-495.11.

(e) The cabinet shall issue an ignition interlock license for the period of suspension ordered by the court.

(3) A defendant requesting indigency status review shall file concurrently with the application a completed Financial Statement, Affidavit of Indigency, Request for Reduced Ignition Interlock Device Costs, AOC-495.8.

(4) Upon review of the appropriate application, the court may issue the defendant a Pretrial Order Authorizing Application for Ignition Interlock License and Device, AOC-495.5, or an Order Upon Conviction Authorizing Application for Ignition Interlock License and Device, AOC-495.13.

(5) Defendant eligibility guidelines, applications, and medical accommodation forms shall be made available electronically on the cabinet's Web site at <http://drive.ky.gov> and in printed form through the Department of Vehicle Regulation regional field offices. Regional office locations and contact information are available at <http://drive.ky.gov>.

(6)(a) Prior to application, a defendant shall be required to remit to the cabinet a non-refundable application fee in the amount of \$105 pursuant to KRS 189A.420(6). Payment shall be made by cashier's check, certified check, or money order at one (1) of the cabinet's regional field offices or the central office in Frankfort.

(b) A defendant's payment of the application fee shall not be subject to a court's determination of indigency.

(7) A defendant and his or her counsel are advised that a pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, or 205.712 shall result in the defendant's ineligibility to obtain an ignition interlock device. Eligibility guidelines are available at <http://drive.ky.gov>.

(8) A defendant shall submit to the cabinet a completed Ignition Interlock Application, TC 94-175, with a court order authorizing application and proof of insurance and valid vehicle registration.

(9) A defendant seeking a medical accommodation due to diminished lung capacity shall submit with the application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(10) The cabinet shall issue the defendant a letter providing notice of his or her eligibility or ineligibility to install an ignition interlock device based on whether his or her current driving history record conforms to the eligibility guidelines established in KRS Chapters 186 and 205.

(11) A defendant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet's Web site at <http://drive.ky.gov>.

(12) A technician designated by the device provider shall install a certified ignition interlock device on the defendant's vehicle upon receipt of the court order and letter of eligibility issued by the cabinet.

(13) A defendant shall be required to install an ignition interlock device on one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

(14) Nothing in this administrative regulation shall prohibit a person from installing devices on multiple motor vehicles pursuant to subsection (13) of this section.

(15) Upon a defendant's payment of the appropriate fees, the

service provider's technician shall install the device and issue to the defendant a Certificate of Installation for Ignition Interlock Device, TC 94-177.

(16) At the time of issuance of an ignition interlock license, a defendant shall:

(a) Present the Certificate of Installation to the circuit clerk in the defendant's county of residence; and

(b) Pay a licensing fee pursuant to KRS 186.531 in addition to the fees specified in subsection (20)(c) of this section. The license shall display an ignition interlock device restriction.

(17) After ten (10) days' written notice to the defendant, the provider shall notify the appropriate county attorney and the cabinet for nonpayment of fees on an account that is in arrears for thirty (30) days or more.

(18) A defendant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (13) of this section, and upon payment of the appropriate fees to the provider.

(19) A defendant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock period specified by the court.

(20)(a) Upon removal of the device, the service provider shall retain for their records and provide to the defendant a Certificate of Removal for Ignition Interlock Device, TC 94-178, documenting the successful removal of the interlock device and defendant's payment of all fees.

(b) Upon notice that the device has been removed, the cabinet shall update the defendant's driver history record authorizing the circuit clerk's office to issue the defendant a new license without the ignition interlock restriction.

(c) A defendant shall pay the appropriate fee for a duplicate or renewal license pursuant to KRS 186.531.

(21) A defendant with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Initial certification shall be valid for a period of eighteen (18) months. Extensions shall be for a period of two (2) years with two (2) subsequent renewals.

(2) Ignition interlock device providers certified under this administrative regulation shall obtain re-certification in compliance with this administrative regulation prior to providing devices and services.

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in its original certification request and is specifically certified by the cabinet pursuant to KRS 189A.500.

(5) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the defendant and other individuals operating a vehicle with an installed device.

(6)(a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an agreement is in place or for the purpose of replacing a defendant's provider due to that provider's insolvency or business interruption.

(b) The original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(7) A device provider shall notify the cabinet within fifteen (15) days of a pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading

establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

(8) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for five (5) years from the date the device is removed from the defendant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and the provisions contained in this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) An ignition interlock device provider requesting certification of an ignition interlock device shall:

(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and

(b) Submit documentation for each model from either a certified, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the current NHTSA model specifications at nhtsa.gov/staticfiles/nti/pdf/811859.pdf.

(2) An ignition interlock device provider requesting certification shall:

(a) Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program, including a list of jurisdictions served by the device provider;

(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide sufficient notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(e) Provide a plan for the receipt, maintenance, and destruction or appropriate return of defendant records consistent with court rules and the confidential maintenance of defendant records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(f) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The provider's liability insurance shall be expressly considered primary in the policy;

(g) Designate a provider representative authorized to speak on behalf of and bind the device provider, and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(h) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by defendants to request assistance in the event of operational problems related to the device and shall include technical assistance and aid in obtaining roadside service if needed; and

(i) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts.

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:

(a) Device tampering or circumvention violations; or

(b) A defendant's failure to comply with a court order pursuant to Section 6(6) of this administrative regulation.

(4) A provider shall indemnify and hold harmless the commonwealth and its employees and agents from all claims,

demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. Indemnification shall extend to acts or omissions by the cabinet, department, or its employees or agents due to verified errors in reporting ignition interlock activities by the provider.

Section 5. Ignition Interlock Device Installation. (1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:

(a) Standard ignition interlock device installation, or installation on alternative fuel motor vehicles or a motor vehicle with a push button starter;

(b) Device rental on a monthly basis;

(c) Scheduled device calibrations and monitoring as specified in the RFQ;

(d) Required insurance in case of theft, loss, or damage to the device and its components;

(e) Resets necessary due to the fault of the defendant;

(f) Missed appointments without notice;

(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and

(h) Device removal.

(2)(a) The court shall determine whether a defendant is indigent. A defendant declared indigent shall pay a proportionate amount of the fees agreed to in the RFQ based upon the guidelines established by the Kentucky Supreme Court in Amendment to Administrative Procedures of the Court of Justice, Part XVI, Ignition interlock, Amended Order 2015-13.

(b) A device and service provider shall accept the court ordered amounts paid by an indigent defendant as payment in full.

(3) The defendant shall remit the fees directly to the device or service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

(4) The device provider shall pursue collection of amounts in arrears and recovery of the devices, where applicable, through separate legal action.

(5) An ignition interlock device shall be installed by or under the direction and supervision of a cabinet-certified ignition interlock device provider in conformance with approved, prescribed procedures of the device manufacturer.

(6) A service provider and technician shall use the calibration units approved by NHTSA and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>.

(7) An ignition interlock device provider shall ensure that technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the previous period and send the information to the appropriate authority within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient pursuant to KRS 189A.500;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering or circumvention, record suspected violations, and transmit violation reports pursuant to Section 4(3) of this administrative regulation; and

(e) Conform to other calibration requirements established by the device manufacturer.

(8) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities available at <http://drive.ky.gov>;

(b) Make available an Ignition Interlock Application, TC 94-175, available at <http://drive.ky.gov> and in regional field offices and the central office in Frankfort;

(c) Make available a uniform Certificate of Installation for Ignition Interlock Device, TC 94-177 to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device installation; and

(d) Issue an ignition interlock license to eligible defendants upon receipt of a court order and in compliance with the requirements of this administrative regulation. The license shall have in-force status and indicate it is an ignition interlock license by displaying a restriction code for an ignition interlock device.

Section 6. Installation, Operation, Calibration, and Removal of Devices. (1) Prior to installing the device, the provider shall obtain and retain copies of the following from the defendant:

(a) Photo identification;

(b) A copy of the vehicle registration or title containing the VIN of the vehicle designated as primary by the defendant and the names of the operators of the motor vehicle; and

(c) Consent of the defendant or registered owner to install the device.

(2)(a) The device shall be inspected or calibrated by technicians designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter, as established in KRS 189A.420(4)(b).

(b) A defendant shall have the option to service the device at thirty (30) day intervals following the initial calibration.

(3) If a defendant fails to have the device inspected or recalibrated as required, the ignition interlock device shall be programmed to enter into a lockout condition, at which time the vehicle shall be required to be returned to the service provider.

(4) The defendant shall be responsible for costs related to roadside service unless it is determined that the interlock device failed through no fault of the defendant, in which case the device provider shall be responsible for the applicable costs.

(5) In the event of a violation resulting in an order from the court, the device provider shall remove the device and the cabinet shall suspend the defendant's ignition interlock license.

(6) A device provider shall, within ninety-six (96) hours of receipt of the court's order directing removal of the device, notify the defendant that he or she shall return the vehicle with the installed device for removal.

(7) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

Section 7. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency. (1) The department shall indefinitely suspend or revoke certification of an ignition interlock device provider for the following:

(a) A device in use by that provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

(b) The device provider's liability insurance is terminated or cancelled;

(c) The device provider makes materially false or inaccurate information relating to a device's performance standards;

(d) There are defects in design, materials, or workmanship causing repeated failures of a device;

(e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

(f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, vehicle damage, or a complaint brought by a third party;

(g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;

(h) A provider becomes insolvent or files for bankruptcy; or

(i) The device provider requests a voluntary suspension.

(2)(a) The device provider shall be given thirty (30) days written notice of the existence of one (1) or more of the conditions specified in subsection (1) of this section by letter from the Commissioner of the Department of Vehicle Regulation, served by certified mail, and an opportunity to respond to the allegations or

correct the deficiencies within that period.

(b) The commissioner shall consider the provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the provider.

(c) The provider may appeal the commissioner's decisions pursuant to the provisions of KRS Chapter 13B.

(3) A device provider subject to revocation shall be responsible for, and bear the costs associated with:

(a) Providing notice to defendants; and

(b) The removal of currently installed devices or the installation of a new approved device by a device provider in good standing.

(4) A provider subject to revocation shall continue to provide services for currently installed devices for a time to be determined by the cabinet, but no longer than ninety (90) days.

(5) A provider subject to suspension shall continue to provide services for currently installed devices. A new ignition interlock installation shall not be permitted during the period of suspension.

(6)(a) A provider who terminates certification or goes out of business shall comply with the requirements established in subsection (3) of this section, and shall continue to provide services for currently installed devices for ninety (90) days from the date of the provider's notification to the cabinet that they will be terminating ignition interlock services.

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing defendants to other providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for approval by the commissioner within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.

(d) The provider shall be solely responsible for notifying defendants with currently installed devices serviced by the provider, and shall be solely responsible for charges related to installation of a device by a new provider.

Section 8. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plates pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received, if the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.

(3) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plates.

(5) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner as follows:

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2); or

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

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

(a) "Breath Alcohol Ignition Interlock Physician Statement", TC 94-176, August 2015;

(b) "Certificate of Installation for Ignition Interlock Device", TC 94-177, August 2015;

(c) "Certificate of Removal for Ignition Interlock Device", TC 94-178, August, 2015; and

(d) "Ignition Interlock Application", TC 94-175, August 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's Web site at <http://drive.ky.gov> [Surrender of Motor Vehicle Registration Plates.

(1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

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(b) Identify all motor vehicles owned or jointly owned by the person named on the request; and

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(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 2. Breath Alcohol Ignition Interlock Device. (1) An ignition interlock device, installed pursuant to court order shall meet the following criteria:

(a) The ignition interlock device shall be designed and constructed to measure a person's breath alcohol concentration, as defined in KRS 189A.005(1), by utilizing a sample of the person's breath delivered directly into the device;

(b) The ignition interlock device shall be designed and constructed so that the ignition system of the vehicle in which it is installed will not be activated if the alcohol concentration of the operator's breath exceeds .02 alcohol concentration as defined in KRS 189A.005(1);

(c) The ignition interlock device shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), as published in 57 FR 11772-11787 (April 7, 1992);

(d) The ignition interlock device shall prevent engine ignition if the device has not been calibrated within a period of ninety-seven (97) days subsequent to the last calibration;

(e) The ignition interlock device shall:

1. Record each time the vehicle is started;
2. Record results of the alcohol concentration test;
3. Record how long the vehicle is operated; and
4. Detect any indications of bypassing or tampering with the device;

(f) The ignition interlock device shall permit a sample free restart for a period of two (2) minutes or less after a stall;

(g) The ignition interlock device shall require:

1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;
2. That retests continue at intervals not to exceed sixty (60)

minutes after the first retest;

3. That retests occur during operation of the vehicle; and

4. That the device enter a lockout condition in five (5) days if a retest is not performed or the results of the test exceeds the maximum allowable alcohol concentration;

(h) The ignition interlock device shall be equipped with a method of immediately notifying peace officers:

1. If the retest is not performed; or

2. If the results exceed the maximum allowable alcohol concentration; and

(i) The ignition interlock device shall include instructions recommending a fifteen (15) minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the device.

(2) An ignition interlock device shall be:

(a) Installed by the manufacturer or by private sector installers in conformance with the prescribed procedures of the manufacturer; and

(b) Be used in accordance with the manufacturer's instructions.

(3)(a) An ignition interlock device shall be calibrated at least once every ninety (90) days to maintain the device in proper working order.

(b) The manufacturer or installer shall calibrate the device or exchange the installed device for another calibrated device in lieu of calibration.

(c) The record of installation and calibration shall be kept in the vehicle at all times for inspection by a peace officer and shall include the following information:

1. Name of the person performing the installation and calibration;

2. Dates of activity;

3. Value and type of standard used;

4. Unit type and identification number of the ignition interlock device checked; and

5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.

4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.

Section 3. Division of Driver Licensing Requirements. (1) The Division of Driver Licensing shall maintain a list of all manufacturers of ignition interlock devices meeting the requirements of this administrative regulation who have provided documentation to the division confirming that they offer appropriate ignition interlock devices and related services within the Commonwealth.

(2) The list of manufacturers who provide appropriate devices, approved installers, and servicing and monitoring entities shall be published and periodically updated by the Division of Driver Licensing on the Transportation Cabinet Web site.

(3) The Division of Driver Licensing shall provide a notation on the face of the operator's license stating that:

(a) The licensee is required by order of the court to be using a vehicle with an ignition interlock device; and

(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.340, if granted by the court.

(4) Manufacturers, installers, and servicing and monitoring entities shall apply to the Division of Driver Licensing for approval and placement on the list maintained by the cabinet.

Section 4. Incorporation by Reference. (1) Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), 57 FR 11772-11787 (April 7, 1992), 40 pages, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of Driver Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

GREG THOMAS, Acting Secretary
RODNEY KUHL, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: March 17, 2016

FILED WITH LRC: March 29, 2016 at 3 p.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel,
Transportation Cabinet, Office of Legal Services, 200 Mero Street,
Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-
5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.500.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.500.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary: This regulation will amend and replace 601 KAR 2:030, the current ignition interlock administrative regulation.

(a) How the amendment will change this existing administrative regulation: These amendments remove the definition for "permanent lockout"; require a provider to contact the county attorney and cabinet after ten (10) days' notice to the defendant and before removal of a device; remove the requirement for a provider to contact the cabinet within fifteen (15) days of an investigation; require the provider to retain records for five (5) years from the date the ignition interlock device is removed; ensure that the Certificate of Installation form is not readily available on the Web site; remove the obligation for a provider to verify insurance policy and expiration date; allow a defendant to return a vehicle to the service provider rather than the site of installation; and permit ninety-six (96) hours from receipt of court order to notify the defendant.

(b) The necessity of the amendment to this administrative regulation: These amendments are made in response to public hearing and written comments.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will clarify provisions in the current administrative regulation

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device

certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of \$105 pursuant to KRS 189A.420(6).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If eligible pursuant to KRS chapter 186, defendants will be approved to drive with an Ignition Interlock license; businesses desiring to provide Ignition Interlock devices and services will be granted certification for devices and authority to provide services.

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

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at \$525,000.

(b) On a continuing basis: \$105 per defendant and up to approximately \$525,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially FHWA – Hazard Elimination Fund. There is presently no appropriation in place to administer or enforce this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to offset any costs KYTC.

(9) TIERING: Is tiering applied? No tiering is required for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for defendants in this program is pursuant to statute and judicially determined indigency status.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.500(1)(f).

(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. For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

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

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

(c) How much will it cost to administer this program for the first year? Up to approximately \$525,000.

(d) How much will it cost to administer this program for subsequent years? Unknown.

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

regulation.

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

STATEMENT OF EMERGENCY
921 KAR 3:035E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)1 to ensure the longest certification period possible, contingent upon circumstances, for recipients of the Supplemental Nutrition Assistance Program (SNAP). Without lengthening the SNAP certification period as outlined in this administrative regulation, low-income working and vulnerable households would experience unnecessary hardships in accessing safety net food benefits, potentially detrimental to the household members' health and nutritional needs and stress community resources to otherwise fulfill the needs. Additionally, this emergency administrative regulation preserves the state's federal funding in accordance with KRS 13A.190(1)(a)2 through improved congruency and compliance with SNAP access and participation requirements. An ordinary administrative regulation would not allow the agency sufficient time to resolve access hardships faced by SNAP recipients and improve adherence to other requirements of the SNAP eligibility determination and recertification processes. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 3:035E. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4
EFFECTIVE: April 1, 2016

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for at least:

(a) Twelve (12)~~(Six (6))~~ months; or

(b) Twenty-four (24)~~(Twelve (12))~~ months if all members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a ~~six (6) month or~~ twelve (12) or twenty-four (24) month certification as specified in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household:

1. Shall complete an interim report using the FS-2, SNAP REVIEW, every six (6) months during the household's certification period unless all household members meet criteria specified in subparagraph 2 of this paragraph; or

2. In which all members are elderly or have a disability as defined in 921 KAR 3:010 and have no earned income, shall complete an interim report using the [Form] FS-2, SNAP 6-Month Review, during the 12th month of the household's certification period [if the household reports:

1. ~~A new household member who is non-elderly or non-disabled; or~~

2. ~~A gain of earned income].~~

(b) If a household fails to return a completed FS-2 or the required ~~[income]~~ verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures. (1) A household with a self-employed member shall have its case processed as established in this subsection.

(a) Income shall be annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or

2. Is received on a monthly basis which represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and
2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as established in this subsection.

(a) Income from the boarder shall:

1. Be treated as self-employment income; and
2. Include all direct payments to the household for:
 - a. Room;
 - b. Meals; and
 - c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as established in this subsection.

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;
2. Comparing monthly income with income eligibility standards;

and

3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as established in this subsection.

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as established in this subsection.

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or
2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as established in this subsection.

(a) An eligible household shall include:

- 1.a. A narcotic addict; or
- b. An alcoholic; and
2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The case processing procedures established in this subsection shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2.

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or
2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or
2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as established in this subsection.

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or
2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

- (a) Comparing the striking member's income the day prior to the strike, to the striker's current income;
- (b) Adding the higher of the prestrike income or current income to other current household income; and
- (c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse which shall:

- a. Include total monthly earned and unearned income; and
- b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change which causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, SNAP[6-Month] REVIEW", 4/16[42/45], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: March 29, 2016

FILED WITH LRC: April 1, 2016 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation establishes the certification process necessary to determine SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the certification process for SNAP eligibility determination.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the certification process for SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation extends certification periods for qualified SNAP households from six months to 12 months with an interim review conducted during the sixth month, and for qualified SNAP households who are elderly and disabled from 12 months to 24 months with an interim review conducted during the 12th month. The incorporated form has been revised accordingly, including inputs from the U.S. Department of Agriculture, Food and Nutrition Service. In addition, the administrative regulation makes other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary: to reduce access and participation hardships experienced by qualified SNAP households consistent with communications received from the Kentucky Equal Justice Center in 2014, and to better align with federal expectations. As a result, the amendment preserves federal funding and protects the health and welfare of households participating in SNAP, including the working poor, individuals with disabilities, and the elderly.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conform to the content of the authorizing statutes by allowing the longest certification period possible contingent upon circumstances and better conforming with federal expectations resulting from recent federal inputs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by extending SNAP certification periods to the extent possible based upon circumstances and incorporating recent federal guidance and inputs regarding SNAP access and participation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In February 2016, there were 39,685 SNAP applications, 47,042 SNAP recertifications, and 325,287 active households.

(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 regulated entities identified in the prior question will have a longer SNAP certification period with an interim review required at the mid-point of the certification period. Other reporting requirements of the household are unchanged during the certification period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities should realize reduced hardship in accessing and participating in SNAP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of a longer certification period, qualified households will be able to continue participation in SNAP with more minimal hardship and without adverse consequence to case accuracy.

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

(a) Initially: There is no new cost borne by the administrative body to implement this administrative regulation.

(b) On a continuing basis: There is no new cost borne by the administrative body to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The

funding has been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative regulation will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation will not require any additional 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 REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, April 11, 2016)

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, 133.130, 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 20A001, Kentucky Department of Revenue Acknowledgment 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 persons 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.**

(55) 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.

(56)/(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.

(57)/(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.

(58)/(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.

(59)/(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.

(60)/(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.

(61)/(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.

(62)/(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.

(63)/(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.

(64)/(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.

(65)/(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.

(66)/(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.

(67)/(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.

(68)/(67)/(58) 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.

(69)/(68)/(59) 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.

(70)/(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.

(71)/(70)/(61) 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.

(72)/(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.

(73)/(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.

(74)/(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.

(75)/(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.

(76)/(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.

(77)/(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.

~~(78)~~~~(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.

~~(79)~~~~(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.

~~(80)~~~~(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.

~~(81)~~~~(80)~~~~(71)~~ 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.

~~(82)~~~~(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.

~~(83)~~~~(82)~~~~(73)~~ Revenue Form 31A050, Electronic Transmittal Authorization, shall be used by auditors to seek permission from a taxpayer to transmit audit results electronically.

~~(84)~~~~(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.

~~(85)~~~~(84)~~~~(75)~~ Revenue Form 31A114, Property Audit Request, shall be used by PVAs to submit audit requests for property tax.

~~(86)~~~~(85)~~~~(76)~~ Revenue Form 31A115, Agreement Fixing Test Periods, shall be used by auditors to establish certain test periods when conducting an audit.

~~(87)~~~~(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.

~~(88)~~~~(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.

~~(89)~~~~(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.

~~(90)~~~~(89)~~~~(80)~~ Revenue Form 31A200, Reporting Agreement, shall be used to document an agreement between the Department of Revenue and taxpayer regarding sales tax.

~~(91)~~~~(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.

~~(92)~~~~(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.

~~(93)~~~~(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.

~~(94)~~~~(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.

~~(95)~~~~(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 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 20A001, "Kentucky Department of Revenue Acknowledgment of Confidentiality", February 2016;

(ccc) Revenue Form 21A020, "Request for Copy of Tax Refund Check", November 2011;

(ddd)(ccc) Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", September 1998;

(eee)(ddd) Revenue Form 30A006-ASH[30A006], "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015[2006];

(fff)(eee) Revenue Form 30A006-BG, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;

(ggg)(fff) Revenue Form 30A006-CKY, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;

(hhh)(ggg) Revenue Form 30A006-COR, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;

(iii)(hhh) Revenue Form 30A006-HOP, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;

(iii)(iii) Revenue Form 30A006-LOU, "Temporary Vendor

Sales and Use Tax Return/Processing Document", December 2015;

(kkk)(iii) Revenue Form 30A006-NKY, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;

(lll)(kkk) Revenue Form 30A006-OWEN, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;

(mmm)(lll) Revenue Form 30A006-PAD, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;

(nnn)(mmm) Revenue Form 30A006-PIKE, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2015;

(ooo)(nnn) Revenue Form 30A872, "Record of Money Receipt Issued", October 2000;

(ppp)(ooo)(fff) Revenue Form 31A001, "Vendor Contact Authorization", July 2006;

(qqq)(ppp)(ggg) Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July 2006;

(rrr)(qqq)(hhh) Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", December 2011;

(sss)(rrr)(iii) Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", December 2011;

(ttt)(sss)(jjj) Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", December 2011;

(uuu)(ttt)(kkk) Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", December 2011;

(vvv)(uuu)(lll) Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", December 2011;

(www)(vvv)(mmm) Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", December 2011;

(xxx)(www)(nnn) Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", December 2011;

(yvy)(xxx)(ooo) Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", December 2011;

(zzz)(yvy)(ppp) Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", December 2011;

(aaa)(zzz)(qqq) Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", December 2011;

(bbb)(aaa)(rrr) Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July 2006;

(ccc)(bbb)(sss) Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July 2006;

(ddd)(ccc)(ttt) Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July 2006;

(eee)(ddd)(uuu) Revenue Form 31A050, "Electronic Transmittal Authorization", March 2011;

(fff)(eee)(vvv) Revenue Form 31A110, "Office of Field Operations Estimated Assessment Request", June 2014;

(ggg)(fff)(www) Revenue Form 31A114, "Property Audit Request", November 2011;

(hhh)(ggg)(xxx) Revenue Form 31A115, "Agreement Fixing Test Periods", April 2008;

(iii)(hhh)(yyy) Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July 2006;

(jii)(iii)(zzz) Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", May 2008;

(kkk)(jii)(aaa) Revenue Form 31A151, "Agreement Fixing Period of Limitation Upon Assessment of Sales or Use for Authorized EDP Holders", June 2013;

(lll)(kkk)(bbb) Revenue Form 31A200, "Reporting Agreement", November 2011;

(mmm)(lll)(ccc) Revenue Form 31A685, "Authorization to Examine Bank Records", May 1985;

(nnnn)(mmm)(ddd) Revenue Form 31A725, "Statute of Limitations Agreement", July 2014;

(oooo)(nnnn)(eee) Revenue Form 31A800, "IIT Review History Document", November 2011;

(pppp)(ooo)(fff) Revenue Form 31F006, "Southeastern

States Information Exchange Program", March 2012; ~~and~~ ~~and~~ ~~(gggg)(eeee)(gggg)~~ Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program", May 2010; ~~and~~ ~~(gggg)~~ Revenue Form 20A001, "Kentucky Department of Revenue Acknowledgement of Confidentiality", February 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40602, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: February 12, 2016

FILED WITH LRC: February 15, 2016 at noon

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.

**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, April 11, 2016)**

201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

RELATES TO: KRS 314.041(1), 314.111(1), 314.131

STATUTORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs.

Section 1. Definitions. (1) "Campus" means a division of a college or university that has its own grounds, buildings, and students, but is administratively joined to the rest of the college or university.

(2) "Clerical assistance" means the provision of administrative, secretarial, or clerical help by qualified individuals that assists the program of nursing.

(3) "Clinical instructor" means a nurse who is employed by a program of nursing solely to provide students with traditional clinical or simulated experiences.

~~(4) "NCLEX" means the National Council Licensure Examination.~~

~~(5) "Nurse faculty" means a nurse who is employed by a program of nursing, either full-time, part-time, or adjunct, to provide didactic instruction, and may also provide clinical instruction or simulated experiences.~~

~~(5)(6) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a student.~~

~~(6)(7)(2) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse and includes secondary learning sites, if applicable.~~

~~(7)(8) "Suspension of enrollment" means temporarily halting the admission of students into an approved program of nursing tract.~~

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution that establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program administrator for the prelicensure program of nursing who is qualified pursuant to 201 KAR 20:310 and is responsible for fulfilling the duties specified in subsection (3) of this section on a twelve (12) month basis;

2. Assure that at least fifty (50) percent and up to 100 percent of the program administrator's time shall be dedicated to complete the duties specified in this administrative regulation at each program of nursing ~~[, up to 100 percent]~~. A governing institution that is unable to comply with this standard may request an exemption from the board in writing.

a. The request shall state the reasons for noncompliance and the efforts the institution has taken and will take to comply with the standard.

b. If the exemption is granted, it shall be for one (1) academic year. During this time, the governing institution shall not open a new program of nursing and shall not increase enrollment at an existing program of nursing;

3. Establish administrative policies;

4. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;

5. Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

6. Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

7. Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and expertise to accomplish program outcomes and quality improvement;

8. Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, and retention ~~[promotion, retention, and tenure]~~;

9. Involve the nurse faculty in determining academic policies and practices for the program of nursing; and

10. Provide for the security, confidentiality, and integrity of faculty employment and student records.

(d) The governing institution shall provide an organizational chart that describes the organization of the program of nursing and its relationship to the governing institution;

(2) Administrative policies.

(a) There shall be written administrative policies for the program of nursing that shall be:

1. In accord with those of the governing institution; and

2. Available to the board for review.

(b) The board shall be notified in writing of a vacancy or pending vacancy in the position of the program administrator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy.

1. If the program administrator vacates the position, the head of the governing institution shall submit to the board in writing:

a.1.1 The effective date of the vacancy; ~~and~~

b.1.2 The name of the registered nurse who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae; ~~;~~

2.a.3.a.1 If there is to be a lapse between the date of the vacancy and the date the newly-appointed program administrator assumes duties, the head of the governing institution shall submit a plan of transition to ensure the continuity of the program.

b. Progress reports shall be submitted if requested by the board ~~;~~

3.a.4.a.1 The length of the appointment of an interim program

administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.~~]; and]~~

4.a[5.a.] If the individual to be appointed as the interim program administrator is not qualified pursuant to 201 KAR 20:310, the head of the governing institution shall petition the board for a waiver prior to the appointment.

b. A waiver shall be granted if the individual to be appointed meets at least the minimum requirements established in 201 KAR 20:310 for nurse faculty.

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause by either party;

(3) A program or an interim program administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) ~~Submission of~~Within thirty (30) days of appointment to the program of nursing, submit] the qualifications of all nurse faculty and clinical instructors ~~as set forth in 201 KAR 20:310, Section 4;~~

(e) To provide leadership within the nurse faculty for the development, implementation, and evaluation of the program of nursing and program outcomes;

(f) To facilitate the implementation of written program policies for the following:

1. Student admission;

2. Student readmission and advance standing;

3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on and off campus;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Student conduct that incorporates the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the continuing academic and professional development for the nurse faculty;

(h) 1. To coordinate the development and negotiation of contracts with clinical facilities, the number and variety of which shall be adequate to meet curricular outcomes; and

2. To coordinate the development of written criteria for the selection and evaluation of~~[criteria for]~~ clinical facilities and ensure

that the criteria shall be utilized by the program of nursing;

(i) The establishment of student-nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients- clients shall be defensible in light of safety, learning objectives, student level, and patient acuity.

2. The student-nurse faculty ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or ~~other supervised learning~~[preceptored] experiences.~~[Observational experiences shall include an assignment where a student observes nursing and where the student does not participate in direct patient or client contact but has access to a clinical instructor as needed.]~~

3. This ratio shall not apply to on campus skill lab experiences;

(j) The submission of the Certified List of Kentucky Program of Nursing Graduates, as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma, or certificate, regardless of the state in which the graduate intends to seek licensure;

(k) The development and maintenance of an environment conducive to the teaching and learning process;

(l) To facilitate the development of long-range goals and objectives for the nursing program;

(m) To ensure that equipment, furnishings, and supplies shall be current and replaced in a timely manner;

(n) To ensure that the nurse faculty has sufficient time to accomplish those activities related to the teaching-learning process and program outcomes;

(o) To coordinate an orientation to the roles and responsibilities of full-time, ~~part-time~~, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program shall be achieved;

(p) To facilitate regular communication with the full and part time nurse faculty and clinical instructors in the planning, implementation, and evaluation of the program of nursing;

(q) To ensure that recruitment materials provide accurate and complete information to prospective students about the program including the:

1. Admission criteria;

2. Nature of the program, including course sequence, prerequisites, corequisites, and academic standards;

3.[2.] Length of the program;

4.[3.] Current cost of the program; and

5.[4.] Transferability of credits to other public and private institutions in Kentucky;

(r) To conduct or participate in the written evaluation of each nurse faculty member, clinical instructor, and support staff according to published criteria, regardless of contractual or tenured status;

(s) To ensure the adherence to the written criteria for the selection and evaluation of clinical facilities utilized by the program of nursing;

(t) To maintain current knowledge of requirements pertaining to the program of nursing and licensure as established in 201 KAR Chapter 20;

(u) To attend a board orientation for program administrators~~[of Nursing Program Administrators Orientation]~~ within one (1) year of appointment;

(v) To develop a structure to allow nurse faculty to assist in the governance of the program; and

(w) To ensure that the curriculum is developed and implemented pursuant to 201 KAR 20:320~~[as submitted to the board];~~

(4) A system of official records and reports essential to the operation of the program of nursing maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for standardized tests, and clinical performance records;

(b) Minutes of faculty and committee meetings, ~~which~~ These records shall be maintained a minimum of five (5) years, irrespective of institutional policy;

(c) Faculty records including:

1. Validation of current licensure or privilege to practice as a Registered Nurse in Kentucky;

2. Evidence of fulfilling the faculty orientation requirements established in 201 KAR 20:310, Section 3(5); and

3. Performance evaluation for faculty employed more than one (1) year;

(d) Systematic plan of evaluation;

(e) Graduates of the program of nursing; and

(f) Administrative records and reports from accrediting agencies; and

(5) Official publications including:

(a) A description of the governing institution and program of nursing;

(b) Policies on admission, progression, dismissal, graduation, and student grievance procedures;

(c) A description of student services;

(6) Clerical assistance and support staff.

~~(a) The number of clerical assistants shall be based upon the number of students and faculty.~~

~~(b) There shall be [secretarial and] clerical assistance and support staff [assistants] sufficient to meet the needs of the nursing program for the administrator, faculty, and students at the main campus [designated primary location, as well as clerical support for secondary and distance learning sites, if applicable].~~

(b) A non-main campus shall have additional clerical assistance and support staff sufficient to meet its needs.

(7) Nurse faculty, full-time, and part-time, with the authority and responsibility to:

(a) Plan, implement, evaluate, and update the program;

(b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;

(c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;

(d) Participate in academic advisement and guidance of students;

(e) Provide theoretical instruction and clinical learning experiences;

(f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;

(g) Develop and implement student evaluation methods and tools ~~for each course that~~ to measure the progression of the student's cognitive, affective, and psychomotor achievement ~~off~~ in course and clinical outcomes based on published rubrics and sound rationale;

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;

~~(i) Establish clinical outcomes within the framework of the course;~~

~~(j) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;~~

~~(k) Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis;~~

~~(l) Evaluate the student's experience, achievement, and progress in relation to course and clinical [or] outcomes, with input from the clinical instructor and preceptor, if applicable; and~~

(l) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure; and

(8) Clinical instructors with the authority and responsibility ~~[governance]~~ to:

(a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;

(b) Clarify with the nurse faculty member:

1. The role of the preceptor, if applicable;

2. The course responsibilities;

3. The course or clinical outcomes;

4. A course evaluation tool; and

5. Situations in which collaboration and consultation shall be needed; ~~and~~

(c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes; ~~and~~

(d) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure.

Section 3. Notification of Change in ~~[Increased]~~ Enrollment.

(1)(a) Within sixty (60) days of the effective date of this administrative regulation, all existing programs of nursing shall submit to the board the maximum number of students that the program is able to enroll in one (1) year. This number shall be referred to as the program's enrollment baseline.

(b) A program of nursing that begins operation after the effective date of this administrative regulation shall submit its enrollment baseline in the initial application.

(2)(a) A program of nursing shall submit a request for an increase in enrollment by twenty (20) percent or more of the enrollment baseline [last cohort enrolled] or ten (10) students, whichever is greater. [a] The request shall be sent in writing at least two (2) [not later than six (6)] months prior to the date for which the requested increase is being sought. Exceptions to this time frame shall only be made for exigent circumstances.

(b) The request shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment. These sufficient resources shall include adequate:

1. Number of qualified faculty;

2. Classroom space;

3. Clinical sites;

4. Clerical support; and

5. Financial support.

(c) The program shall investigate the projected impact of the increase on the operation of programs of nursing within a fifty (50) mile radius and shall submit a report to the board.

(d) The program of nursing shall submit evidence that it has met the benchmarks set out in 201 KAR 20:360, Section 5(2)(f).

(3)[(2)] The board shall evaluate if the program has sufficient resources prior to making the decision of whether to grant or deny the request.

Section 4. Multiple Campuses. (1) A governing institution may have programs of nursing located on different campuses.

(2)(a) The governing institution shall designate a main campus headed by a program administrator.

(b) The program administrator shall have final responsibility and authority for the non-main campuses, but shall designate an assistant program administrator to assist in the governance of each non-main location. The assistant program administrator shall meet the qualification for a nurse faculty as set out in 201 KAR 20:310. The program administrator may designate the amount of release time for the assistant program administrator for administrative duties, but it shall not be less than twenty-five (25) percent.

(3) For purposes of calculating benchmarks set out in 201 KAR 20:360, Section ~~5(2)(f)~~ 4(2)(f), each campus shall individually report its data annually to the board. The board shall evaluate the benchmarks for each campus individually.

Section 5. Suspension of Enrollment. (1) A governing institution that decides to suspend enrollment shall notify the board in writing within thirty (30) days following the decision.

(2) The notification shall identify the reasons leading to the decision and how long it is anticipated that the suspension will be in effect.

(3) The governing institution shall report to the board annually on the status of the suspension.

(4)(a) If the decision to reinstate enrollment is made within three (3) years of the decision to suspend enrollment, the governing institution shall notify the board in writing of the decision within thirty (30) days.

(b) The notification shall state the date classes will begin. It shall also list the faculty and clinical sites that will be utilized.

(5) If the decision to reinstate enrollment is made three (3) years or more from the decision to suspend enrollment, the governing institution shall comply with the procedures outlined in 201 KAR 20:280.

[(3) The board shall not grant approval for the increase in enrollment unless the program has: (a) Full approval status; and (b) Program NCLEX pass rate for first time test takers for the preceding year of a minimum of eighty-five (85) percent.]

GAIL WISE, President

APPROVED BY AGENCY: December 11, 2015

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**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, April 11, 2016)**

201 KAR 20:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3), 314.131(2)

STATUTORY AUTHORITY: KRS 314.111, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 requires the board to review schools, approve qualified schools, and, if appropriate, [and possibly] withdraw approval for schools of nursing. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314. This administrative regulation establishes the standards for the development and approval of programs that[which] prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states.

Section 1. Definitions. (1) "Developmental status" means approval of the proposal.

(2) "Initial status" means admission of the first class.

(3) "Program approval" means permission by the board to operate a program of nursing.

Section 2. Establishment of a Program of Nursing. (1) The governing institution may receive consultation from the board prior to establishing a program of nursing.

(2) The governing institution that desires to establish and conduct the program of nursing shall be accredited as established in 201 KAR 20:260, Section 2.

Section 3. [2.] Letter of Intent. (1) The governing institution shall submit to the board a letter of intent to establish a prelicensure program of nursing and the fee required by 201 KAR 20:240.

(2) The letter of intent shall be completed under the direction or consultation of a registered nurse who meets the qualifications of a program administrator as established in 201 KAR 20:310.

(3) The letter of intent shall include:

(a) Approval from the governing body of the institution proposing the program of nursing or other empowered approval bodies as applicable;

(b) The results of a feasibility study that includes the following information related to the need for the program of nursing:

1. Nursing[Population data within the past three (3) years of both the state and the geographic area to be served;

2. workforce supply and demand data from the past year for the area within a fifty (50) mile radius; and

2. [3. The rationale for why the particular geographic area was

chosen;

4. A survey of all hospitals, nursing homes, and other health-related facilities where graduates of the program could be hired.

a. The letter of intent shall include copies of the completed survey forms.

b. The survey forms shall include:

(i) How many registered nurses (RNs) and licensed practical nurses (LPNs) are employed;

(ii) The attrition rate for the nurses employed each year for the past three (3) years and why does this attrition occur;

(iii) How many openings for RNs and LPNs are available at the time of the survey;

(iv) How many positions for RNs and LPNs are budgeted for the next three (3) years; and

(v) If the facility expects to increase or decrease the number of beds in the next three (3) to five (5) years;

5. A description of the characteristics of the population in the community to be served to include current and emerging health needs based on statistical studies to include age groups and socioeconomic status;

6. A summary of how the market in this area will support the need for the program with an analysis of data and percentages;

7. A description of the applicant pool that is being targeted and how this population will be reached; [and

8. The availability of qualified staff, including faculty, within a fifty (50) mile radius;]

(c) [Results of an investigation into the projected impact on the operation of programs of nursing within a fifty (50) mile radius, which shall include information on the wait list for these programs for the last three (3) years, and] Evidence that an introductory letter has been sent to all [the impacted] programs within a fifty (50) mile radius;

(d) Documentation from cooperating healthcare agencies in the community that they will provide support for the creation of the program of nursing. This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the program;

(e) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources;

(f) A timeline for the hiring of a full time program administrator, admission of students, and projected graduation of the first class;

(g) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

(h) A copy of the curriculum vitae of the registered nurse involved in the planning; and

(i) Description and rationale for the proposed type of program of nursing.

(4)(a) If concerns are raised about the need for the program or about the ability of the program to obtain appropriate clinical sites, a hearing shall be held before the board's education committee to act upon the letter of intent.

(b) At the conclusion of the hearing, the committee shall recommend to the board whether or not to approve the letter of intent.

(c) If the letter of intent is approved by the board, the governing institution shall be notified in writing that it may move to the proposal phase. The governing institution shall appoint a qualified program administrator and provide appropriate resources, consultants, and faculty to develop the proposed program plan. The proposal shall be submitted within one (1) year of the date of the approval of the letter of intent or the letter of intent shall expire.

Section 4. [3.] Proposal Phase. (1)(a) A completed program proposal shall be submitted to the board by the governing institution for approval [no less than one (1) year prior to the anticipated opening date for a program of nursing].

(b) If the governing institution has not completed the program proposal within one (1) year of the date of the approval of the letter of intent [submission], the program proposal shall be void and the governing institution shall comply with Section 3 of this

administrative regulation.

(2) The program shall not be announced, advertised, or students admitted to the program of nursing until the proposal has been approved and developmental[approval] status has been granted by the board.

(3) The program proposal shall include:

(a) Philosophy, mission, and learning outcomes of the governing institution;

(b) An organizational chart of the governing institution and written plan, which describes the organization of the program of nursing and its relationship to the institution;

(c) Proposed philosophy, mission, and learning outcomes for the proposed program;

(d) Curriculum design including proposed course sequence and credit hours delineating those credits assigned to theory and clinical;

(e) Recruitment plan and the enrollment baseline as set out in 201 KAR 20:260, Section 3(1)(b)[five (5)-year projection for student enrollment];

(f) A five (5) year plan for recruiting and retaining qualified nurse faculty;

(g) A proposed job description for the program administrator reflecting authority and responsibility;

(h) A description of faculty offices, classrooms, clinical skills laboratory, library facilities, conference rooms, and learning resources;

(i) A description of support services for students, to include provision of health services or evidence of an emergency plan for care, academic advisement, student services, mechanism for obtaining learning resources, and financial aid;

(j) Availability and willingness of accredited agencies to provide clinical experiences across the curriculum. This information shall include the:

1. Shifts and days students will work;
2. Number of students each agency can accept;
3. Clinical experience that will be available from each agency;
4. Other nursing programs that utilize this agency; and
5. Plan to avoid displacement of students from existing programs;

(k) Policies and procedures for student selection and progression, including the plan to retain students so as to maintain a low attrition rate;

(l) A plan for clerical assistance and support staff as set out in 201 KAR 20:260, Section 2(6)[available to the program for planning, implementing, and maintenance of the program];

(m) A general plan for an on-going, research based planning and evaluation process that incorporates a systematic review of the program that results in continuing improvement; and

(n) A description of financial resources to support the program including a budget for the first three (3) years with projected revenues and expenditures and the amount of resources going to institutions or organizations for contractual or support services.

(4) The program of nursing shall meet with the board staff[A representative of the board shall arrange a site visit to the governing institution and the program of nursing] to clarify, verify, and amplify materials included in the[proposed] program proposal[plan].

[a] Prior to approval being granted, a written report shall be submitted to the board by the board representative who conducts the site visit.

(b) This site visit shall not be construed as affirming that the proposed program plan meets requirements.]

(5) The governing institution shall be notified in writing of action taken by the board on the proposal[and the site visit report].

(a) If the board determines that all requirements have been met, the program shall be granted developmental status.

(b) The board, in collaboration with the program, shall determine an opening date.

[b] If the board determines that all requirements have not been met, the program may be granted developmental status based on compliance with the terms and conditions identified in the site visit report.

(c) If the program does not comply with the terms and

conditions identified in the site visit report, the program shall be denied approval.]

(6) Developmental status[Approval to establish a program of nursing] shall be withdrawn if program requirements are not met or[and] if a class is not enrolled within eighteen (18) months after the board granted developmental status[approval].

(a) If a proposed program does not comply with 201 KAR[Chapter] 20:260 through 360, developmental status[approval] may be withdrawn.

(b) The governing institution shall be notified in writing of the withdrawal of developmental status[approval].

(7) Students shall not be admitted to the program of nursing until developmental status[approval] has been granted by the board.

(8) Failure to submit board required reports within the designated time period may result in the withdrawal of developmental[approval] status.

(9) Employment of program administrator and faculty.

(a) The program administrator shall be the first faculty member employed, and shall have assumed full time responsibilities for the program prior to submission of the proposal to the board.

(b) The faculty as established in 201 KAR 20:310 shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.

(10) Any deviation from the initial curriculum plan approved within the proposal shall be approved by the board before the first class begins course requirements.

(11) Written contracts for use of clinical facilities shall be executed prior to admission to the first nursing course.

(12) The program of nursing shall submit semi-annual[quarterly] progress and evaluation reports to demonstrate implementation of the approved proposal until the first class graduates.

(13) Site visits shall be conducted by the board as necessary.

Section 5. Initial Status and Program Approval[4. Approval Status]. (1) The status of the program shall move automatically from developmental status to initial status[approval] upon admission of the first class. It shall be the responsibility of the program of nursing to notify the board of the admission of the first class.

(2) The program shall notify the board in writing thirty (30) days prior to the graduation of the first class.

(3) Eligibility for program approval occurs after the graduation of the first class. Within sixty (60)[ninety (90)] days after[of] graduation of the first class, the faculty shall submit a written report[conduct a self-study] that:

(a) Evaluates the implementation[establishment] of the program of nursing compared to the approved proposal; and

(b) Addresses compliance with the standards set by 201 KAR 20:260 through 360[submit a written report to the board prior to consideration for full approval].

(4) The decision to grant or deny program[full] approval shall be based on review of the report submitted by the program of nursing and a site visit report by a representative of the board[:

(a) Program evaluation by the faculty and the program administrator;

(b) Site visit report by the board representative conducted to evaluate program compliance with administrative regulations; and

(c) Other facts that pertain to the program and reports necessary to document that standards have been met].

(5) If program approval is denied, the applicant may request a hearing pursuant to KRS Chapter 13B[After receipt of the self-study, the board shall determine the approval status of the program as established in 201 KAR 20:360, Section 1(3)].

GAIL WISE, President

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, April 11, 2016)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111, 314.470

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. This administrative regulation establishes standards for faculty of programs of nursing that prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Definitions. (1)[~~Definition.~~] "Nursing experience" means employment in a position that requires the individual to hold an active nursing license, such as nursing clinical practice, nursing administration, nursing education, or nursing research.

(2) "Unencumbered" means a license without current disciplinary conditions or restrictions. Enrollment in an alternative to discipline program is not an encumbrance.

Section 2. Faculty for Prelicensure Registered Nurse and Practical Nurse Programs. (1)(a) The faculty shall include a program administrator and shall include at least one (1) other~~two (2)~~ nurse faculty~~[(one (1) of whom may also serve as program administrator)]~~.

1. The faculty may include clinical instructors in the major areas of nursing practice.

2. The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the students, the number of students and classes admitted annually,~~[and any additional secondary site, or continuing education programs conducted.]~~ and the educational technology utilized.

(b) The program administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing.

(c)~~[A program of nursing shall designate an assistant program administrator for a secondary site. At least twenty (20) percent of the assistant program administrator's time shall be dedicated to complete administrative duties.~~

(d) A program shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each~~among all~~ program location~~locations and assistant program administrators~~.

(2) The program administrator for a registered nurse program shall have:

(a) A minimum of a master's or higher degree in nursing from an accredited college or university;

(b) A minimum of five (5) years of nursing experience within the immediate past ten (10) years and demonstrated leadership experience;

(c) A minimum of two (2) years of full time teaching experience at or above the academic level of the program of nursing; and

(d) An unencumbered current license, privilege, or temporary work permit to

practice as a registered nurse in the Commonwealth of Kentucky.

(3)(a) Except as provided by paragraph (b) of this subsection, the program administrator for a practical nurse program shall have:

1. [(a)] A master's~~baccalaureate~~ or higher degree~~[with a major]~~ in nursing from an accredited college or university;

2. [(b)] A minimum of five (5) years of nursing experience within the past ten (10) years with demonstrated leadership experience;

3. [(c)] Current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky;

4. [(d)] A minimum of two (2) years full time teaching experience at or above the academic level of the program of

nursing; and

5. [(e)] A current knowledge of nursing practice at the practical or vocational level.

(b) [(f)] A program administrator who is currently employed at a practical nurse program and who does not meet the requirements of paragraph (a) of this subsection on the effective date of this administrative regulation because of the lack of a master's degree may continue to be employed at the program of nursing where the program administrator is~~they are~~ presently, but shall earn the master's degree or higher within five (5) years of the effective date of this administrative regulation.

(4)(a) Nurse faculty~~[or an assistant program administrator]~~ in a baccalaureate degree prelicensure registered nurse program shall hold a degree from an accredited college or university, which shall include:

1. A master's degree within the discipline of nursing or have completed that portion that would be equivalent to a master's in nursing degree; or

2. A baccalaureate degree with a major in nursing and a master's degree in a related field, which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's degree.

(b) Nurse faculty~~[or an assistant administrator]~~ in an associate degree prelicensure registered nurse program shall hold a degree from an accredited college or university, which shall include:

1. A master's degree within the discipline of nursing or have completed that portion of a nursing program that would be equivalent to a master's in nursing degree;

2. A baccalaureate degree with a major in nursing and a master's degree in a related field, which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's degree; or

3. A baccalaureate degree with a major in nursing or have completed that portion of a state approved program of nursing that would be equivalent to a baccalaureate degree, and the nurse faculty member shall complete within five (5) years of hire a master's degree commensurate with either subparagraph 1_u or 2_u of this paragraph.

(c) Nurse faculty~~[or an assistant administrator]~~ in a practical nurse program shall have a minimum of a baccalaureate degree with a major in nursing from an accredited college or university.

(d) The nurse faculty shall hold a temporary work permit or a current unencumbered license or privilege to practice as a registered nurse in the Commonwealth of Kentucky, except as set out in paragraph (i) of this subsection.

(e) The nurse faculty shall document a minimum of two (2) years full time or equivalent experience as a registered nurse within the immediate past five (5) years and shall maintain expertise appropriate to teaching responsibilities.

(f) The nurse faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.

(g) Nurse faculty shall have and maintain expertise in the clinical or functional area of responsibility.

(h) Nurse faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(i) 1. Non-nurse faculty members who teach nursing courses required within the curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate.

2. Non-nurse faculty shall be required to collaborate with a nurse faculty member in order to meet the nursing course outcomes.

(j) Nurse faculty who teach via distance or on-line and will not physically practice within the state shall hold an unencumbered active nursing license~~[or multistate privilege]~~ to practice as a registered nurse in the nurse faculty's~~their~~ primary state of

residence[the state where they are located].

(5)(a) A clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(b) A clinical instructor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the state of the student's clinical site.

(c) A clinical instructor shall have a minimum of two (2) years full time or equivalent experience within the functional area as a registered nurse within the immediate past five (5) years and evidence of clinical competence.

(d) For a registered nurse program, the educational preparation of the clinical instructor shall at least equal the level of the appointing program.

Section 3.[Clinical] Preceptors. (1) A[clinical] preceptor may be used to enhance clinical learning experiences. If a[clinical] preceptor is used, it shall be done after a student has received clinical and didactic instruction from the program faculty in all basic areas for the course or specific learning experience.

(2) A[clinical] preceptor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse[in Kentucky or] in the state of the student's clinical site. In a practical nursing program, a[clinical] preceptor may hold a current unencumbered license, privilege, or temporary work permit to practice as a licensed practical nurse[in Kentucky or] in the state of the student's clinical site.

(3) A[clinical] preceptor shall have evidence of clinical competencies related to the area of assigned clinical teaching responsibilities[and serve as a role model to the student].

(4) A[clinical] preceptor shall not be used to replace clinical instructors. The ratio of student to preceptor shall not exceed two (2) to one (1). Clinical instructors or nurse faculty retain responsibility for student learning and confer with the[clinical] preceptor and student for the purpose of monitoring and evaluating learning experiences.

(5) There shall be documentation of orientation to the course, program outcomes, student learning objectives, evaluation methods to be utilized by the faculty, and documented role expectations of faculty, preceptor, and student.

Section 4. Reporting[Evaluation] of Registered Nurse Program and Practical Nurse Program Faculty Qualifications and Appointments. (1) Evaluation of faculty records. The program administrator shall submit to the board the qualifications of nurse faculty and clinical instructors within thirty (30) days off[upon] appointment.

(a) Official academic transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.

(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.

(c) Faculty appointments shall be reported to the board in writing.

(d) The program administrator shall report a change in faculty composition within thirty (30) days of appointment or vacancy.

(2) Reevaluation of faculty records. The board shall review annually the qualifications of the faculty employed in the program of nursing.

[Section 5. Faculty Supervision of Student Clinical Practice. (1) The ratio of students to a nurse faculty member or clinical instructor is set by 201 KAR 20:260, Section 2(3)(i).

(2) The clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(3) For Registered Nurse educational programs, the educational preparation of the clinical instructor shall at least equal the level of the appointing program.

(4) The clinical instructor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in Kentucky or in the state of the student's clinical site.

(5) A clinical instructor shall have a minimum of two (2) years

full time or equivalent experience within the functional area as a registered nurse within the immediate past five (5) years and evidence of clinical competence.

Section 6. Faculty Waiver. (1) All nurse faculty members shall meet qualifications established in this administrative regulation. The program administrator may request a time-limited temporary waiver if a program of nursing meets the following criteria:

(a) Full approval status;

(b) Program NCLEX pass rate for first time test takers for the preceding year of a minimum of eighty-five (85) percent;

(c) The program has not requested a waiver for the previous two (2) years; and]

(d) Faculty turnover for the past academic year does not exceed thirty (30) percent.

(2) A maximum of two (2) faculty waivers shall be permitted at any one (1) time per program.

(3) The waiver shall be requested by the program administrator. The faculty appointment shall not be implemented by the program until the board has approved it.

(4) A waiver shall be limited to one (1) time for any individual.]

GAIL WISE, President

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**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, April 11, 2016)**

201 KAR 20:320. Standards for curriculum of prelicensure nursing programs.

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.051(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) and 314.051(1)(a) require[requires] that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse and practical nursing programs.

Section 1. Definitions. (1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as established[defined] in 201 KAR 20:310, **Section 2**, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Distance learning" means didactic instruction offered by any means where the student and faculty are in separate physical locations.

(3) "Associate degree program" means a program of nursing organized and administered by a community college, or a four (4) year college or university, which awards the graduate an associate degree in nursing upon meeting the requirements of the governing institution.

(2) "Baccalaureate degree program" means a program of nursing organized and administered by a senior college or university which awards the graduate a baccalaureate degree in nursing upon meeting the requirements of the governing institution.

(3) "Master's degree program" means a program leading to a master's degree, which is the individual's first professional degree

in nursing and is conducted by an educational unit in nursing within the structure of a senior college or university.

(4) "Multiple entry-exit program" means a program that allows a student to challenge the NCLEX-RN or NCLEX-PN examinations once the student has completed sufficient course work in a professional nursing program that meets all requirements for the examination.

(5) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(4)(6) "[~~Prelicensure nursing education~~]Program of nursing" means an educational entity that offers the courses and learning experiences that prepare graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN or NCLEX-PN examinations.

(5)(7) "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(6) "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

(7) "Traditional clinical experience means academic time designated by the program of nursing for learning outside the classroom which includes observation or hands-on experience." [A registered nursing program is considered to be any program that culminates in the graduate being eligible for licensure. Examples of registered nurse programs are associate degree programs, baccalaureate degree programs, master's degree programs, and multiple entry-exit programs.]

Section 2. General. (1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

(c) The program shall conduct an evaluation[~~assessment~~] to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

[~~The organizing framework shall serve as a foundation for level of progression, level of outcomes, and course sequencing.~~]

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the [~~prelicensure nursing education~~] program of nursing shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and

expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale,~~[and organizing framework,]~~ which describes the organization and development of the curriculum.

(b) The curriculum plan[~~design~~] shall reflect the philosophy, mission, and outcomes of the program.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes-planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabus[~~syllabi~~].

2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through 201 KAR 20:360 for any other course.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310~~;~~ including the utilization of clinical preceptors].

(e) The curriculum shall have written measurable program competencies that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

(a) A [~~prelicensure nursing education~~] program of nursing that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation.

1. A request for curriculum revision shall include the present plan and[,] the proposed change with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission, or outcomes that[,] which] results in a reorganization or re-conceptualization of the entire curriculum; or

b. The addition of tracks or alternative programs of study that provide educational mobility~~;~~ or

c. ~~The initiation of on-line learning in which a student may obtain fifty (50) percent or more of the nursing credits needed to meet program completion requirements].~~

(b) [An accredited program of nursing shall submit to the board a copy of any curriculum revision submitted to an accrediting agency within thirty (30) days. The program of nursing shall submit

a copy of all correspondence related to program accreditation from the accrediting agency to the board.

(e) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session during the last semester or quarter of a nursing program.

Section 3. Simulation Standards. (1)(a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total clinical hours required for graduation.

(2) Upon request by the board, a program of nursing shall provide evidence that the standards set in this section have been met.

(3)(a) The program of nursing shall provide adequate fiscal, human, and material resources to support the simulation activities.

(b) Simulation activities shall be managed by a nurse faculty member as **established/defined** in 201 KAR 20:310, **Section 2**, who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing faculty member shall demonstrate his or her qualifications by:

1. Attendance at simulation conferences;

2. Completion of educational activities related to simulation; or

3. Holding a credential issued by the Society for Simulation in Healthcare or a **simulation preparation program recognized by the International Nursing Association for Clinical Simulation.**

(c) There shall be a budget that will sustain the simulation activities and training of the faculty.

(d) The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

(e) The program of nursing shall have an orientation plan for faculty concerning simulation.

(f) The program of nursing shall have a written procedure on the method of prebriefing and debriefing each simulated activity.

(4) The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

(5) Faculty, both didactic and clinical, that utilize simulation shall:

(a) Have training in the use of simulation; and

(b) Engage in on-going professional development in the use of simulation.

(6) The simulation activities shall be linked to the program of nursing's course objectives and the programmatic outcomes.

(7)(a) The program of nursing shall develop written criteria to evaluate the simulation activities.

(b) Students and faculty shall evaluate the simulation experience on an ongoing basis.

(8) The program of nursing shall include information about its use of simulation in its annual report to the board.

GAIL WISE, President

APPROVED BY AGENCY: March 10, 2016

FILED WITH LRC: March 11, 2016 at 3 p.m.

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, April 11, 2016)

201 KAR 20:350. Educational facilities and resources for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111(1), 314.131(1)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 authorizes the board to regulate nursing education programs. **KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314.** This administrative regulation establishes the standards for programs of nursing to assure the provision of adequate facilities and resources for conduct of the program of nursing.

Section 1. The facilities and resources shall be provided by the governing institution to meet the teaching and learning requirements of students and nurse faculty of the program of nursing.

Section 2. Physical Facilities. (1) The facilities shall be designed to meet the outcomes of the program of nursing and to foster administrative and instructional activities.

(2) Space allocated for the program shall be based on the number of students and teaching and learning methods.

(3) The physical facilities shall include:

(a) Classrooms, clinical skills laboratory, and conference rooms essential to fulfill program outcomes and adequate in size for the number of students;

(b) Adequately equipped office space to fulfill the essential functions for administrative personnel, faculty, and clerical staff, including the maintenance of confidentiality of student information;

(c) Storage space for equipment and instructional materials;

(d) A private office for the program administrator; and

(e) Space available for use in private counseling with students.

(4) The program of nursing shall report to the board any major changes in the physical facilities, including new buildings.

Section 3. Library and Learning Resources. (1) Instructional material shall be readily available for use in teaching and learning.

(2) The program, through ownership or formal arrangements, shall provide student and nurse faculty with access to an adequate library collection consistent with the program offered. The library collection shall be current and include sufficient titles, references, periodicals, and other material to achieve the outcomes of the curriculum.

(3) The program shall ensure that students and nurse faculty have access to instruction on the use of the library resources.

(4) The use of technology shall enhance student learning and shall be appropriate for meeting the outcomes of the program. Students shall have access to and instruction in the use of the technology.

(5) There shall be sufficient technical and clerical support services available to meet the needs of the nurse faculty and the students.

(6) The collection of library resources for the program of nursing shall be allocated on the same basis as the collections for other departments in the governing institution.

(7) All students[Distance learners] shall have comparable access to library and learning resources regardless of the student's location[as available to on-campus students].

(8) A system of acquisition and deletion shall exist that ensures currency and appropriateness of library resources.

Section 4. Clinical Facilities. (1) The program shall arrange for the clinical practice experience of students in the clinical facilities.

(2) Clinical facilities shall show evidence of approval by the appropriate accreditation, evaluation, or licensure bodies, if[when] applicable.

GAIL WISE, President

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FILED WITH LRC: January 7, 2016 at 11 a.m.

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**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, April 11, 2016)**

201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs[Evaluation of prelicensure registered nurse and practical nurse programs].

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.111 requires nursing programs to be approved by the board. This administrative regulation establishes evaluative standards to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility as registered nurses or as practical nurses.

Section 1. Program of Nursing Accredited by a National Nursing Accrediting Body. (1)(a) A prelicensure registered nursing or licensed practical nursing program that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall be deemed to be in compliance with the standards of 201 KAR 20:260 through **201 KAR 20:360 and shall not have to demonstrate compliance every eight (8) years as required by Section 2 of this administrative regulation. The accredited program shall comply with Sections 3 through 10 of this administrative regulation.**

(b) The board shall retain jurisdiction over accredited programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:260 through **201 KAR 20:360. The board may also conduct site visits in accordance with Section 5 of this administrative regulation.**

(2) A prelicensure program of nursing that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall submit all correspondence and reports to and from the accrediting body to the board within thirty (30) days of submission or receipt.

Section 2. Programs of Nursing Not Accredited by a National Nursing Accrediting Body. (1) A prelicensure registered nursing or licensed practical nursing program that is not accredited by a national nursing accrediting body recognized by the United States Department of Education shall be required to demonstrate compliance with 201 KAR 20:260 through **201 KAR 20:360** at least every eight (8) years for continued approval.

(2)(a) A site visit shall be conducted at least every eight (8) years.

(b) A specific list of information required for review shall be sent by the board to the program of nursing prior to the site visit.

(3) Prior to the site visit, the program of nursing shall submit:

- (a) A self-evaluation report that provides evidence of compliance with 201 KAR 20:260 through **201 KAR 20:360**; and
- (b) Other **related** information as requested by the board.

Section 3. Reports and Evaluation. (1) A program of nursing shall submit the Annual Report of the Program of Nursing to the board regarding its compliance with 201 KAR 20:260 through **201 KAR 20:360**.

(2) To verify continued compliance with 201 KAR 20:260 through **201 KAR 20:360**, the program of nursing shall submit

progress reports or periodic supplemental reports, completed questionnaires, surveys, and other **related** documents as requested by the board.

(3) Pursuant to 201 KAR 20:260, Section 2(7)(a), the faculty shall establish an evaluation plan and shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board. **Revisions to the evaluation plan or report shall be submitted with the annual report.**

(4) The evaluation plan shall include evidence that data collection is evidence-based, on-going, and reflects the collection, aggregate analysis, and trending of data.

(5) The evaluation plan shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

- (a) Organization and administration of the program of nursing;
- (b) Curriculum;
- (c) Resources, facilities, and services;
- (d) Teaching and learning methods including distance education;
- (e) Faculty evaluation;
- (f) Student achievement of program outcomes;
- (g) Graduation rates;
- (h) Licensure examination pass rates;
- (i) Employment rates of graduates; and
- (j) Clinical resources, including laboratory and simulation.

(6) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus based program.

(7) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the program.

Section 4. Calculation of Pass Rate. (1) The board shall calculate the pass rate for a program of nursing on an annual basis from January 1 to December 31 for all first time takers of the NCLEX.

(2) Individuals included in the annual calculation shall have tested within six (6) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070.

Section 5. Site Visits. (1) The board may conduct site visits at any time.

(2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:260 through **201 KAR 20:360** are being met:

- (a) Denial, withdrawal, or change of status by a national nursing accrediting agency;
- (b) Providing false or misleading information to students or the public concerning the program;
- (c) A written complaint received from faculty, students, or the general public relating to a violation of **201 KAR 20:260 through 201 KAR 20:360**[~~these administrative regulations~~];
- (d) A change in physical facilities;
- (e) Information received by the board that may indicate a violation of 201 KAR 20:260 through **201 KAR 20:360**;
- (f) A change in any of these benchmarks:

1. A pass rate as calculated by Section 4 of this administrative regulation that:

- a. Is less than an average of eighty-five (85) percent for three (3) consecutive years; or
- b. Varies above and below eighty-five (85) percent from year to year over the previous five (5) years;

2. A faculty turnover rate greater than thirty (30) percent for two (2) consecutive years;

3. A program administrator turnover rate of more than three (3) individuals in five (5) years;

4. A graduation rate of less than sixty (60) percent of the admitted cohort within the maximum time frame allowed for completion. The maximum time frame shall be determined by multiplying the standard program length for normally progressing students by 1.5;

5. Twenty-five (25) percent or more of the total number of nursing faculty who file grievances or appeals that are substantiated; or

6. Substantiated student grievances and appeals of more than ten (10) percent of the nursing student population each year; or

(g) Failure to submit reports as required by 201 KAR 20:260 through 201 KAR 20:360.

Section 6. Action Following Site Visit. (1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.

(c) If the site visit results in a finding of non-compliance with 201 KAR 20:260 through 201 KAR 20:360~~[these administrative regulations]~~ by the program of nursing, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify the program of nursing of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the program of nursing is unable to meet the requirements in the time set by the board, it may request additional time. The board, in its discretion, may grant or deny this request based on the rationale for the request.

(b) If the board denies the request for additional time, it shall begin the process established in Section 7 of this administrative regulation~~[, it shall send notice to the program administrator of its intent to withdraw approval. This notice shall be sent return receipt requested].~~

Section 7. Withdrawal of Approval. (1) If, in the opinion of the board, the standards established by 201 KAR 20:260 through 201 KAR 20:360 are not being met, the board shall send notice to the program administrator of the affected program of nursing of its intent to withdraw approval. The notice shall be sent return receipt requested.

(2) When making this determination, the board shall consider the following factors:

(a) The number and severity of the deficiencies;

(b) The length of time in which the deficiencies have existed; and

(c) Any exigent circumstances.

(3) Within thirty (30) days of receipt of the notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the program shall be closed. A closed program shall comply with subsection (5) of this section.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer or before the full board.

(5)(a) A program of nursing whose approval has been withdrawn by the board shall be removed from the official approved status listing upon the effective date of the decision. Students currently enrolled in the last semester or quarter of the program may complete the program. If the student graduates, he or she may apply for licensure and make take the licensure examination. Any[No] other student shall not be allowed to apply for licensure or take the licensure examination, unless the student graduates[they graduate] from another approved program of nursing.

(b) The program of nursing that has been closed shall assist a currently enrolled student to transfer to an approved program of nursing.~~[Approval Status and Withdrawal of Approval. Approval~~

status shall be based upon each program of nursing's performance and demonstrated compliance with 201 KAR 20:260 through 20:360. (1) Developmental approval shall be the designation granted to a proposed program of nursing to continue development of plans for program implementation.

(2) Initial approval shall be the designation granted to a new program of nursing upon admission of the first class, if provided the date of enrollment is within eighteen (18) months of board approval of the proposal. During the period of initial approval, reports documenting implementation of the proposal shall be submitted on a quarterly basis.

(3)(a) Full approval shall be the designation granted to a program of nursing that has implemented the proposal and that continues to meet the standards of 201 KAR 20:260 through 20:360.

(b) Monitoring status shall be the designation granted to a program of nursing as established in this paragraph.

1. A program of nursing that has achieved initial approval and fails to achieve the pass rate established in Section 2(4) of this administrative regulation for its first graduating class shall be placed on monitoring status.

2. A program of nursing that meets the standards of 201 KAR 20:260 through 20:360 including achieving the pass rate established in Section 2(4) of this administrative regulation shall be granted full approval status.

3. A program of nursing that has achieved full approval status and fails to meet one (1) or more of the standards of 201 KAR 20:260 through 20:360 including achieving the pass rate established in Section 2(4) of this administrative regulation for one (1) year shall be placed on monitoring status.

4. While on monitoring status, a program of nursing shall make progress to correct its deficiencies.

a. If the deficiency is not achieving the pass rate established in Section 2(4) of this administrative regulation, the program administrator shall comply with Section 2(6) of this administrative regulation. The program's pass rate for the next year shall show an upward trend.

b. If the deficiency relates to any other standard, the program administrator shall analyze data to assess the factors that contribute to the deficiency and submit a plan to correct the deficiency that includes the timeframe involved. The program of nursing shall report its progress to the board.

c. The program shall submit the required documentation no later than four (4) months from the notice of deficiency.

5. A program of nursing shall not remain on monitoring status for more than three (3) consecutive years. The board may conduct a yearly site visit if the program's response warrants it. The program shall either attain full approval or be moved to conditional approval status.

(4) Conditional approval shall be the designation granted to a program of nursing if one (1) or more of the standards of 201 KAR 20:260 through 20:360 have not been met following monitoring status.

(a) Following the decision of the board to place a program of nursing on conditional approval status, the program administrator shall be notified of the areas of deficiency and the time frame allowed for corrective action to be implemented.

(b) The program administrator shall, within thirty (30) days of the notice of the deficiencies being sent, file a plan of compliance to correct each of the identified deficiencies.

(c) The program administrator may, within thirty (30) days of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.

(d) If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to evaluate if deficiencies have been corrected.

(e) If the plan of compliance is not completed within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the conditional approval status of the program of nursing shall be adjusted to probationary status.

(5) Probationary status shall be the designation granted to a program of nursing if one (1) or more standards have continued to be unmet.

(a) Following the decision of the board to place a program of nursing on probationary status, the program administrator shall be notified of the continued areas of deficiency. The probationary status shall not exceed one (1) academic year. A new student shall not be admitted to a program of nursing while it is on probationary status.

(b) The program administrator shall, within thirty (30) days of the notice of the deficiencies being sent, file a plan to correct each of the identified deficiencies.

(c) The program administrator may, within thirty (30) days, of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.

(d) If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board shall conduct quarterly evaluations of the program of nursing during the time of correction to evaluate if deficiencies have been corrected.

(6) If the program of nursing has not corrected the deficiencies within one (1) academic year of being placed on probationary status, a hearing pursuant to KRS Chapter 13B shall be conducted to evaluate whether to withdraw approval of the program of nursing.

(7) If the board decides to withdraw approval of a program of nursing, upon the effective date of the decision, the program of nursing shall be removed from the official approved status listing. A program of nursing whose approval has been withdrawn shall:

(a) Allow a student who is currently enrolled in a nursing class to complete the program of nursing; or

(b) Assist a currently enrolled student to transfer to an approved program of nursing.

(8) A program of nursing whose approval has been withdrawn but continues to operate pursuant to subsection (7)(a) of this section shall be continuously monitored by the board until the program closes.

Section 2. Reports and Examination Pass Rates. (1) A program of nursing that prepares graduates for licensure shall meet all standards of 201 KAR 20:260 through 20:360 in order to retain full approval. Level of approval status shall be established annually by the board on the basis of the program's annual report, NCLEX examination pass rates for first time test takers, and other pertinent data.

(2) A program of nursing shall submit an annual report regarding its compliance with administrative regulations 201 KAR 20:260 through 20:360. A secondary or distance learning site shall be treated independently for purposes of compliance with the regulatory standards.

(3) To verify continued compliance with these administrative regulations, the program administrator shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other documents as requested by the board.

(4) A program of nursing shall maintain at least an eighty-five (85) percent annual pass rate for graduates taking the NCLEX-RN or NCLEX-PN for the first time. Pass rates shall be published on a calendar year basis for those graduates who have tested within twelve (12) months of the program completion date as reported by the program of nursing.

(5) A program of nursing and a secondary learning site shall be evaluated individually concerning licensure examination results.

(6) If a program of nursing's pass rate for first time test takers is less than eighty-five (85) percent for a calendar year, the program administrator shall submit a self study report that evaluates factors that contributed to the graduates' performance on the NCLEX examination and a description of the corrective measures to be implemented.

Section 3. Factors That May Jeopardize Program Approval Status. Approval status may change for any of the following reasons:

(1) Deficiencies in compliance with 201 KAR 20:260 through 20:360;

(2) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives, outcomes, or policies;

(3) Continual failure to submit records or reports to the board within the designated time frame;

(4) Failure to provide clinical learning opportunities for students as described in 201 KAR 20:320, Section 2(7)(b) and (c);

(5) Failure to comply with requirements of the board within the specified time;

(6) Failure to maintain the pass rate on the licensure examination for first time test takers as established in Section 2(4) of this administrative regulation; or

(7) Withdrawal of accreditation by a national nursing accrediting body recognized by the United States Department of Education.

Section 4. Program Evaluation. (1) The faculty shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation plan that is submitted to the board.

(2) The evaluation plan shall include evidence that data collection is evidence-based, on-going, and reflects the collection, aggregate analysis, and trending of data.

(3) The evaluation plan shall provide evidence that the outcomes of the assessment process are used to improve the quality and strength of the program.

(4) The evaluation plan shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

(a) Organization and administration of the program of nursing;

(b) Curriculum;

(c) Resources, facilities, and services;

(d) Teaching and learning methods including distance education;

(e) Faculty performance;

(f) Student achievement of program outcomes;

(g) Graduation rates;

(h) Licensure examination pass rates;

(i) Employment rates of graduates; and

(j) Clinical resources.

(5) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus-based program.]

Section 8. [7.] [5.] Voluntary Closure of a Program. (1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing as established in paragraph (a) or (b) of this subsection.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards until all students enrolled in nursing courses have graduated or transferred.

2. The official closing of the program shall be the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program following the transfer of students to other approved programs.

1. The program shall continue to meet the standards until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to the board for safekeeping.

1. The transcript of the student or graduate shall identify the date on which the program closed.

2. The board shall be consulted about the disposition of all other program records.

Section **9.[8.][6.]** Change in Ownership or Organization of the Governing institution. (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership. The new administrative authority or owner shall inform the board of its plans for immediate and future operation.

(2) The board shall conduct a site visit to ensure adherence by the program of nursing to 201 KAR 20:260 through **201 KAR 20:360**.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership or administrative authority if the approval standards continue to be met.

Section **10.[9.]** Incorporation by Reference. (1) "Annual Report of the Program of Nursing", 12/15, Kentucky Board of Nursing, is incorporated by reference.

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

GAIL WISE, President

APPROVED BY AGENCY: March 10, 2016

FILED WITH LRC: March 11, 2016 at 3 p.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
Board of Nursing
(As Amended at ARRS, April 11, 2016)**

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 **in accordance with Sections 7 through 10 of this administrative regulation**.

(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) **"Conviction" is defined by KRS 314.011(21).**

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

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

(6)(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 **an approved[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 ~~f. 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.

~~(2)](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.

~~(3)](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.

~~(4)](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)](d)]~~ Content. The content shall be described in outline format with corresponding time frame and testing schedules;

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

~~(f)](g)]~~ 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:

(a) Based on compliance with the standards established in Section 7 of this administrative regulation; and

(b) 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) ~~(f)~~ **(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 **established in this subsection.[:]**

(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[12/09];

(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.

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.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

(As Amended at ARRS, April 11, 2016)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Reformatory.

Section 1. Incorporation by Reference. (1) "Kentucky State Reformatory policies and procedures", April/March 11, 2016[December 14, 2015][July 9, 2007], are incorporated by reference. Kentucky State Reformatory policies and procedures include:

KSR 01-00-08	Communication Among the Warden, Management Staff, Department Heads and Inmates (Added <u>4/11/16[3/11/16][12/14/15]</u>)
KSR 02-00-01	Inmate Canteen (Amended <u>4/11/16[12/14/15]</u> [05/04/07])
KSR 02-00-03	Screening Disbursements from Inmate[Personal] Accounts (Amended <u>4/11/16[12/14/15]</u> [07/09/07])
KSR 02-00-11	Inmate[Personal] Accounts (Amended <u>4/11/16[12/14/15]</u> [07/09/07])
KSR 02-00-13	Inmate Canteen Committee (Amended <u>4/11/16[12/14/15]</u> [Added 07/09/07])
KSR 06-00-03	Kentucky Open Records Law and Release of Institutional and Medical Information (Amended <u>4/11/16[12/14/15]</u> [05/04/07])
[KSR 08-00-08]	Death of an Inmate and Notification of Inmate Family About Critical Medical Emergency (Amended 07/09/07)
KSR 09-00-28	Restricted Areas (Amended <u>12/14/15</u> [05/04/07 10/14/05])
KSR 09-00-30	Parole Board (Amended <u>12/14/15</u> [05/04/07])
KSR 10-01-02	Special Management Unit[Segregation-] General Operational Procedures (Amended <u>4/11/16[3/11/16][12/14/15]</u> [07/09/07])
KSR 10-01-03	Special Management Unit - Inmate Tracking System and Record System (Amended <u>12/14/15</u> [07/09/07])
KSR 10-01-09	[Special Management Population] Hold Ticket Inmates (Amended <u>3/11/16[12/14/15]</u> [07/09/07])
KSR 10-02-08	Corrections[Correctional] Psychiatric Treatment Unit (Amended <u>4/11/16[12/14/15]</u> [07/09/07])
KSR 11-00-01	Meal Planning and Procedure (Amended <u>4/11/16[12/14/15]</u> [05/04/07])
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KSR 12-00-03	State and Personal Hygiene Items Issued to

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KSR 12-00-07	Inmates (Amended 12/14/15[07/09/07]) [Regulations for] Inmate Barbershop (Amended 4/11/16[12/14/15][05/04/07])	KSR 16-00-02	Inmate Correspondence and Mailroom Operations (Amended 12/14/15)
KSR 12-00-09	Treatment of Inmates with Body Lice (Amended 12/14/15[05/04/07])	KSR 16-00-03	Inmate Access to Telephones (Amended 12/14/15)
KSR 13-00-03	Medication for Inmates Leaving Institutional Grounds (Amended 12/14/15[10/14/05])	KSR 16-01-01	Inmate Visiting [Regulations] (Amended 4/11/16[12/14/15])
KSR 13-00-04	Medical and Dental Care (Amended 4/11/16[12/14/15][10/14/05])	[KSR 16-01-03	Night Visit Regulations]
KSR 13-00-05	Medical Records (Amended 4/11/16[3/11/16][12/14/15][12/13/05 10/14/05])	KSR 17-00-05	Inmate Reception and Orientation (Amended 12/14/15)[Assessment and Orientation, Consent Decree Notification to Inmates]
[KSR 13-00-08	Institutional Specimen Processing Center (Amended 10/14/05)]	KSR 17-00-07	Inmate Personal Property (Amended 12/14/15)
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KSR 13-01-01	Death of an Inmate and Notification of Inmate Family About a Critical Medical Emergency (Added 12/14/15)	[KSR 19-00-01	Inmate Work Incentives]
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KSR 15-00-06	Inmate Identification[I.D.] Cards (Amended 12/14/15)	KSR 21-00-02	[Inmate]Library Services (Amended 4/11/16[3/11/16][12/14/15])
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KSR 15-00-09	Tobacco Free Environment (Amended 12/14/15)[Use of Tobacco Products for Inmates and Staff]	KSR 22-00-03	Inmate Organizations (Amended 12/14/15)
KSR 15-00-10	Program Services for Special Housing Placement (Amended 4/11/16[12/14/15])	KSR 22-00-07	Inmate Magazine (Amended 12/14/15)
KSR 15-01-01	Responsibilities of Staff Assigned to Units[Operational Procedures and Rules and Regulations for Unit] A, B & C (Amended 4/11/16[12/14/15])[Functions of Assigned Personnel]	KSR 24-00-01	Social Services Staff (Added 12/14/15)
KSR 15-01-02	Staff Operational Procedures[and Rules and Regulations] for Units[Unit] A, B, & C (Amended 12/14/15)[Staff Operational Procedures]	[KSR 22-00-08	Privilege Trips]
KSR 15-01-03	Inmate[Operational Procedures and] Rules[and Regulations] for General Population Living Areas (Amended 4/11/16[12/14/15])[Unit A, B & C: Inmate Rules and Regulations]	KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives]
KSR 15-01-04	Operational Procedures and Rules and Regulations for Unit A, B & C: Institutional Medical and Fire Safety Service: Unit Application	KSR 23-00-03	Religious Programming]
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services]	KSR 24-00-02	Substance Abuse and Chemical Dependency Program (Amended 12/14/15)
KSR 15-01-06	[Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate] Honor Housing Criteria and Rules (Amended 12/14/15)	KSR 24-00-03	Social Services Program (Added 12/14/15)
KSR 15-01-07	Nursing Care Facility Operational Procedures and Rules (Amended 4/11/16)[and Regulations (Added 12/14/15)] [Regulations]	KSR 25-00-01	Discharge of an Inmate[Inmates] to Hospital or Nursing Home (Amended 12/14/15)
		KSR 26-00-01	Volunteer Services Program (Amended 12/14/15)

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JONATHAN R. GRATE, Acting Commissioner
APPROVED BY AGENCY: March 8, 2016
FILED WITH LRC: March 11, 2016 at 1 p.m.
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6686.

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

902 KAR 20:275. Mobile health services.

RELATES TO: KRS 216B.010-216B.131, 216B.990, 311, 313, 314, 319A, 327, 334A, 29 C.F.R. 1910.1030(d)(2)(vii), 45 C.F.R. 160, 164, 42 U.S.C. 1320d

STATUTORY AUTHORITY: KRS 216B.042, 314.011(8), EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by mobile health services. ~~The administrative regulation establishing standards for mobile health services, 902 KAR 20:270, was found deficient by the Interim Joint Committee on Health and Welfare at its November 15, 1995, meeting. The finding of deficiency resulted from the lack of guidelines to coordinate the relationship between home IV therapy service and home health agencies. Legislation to establish such guidelines was not enacted during the 1996 Regular Session of the General Assembly. Therefore, pursuant to KRS 13A.333(1), 902 KAR 20:270 expired. KRS 216B.042 requires the cabinet to establish standards for health facilities and services, and authorizes it to promulgate administrative regulations. Without an administrative regulation establishing standards for mobile health services, the cabinet would be in violation of the legislative mandate expressed in KRS 216B.042. KRS 13A.333(6) prohibits an administrative body from promulgating an administrative regulation that is identical to or substantially the same as an administrative regulation that has expired. This administrative regulation is not identical to or substantially the same as 902 KAR 20:270, because:~~

~~(1) Only the lack of guidelines to coordinate the relationship between home IV therapy services and home health services was found deficient;~~

~~(2) This administrative regulation includes guidelines to coordinate the relationship between home IV therapy service and home health agencies; and~~

~~(3) It is required by the legislative mandate of KRS 216B.042.~~

~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services].~~

Section 1. Definitions. (1) ~~"Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources or radiation.~~

~~(2) "Computed tomography (CT) scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.~~

~~(2) [(3)] "Governing authority" or "licensee" means the individual, agency, partnership, or corporation[,] in which the ultimate responsibility and authority for the conduct of the institution is vested.~~

~~(3) [(4)] "IV therapy" means the administration, by a registered nurse under the supervision of a licensed physician, of various pharmaceutical and nutritional products by intravenous, subcutaneous, or epidural routes.~~

~~(4) [(5)] "IV therapy service" means pharmaceutical and nursing services, including direct hands-on care, limited to and necessary for the:~~

~~(a) Preparation, dispensing, and delivery of pharmaceutical and nutritional products and equipment; and~~

~~(b) Related clinical consultation, training, and assessment or~~

~~care incidental to initial start-up of IV therapy.~~

~~(5) [(6)] "License" means an authorization issued by the cabinet for the purpose of operating mobile health services.~~

~~(6) [(7)] "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones.~~

~~(7) [(8)] "Magnetic resonance imaging," or "MRI[(MRI)]" means a diagnostic imaging modality which utilizes magnetic resonance, an interaction between atoms and electromagnetic fields, to project images of internal body structures.~~

~~(8) [(9)] "Other diagnostic and treatment services" means those health services which are determined to require licensure pursuant to KRS 216B.042 as a mobile health service.~~

~~(9) "Positron emission tomography[(PET)] scanning" or "PET scanning" means an imaging procedure that uses a radioactive substance to reveal how organs and tissues are working.~~

~~(10) "Qualified anesthesiologist" means a person who:~~

~~(a) Is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery;~~

~~(b) [and who] Is board certified or in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery; and~~

~~(c) [who otherwise] Meets the criteria established by the mobile health service's governing authority.~~

~~(11) "Qualified urologist" means a person who:~~

~~(a) Is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery;~~

~~(b) [and who] Is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery; and~~

~~(c) [who otherwise] Meets criteria established by the mobile health service's governing authority.~~

~~(12) "Registered nurse" is defined by KRS 314.011(5).~~

~~(13) "Therapy practice" means a practice:~~

~~(a) That does not meet the licensure exemption criteria of KRS 216B.020(2); and~~

~~(b) Employs, directly or by contract, at least one (1) or any combination of the following practitioners:~~

~~1. Occupational therapists and occupational therapy assistants licensed pursuant to KRS Chapter 319A;~~

~~2. Physical therapists and physical therapy assistants licensed or certified pursuant to KRS Chapter 327; or~~

~~3. Speech-language pathologists and speech language pathology assistants licensed pursuant to KRS Chapter 334A [means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041].~~

Section 2. Scope of Operation and Services. (1) Mobile health services;

~~(a) Shall provide medical services in various locations, which may include settings such as the office of the licensee, a health facility licensed under KRS Chapter 216B, or a home- or community-based setting; and~~

~~(b) May [in some instances] utilize a specially equipped vehicle, including [such as] a:~~

~~1. Van;~~

~~2. [.] Trailer; or~~

~~3. Mobile home.~~

~~(2) A mobile health service shall (does) not include a private office or entity exempt from licensure pursuant to KRS 216B.020(2).~~

~~(3) Mobile health [These] services shall include:~~

~~(a) Mobile diagnostic imaging and examination services; or~~

~~(b) [.] Mobile treatment services.~~

~~(4) Mobile health services may be:~~

~~(a) [., and any other medical or dental services] Provided through the use of a mobile vehicle; or~~

~~(b) Performed at various locations.~~

Section 3. Administration. (1) Licensee.

~~(a) The licensee shall be legally responsible for:~~

~~1. All activities of the mobile health service; and~~

~~2. [the service and for] Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of~~

the service, limited to the scope of the service's certificate of need.

(b) The licensee shall:

1. Establish lines of authority; and

2. Designate an administrator who shall be principally responsible for the daily operation of the service.

(2) If a mobile health service's governing authority is comprised of more than one (1) licensed hospital, a separate administrator may be designated from each hospital to serve as the administrator during the time in which services are provided at the hospital where the designee is employed.

(3)(2) Policies. A mobile health service shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing, and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail each service offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of each service;

(e) A description of the administrative and patient care records and reports; and

(f) Procedures to be followed if the licensee performs any functions related to the storage, handling, and administration of drugs and biologicals.

(4)(3) Personnel.

(a) Medical director. Except for a therapy practice or entity that is licensed pursuant to this administrative regulation to provide only therapy services, the mobile health service shall have a medical director who shall be a licensed physician or dentist with specialized training and experience in, and responsibility for, all medical or dental aspects of the service.

(b) A mobile health service shall be exempt from paragraph (a) of this subsection if:

1. The service whose governing authority is comprised of more than one (1) licensed hospital, a separate medical director may be designated from each hospital's medical staff to serve as the medical director of the service when it is being provided at the hospital where the physician is on staff. If a service operates only diagnostic examination equipment;

2. The service is offered only to licensed hospitals; and

3. Personnel make no medical assessment of the diagnostic patient data collected; then the service shall be exempt from the requirements of this paragraph.

(5) A mobile health service shall employ or contract with a sufficient number of qualified personnel to provide effective patient care and all other related services.

(6) The licensee shall provide written personnel policies, which shall:

(a) Be available to each employee;

(b) Be reviewed on an annual basis;

(c) Be revised as necessary; and

(d) Contain a job description for each position subject to review and revision, as necessary.

(7) The licensee shall maintain the staff-to-patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(c) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(d) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination, tuberculin test, and other appropriate tests.

(e) current personnel records shall be maintained for each

employee that shall contain the following:

(a) Name, address, and Social Security number;

(b) Evidence of current registration, certification, or professional licensure;

(c) Documentation of training and experience;

(d) Performance evaluations; and

(e) Record of pre-employment and regular health exams related to employment.

(4) In-service training. Personnel shall attend training programs relating to their respective job activities. The training programs shall include:

(a) Thorough job orientation for new employees; and

(b) In-service training programs, emphasizing competence and professionalism necessary for effective health care.

(5) Medical records.

(a) The licensee shall maintain medical records that contain the following:

1. Medical and social history relevant to each service provided, including data obtained from other providers;

2. Names of referring physician, if any, and Physician's orders if an order is required for a specific diagnostic service for special diagnostic services such as x-ray or CT scans;

3. Description of each medical visit or contact, including a description of the:

a. Condition or reason for the visit or contact;

b. Assessment;

c. Diagnosis;

d. Services provided;

e. If applicable, medications and treatments prescribed; and

f. Disposition made;

4. Reports of all physical examinations, laboratory, x-ray, and other test findings related to each service relevant to the service(s) provided; and

5. Documentation of all referrals made, including reason for referral and to whom patient was referred, and any information obtained from referral source.

(b) Ownership.

1. Medical records shall be the property of the mobile health service.

2. The original medical record shall not be removed except by court order.

3. Copies of a medical record or portions of the record may be used and disclosed, in accordance with the requirements for use and disclosure established in this administrative regulation.

(c) Confidentiality and security: use and disclosure.

1. The mobile health service shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The mobile health service may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. This administrative regulation shall not be construed to forbid the mobile health service from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(d) Confidentiality of all patient records shall be maintained at all times. (e) Transfer of records. The licensee shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care; and

2. Upon proper release, the service shall, upon proper release, transfer medical records or an abstract, if requested.

(e) Retention of records. After the patient's death or discharge, the completed medical record shall be placed in an

inactive file and retained for:

1. Six (6) ~~five (5)~~ years; or

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

(f) Mammography and other radiology records shall be retained in accordance with 42 U.S.C. 263b(f)(1)(G) [federal requirements].

(g) ~~(e)~~ A specific location shall be designated by the mobile health service for the maintenance and storage of the service's medical records.

(h) The licensee shall have ~~(f)~~ provisions for the storage of medical records ~~if in the event~~ the mobile health service ceases to operate because of disaster~~;~~ or for any other reason.

(i) The licensee shall safeguard the record and its content against loss, defacement, and tampering.

(j) If a therapy practice licensed pursuant to this administrative regulation provides physical therapy, occupational therapy, or speech pathology services under a contractual agreement with another facility or service licensed under 902 KAR Chapter 20, the therapy practice shall:

1. Be exempt from the requirements of this subsection; and

2. Demonstrate compliance with Section 5(3)(d)1.d. and Section 5(3)(d)3. of this administrative regulation.

(10) Kentucky Health Information Exchange (KHIE).

(a) A mobile health service shall participate in the KHIE pursuant to the requirements of 900 KAR 9:010.

(b) If a mobile health service has not implemented a certified electronic health record, the service may meet the requirement of paragraph (a) of this subsection by participating in the direct secure messaging service provided by KHIE.

Section 4. Requirements for any Vehicle that a Patient Enters for Diagnostic or Treatment Services ~~Vehicle Requirements~~. (1) A vehicle used for the delivery of medical or dental services ~~All vehicles used in the provision of a health service, as provided by the service's certificate of need,~~ shall be kept~~;~~ in optimum order with clean interiors and equipment.

(2) The following standards shall apply only to a vehicle ~~in these vehicles~~ which the patient enters~~;~~

(a) There shall be adequate heating and air-conditioning capability in both the driver and patient compartments~~;~~

(b) There shall be a minimum of two (2) potential power sources for the vehicle;

(c) ~~(c)~~ To insure an immediately available source of power ~~if in the event of~~ a power failure occurs, one (1) power source shall ~~must~~ be self-contained on the vehicle, and ~~;~~ the other source shall ~~must~~ be an exterior source of power hookup;

(d) ~~(c)~~ The vehicle shall be accessible to users with disabilities~~either~~ through the use of a wheelchair lift or a ramp ~~[that] which~~ [complies with applicable American National Standards Institute (ANSI) requirements]; and

(e) ~~(d)~~ The vehicle shall have adequate and safe space for staff and examination procedures.

(3) ~~as determined by the cabinet.~~ (e) Equipment. A vehicle used for the delivery of health services ~~Vehicles used in the provision of a health service, as provided by the service's certificate of need,~~ shall have the following essential equipment:

(a) ~~4-~~ One (1) five (5) pound dry chemical fire extinguisher;

(b) ~~2-~~ One (1) first aid kit;

(c) ~~3-~~ Suction apparatus; and

(d) ~~4-~~ Oxygen equipment (portable), including:

1. ~~a-~~ One (1) "D" size oxygen cylinder;

2. ~~b-~~ One (1) pressure gauge and flow rate regulator;

3. ~~c-~~ Adaptor and tubing; and

4. ~~d-~~ Transparent masks for adults and children. Nasal cannulas may be substituted.

(4) ~~(f)~~ Personnel. Each mobile health service vehicle shall ~~at a minimum~~ be staffed by at least one (1) person~~;~~ who may ~~also~~ be the driver of the vehicle, and ~~who~~ shall have the following qualifications:

(a) ~~4-~~ Red Cross Advanced and Emergency Care Certification, each with supplemental CPR instruction certified by the American

Red Cross or the American Heart Association;

(b) ~~or 2-~~ EMT-first responder certification;

(c) ~~or 3-~~ EMT-A certification; or

(d) ~~4-~~ Licensure as a registered nurse, physician, or dentist.

Section 5. Requirements for Provision of Services; Diagnostic Services and Treatment Services. (1) Unless an exemption applies, a licensed mobile health service shall comply with the:

(a) Requirements listed in Sections 3, 4, and 6 of this administrative regulation;

(b) ~~the~~ Service's program narrative~~;~~ and

(c) ~~the~~ Additional requirements of this section that ~~which~~ relate to the particular service ~~service(s)~~ offered by the licensee.

(2) ~~(4)~~ Diagnostic services. Diagnostic services are ~~these~~ services which are performed to ascertain and assess an individual's physical health condition.

(a) Diagnostic services, except for mammography services, shall be performed only on the order of a physician or advanced practice registered nurse as authorized in KRS 314.011(8).

(b) The licensee ~~service~~ shall prepare a record for each patient that includes the following:

1. ~~to include the~~ Date of the procedure;

2. ~~;~~ Name of the patient;

3. ~~;~~ Description of the procedures ordered and performed;

4. ~~;~~ The referring physician;

5. ~~;~~ The name of the person performing the procedure; and

6. ~~;~~ The date and the name of the physician to whom the results were sent.

(c) Diagnostic imaging services.

1. Diagnostic imaging services shall be ~~are~~ ~~these~~ services that ~~which~~ produce an image~~;~~ ~~either~~ through film or computer generated video~~;~~ of the internal structures of a patient. These services may include:

a. X-ray;

b. MRI;

c. CT scanning;

d. PET scanning;

e. Ultrasound;

f. ~~e-~~ Mammography;

g. ~~f-~~ Fluoroscopy; and

h. ~~g-~~ Other modalities using directed energy to gain statistical, physiological, or biological diagnostic imaging information.

2. Any mobile health service that ~~which~~ provides diagnostic imaging services shall comply with the following requirements:

a. Equipment used for direct patient care shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;

b. There shall be a written preventive maintenance program, which the licensee ~~service~~ follows to ensure that imaging equipment is:

(i) Operative;

(ii) ~~;~~ Properly calibrated~~;~~ and

(iii) Shielded to protect the operator, patient, environment, and the integrity of the images produced;

c. ~~;~~ Recalibration of radiation producing and nonradiation producing instrumentation shall occur at least every six (6) months by biomedical service personnel; and

d. ~~and~~ Radiation producing instrumentation shall be recalibrated annually by a consulting health physicist.

3. ~~e-~~ Diagnostic imaging services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific imaging technique for diagnostic purposes.

4. ~~;~~ ~~d-~~ Imaging services shall have a current license or registration pursuant to KRS Chapter 311B and 902 KAR Chapter 100 ~~applicable Kentucky statutes and any administrative regulations promulgated thereunder~~.

5. ~~;~~ ~~e-~~ All Personnel engaged in the operation of imaging equipment shall be currently licensed or certified in accordance with KRS Chapter 311B and 201 KAR Chapter 46 ~~applicable Kentucky statutes and administrative regulations~~.

6. ~~;~~ ~~f-~~ There shall be a written training plan for personnel in the safe and proper usage of the mobile imaging equipment and

system.

7. ~~(g)~~ There shall be a physician's signed order that:
 - a. ~~(which)~~ Specifies the reason the procedure is required;
 - b. ~~Identifies~~ the area of the body to be examined; and
 - c. ~~Documents~~ ~~a statement concerning~~ the condition of the patient.

8. ~~(which indicates why mobile imaging services are necessary; and h.)~~ There shall be sufficiently trained on-duty personnel with adequate equipment to provide emergency resuscitation services if there is ~~in the event of~~ a patient emergency.

(d) Other diagnostic services.

1. Other diagnostic services shall be ~~are~~ these ~~services~~ which are provided through the use of diagnostic equipment and physical examination. These services may include:

- a. Electrocardiogram services;
- b. Electroencephalogram services;
- c. Holter monitor services;
- d. Disability determination services;
- e. Pulmonary function services;
- f. Aphresis services;
- g. Blood gas analysis services;
- h. Echosonography services; and
- i. Doppler services.

2. Equipment used for direct patient care shall comply with the following:

a. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

b. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed or certified in accordance with KRS Chapter 311B and 201 KAR Chapter 46 ~~applicable Kentucky statutes and administrative regulations~~; and

c. There shall be a written personnel training plan for instruction ~~the adequate training of personnel~~ in the safe and proper usage of the equipment.

3. Physical examination services shall be nonabusive and provided in a manner that ~~which~~ ensures the greatest amount of safety and security for the patient.

a. Protocols for diagnostic examinations shall be developed by the medical director.

b. Personnel performing physical examinations shall:

(i) Have adequate training; and

(ii) Be currently licensed or certified in accordance with KRS Chapter 311 or KRS Chapter 314 ~~applicable Kentucky statutes and administrative regulations~~.

c. Personnel performing physical examinations shall be limited by the relevant scope of practice pursuant to his or her professional license to practice ~~of Kentucky licensure~~.

(3) ~~(2)~~ Treatment services. Treatment services are ~~these~~ services provided to a patient ~~an individual~~ who, because of a physical health condition, is in need of medical assistance for the attainment of his or her ~~their~~ maximum level of physical function.

(a) Mobile health clinic.

1. A mobile health clinic shall provide ~~is a health service providing~~ both diagnostic and treatment services through the use of a mobile vehicle that meets the requirements of Section 4 of this administrative regulation.

2. A mobile health clinic may provide a wide range of diagnostic and treatment services on an outpatient basis for a variety of physical health conditions.

3. ~~(4)~~ Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes:

- a. One (1) or more physicians; and
- b. One (1) or more advanced practice registered nurses.

4. At least one (1) member of the group responsible for developing patient care policies shall not be a member of the mobile health clinic staff.

5. The policies shall include:

a. A description of the services the mobile health clinic provides directly and those provided through agreement;

b. Guidelines for the medical management of health problems, which include the conditions requiring medical consultation

or ~~and/or~~ patient referral, and the maintenance of health records; and

c. Procedures for review and evaluation of the services provided by the clinic at least annually.

6. ~~(2)~~ Personnel. The mobile health clinic shall have a staff that includes:

a. At least one (1) physician;

b. ~~and~~ At least one (1) advanced practice registered nurse; and

c. ~~The clinic shall employ such~~ Other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

7. ~~(a)~~ The physician shall:

a. ~~(i)~~ Be responsible for all medical aspects of the clinic;

b. ~~and shall~~ Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311;

c. ~~In addition, the physician shall~~ Provide medical direction, supervision, and consultation to the staff;

d. ~~(iii)~~ In conjunction with the advanced practice registered nurse ~~nurse(s)~~, participate in developing, executing, and periodically reviewing the mobile health clinic's written policies and services;

e. ~~(iii)~~ Periodically review the mobile health clinic's patient records, provide medical orders, and provide medical care services to patients of the mobile health clinic; and

f. ~~(iv)~~ Be present for consultation weekly, and be available within one (1) hour, through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

8. ~~(b)~~ The advanced practice registered nurse shall:

a. ~~(i)~~ Participate in the development, execution, and periodic review of the written policies governing the services the mobile health clinic provides;

b. ~~(ii)~~ Participate with the physician in periodic review of patient health records;

c. ~~(iii)~~ Provide services in accordance with mobile health clinic policies, established protocols, the Nurse Practice Act, KRS Chapter 314 and 201 KAR Chapter 20 ~~(KRS Chapter 314), and with administrative regulations promulgated thereunder~~;

d. ~~(iv)~~ Arrange for, or refer patients to needed services not provided at the mobile health clinic; and

e. ~~(v)~~ Assure that adequate patient health records are maintained and transferred when patients are referred.

9. ~~(3)~~ The mobile health clinic shall have linkage agreements or arrangements with each of the following:

a. Inpatient hospital care;

b. Physician services in a hospital, patient's home, or long-term care facility;

c. Additional and specialized diagnostic and laboratory services that are not available at the mobile health clinic;

d. Home health agency;

e. Emergency medical services;

f. Pharmacy services; and

g. Local health department.

10. ~~(4)~~ The mobile health clinic shall:

a. Carry out or arrange for an annual evaluation of its total program; and

b. ~~shall~~ Consider the findings of the evaluation and take corrective action, if necessary. The evaluation shall include:

(i) ~~(a)~~ The utilization of clinic services including at least the number of patients served and the volume of services;

(ii) ~~(b)~~ A representative sample of both active and closed clinical records; and

(iii) ~~(c)~~ The mobile health clinic's health care policies.

11. ~~(5)~~ The mobile health clinic shall develop and maintain written protocols that include ~~including~~ standing orders, rules of practice, and medical directives that:

a. ~~which~~ Apply to services provided by the clinic; and

b. ~~which~~ Explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall:

(i) ~~further~~ Direct data analysis;

(ii) ~~shall~~ Direct explicit medical action depending upon the data collected;

- (iii) ~~and~~ Include rationale for each decision made; and
- (iv) ~~The protocols shall~~ Be signed by the staff physician.

12. ~~6.~~ The mobile health clinic staff shall furnish ~~these~~ diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system, including:

- a. ~~These include~~ Medical history;
- b. ~~Physical examination;~~
- c. ~~Assessment of health status;~~ and
- d. Treatment for a variety of medical conditions.

13. ~~7.~~ The mobile health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

- a. Chemical examinations of urine by stick or tablet methods or both, ~~including urine ketones~~;
- b. Microscopic examinations of urine sediment;
- c. Hemoglobin or hematocrit;
- d. Blood sugar;
- e. Gram stain;
- f. Examination of stool specimens for occult blood;
- g. Pregnancy tests;
- h. Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and
- i. Test for pinworms.

14. ~~8.~~ The mobile health clinic shall:

- a. Provide medical emergency procedures as a first response to common life-threatening injuries and acute illness; and
- b. Have available the drugs and biologicals commonly used in lifesaving procedures, including:
 - (i) ~~such as~~ Analgesics;
 - (ii) ~~Anesthetics (local);~~
 - (iii) ~~Antibiotics;~~
 - (iv) ~~Anticonvulsants;~~
 - (v) ~~Antidotes;~~
 - (vi) ~~and~~ Emetics;
 - (vii) ~~Serums;~~ and
 - (viii) ~~Toxoids.~~

15. ~~9.~~ The mobile health clinic shall post the following in a conspicuous area at the entrance, visible from the outside of the clinic: ~~is~~

- a. ~~The hours that emergency medical services will be available in the clinic;~~
- b. ~~The clinic's next scheduled visit; and~~
- c. ~~and~~ Where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled visits and hours of operation.

(b) Mobile dental clinic.

1. A mobile dental clinic shall provide is a health service providing both diagnostic and dental treatment services at different locations through the use of a mobile vehicle or equipment.

2. ~~1.~~ Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) licensed dentist.

3. ~~The~~ ~~These~~ policies shall include:

- a. Guidelines that ~~which~~ identify ~~the~~ dental problems beyond the scope of services provided by the licensee;
- b. ~~which may not be performed in the mobile unit, and~~ Provisions for patient referral;
- c. ~~b.~~ Guidelines for the review and evaluation of the services provided by the clinic at least annually;
- d. ~~and c.~~ ~~Guidelines for~~ Procedures to be followed if in the event a patient has a medical emergency; and
- e. Guidelines for infection control.

4. ~~2.~~ Personnel. The mobile dental clinic shall have a staff that includes at least:

- a. One (1) licensed dentist; and
- b. ~~at least~~ One (1) dental assistant.

5. ~~a.~~ The dentist shall:

- a. ~~(i)~~ Be responsible for all aspects of patient care in accordance with KRS Chapter 313 and 201 KAR Chapter 8 ~~any administrative regulations promulgated thereunder~~;
- b. ~~(iii)~~ Be present in the clinic at all times that a patient is

receiving dental care; and

- c. ~~(iii)~~ Provide direct supervision to all staff involved in the delivery of services.

6. ~~b.~~ The dental assistant shall:

- a. ~~(i)~~ Provide services in accordance with;

(i) The mobile dental clinic policies and established protocols; and

(ii) ~~KRS Chapter 313~~ and 201 KAR Chapter 8 ~~any administrative regulations promulgated thereunder~~; and

b. ~~(ii)~~ Provide services only under the direct supervision of a licensed dentist.

7. ~~3.~~ Equipment. The mobile dental clinics shall have the following equipment:

- a. X-ray units;
- b. Sterilizer;
- c. High-speed suction;
- d. Dental lights; and
- e. Emergency kit with the following drug types:
 - (i) Antiallergenic;
 - (ii) Vasodilators;
 - (iii) Anticonvulsives; and
 - (iv) Vasopressors.
- (c) Mobile lithotripter service.

1. A mobile lithotripter service shall provide is a health service which provides for a noninvasive technique for removing kidney or ureteral stones through the use of a lithotripter at various hospital locations.

2. ~~1.~~ Mobile lithotripter services may only be delivered on the grounds of the hospital utilizing the mobile lithotripter service.

3. ~~2.~~ Lithotripsy services shall be:

- a. Performed only on the order of a physician; and
- b. ~~3.~~ ~~Lithotripsy services shall be~~ Provided under the supervision of a physician who is qualified by advanced training and experience in the use of lithotripsy treatment.

4. The mobile lithotripter service shall prepare a record for each patient that includes the:

- a. ~~to include the~~ Date of the procedure;
- b. ~~Name of the patient;~~
- c. ~~Description of the procedures ordered and performed;~~
- d. ~~the~~ Referring physician; and
- e. ~~the~~ Name of the person performing the procedure.

5. There shall be a physician's signed order that ~~which~~ specifies the:

- a. Reason the procedure is required;
- b. ~~the~~ Area of the body to be exposed; and
- c. ~~the~~ Anticipated outcome of treatment.

6. Policies. A mobile lithotripter service shall develop patient care policies with the advice of a group of professional personnel that includes at least:

- a. One (1) qualified urologist; and
- b. One (1) qualified anesthetist.

7. At least one (1) member of the group responsible for developing patient care policies shall not be a member of the mobile lithotripter service staff.

8. The policies shall include:

- a. A description of how a patient will be transported between the hospital and the mobile lithotripter service;
- b. Procedures to be followed if in the event a patient has a medical emergency;
- c. Guidelines for the review and evaluation of the service on an annual basis; and
- d. Policies and protocols governing the utilization and responsibilities of hospital staff in the delivery of lithotripter services.

9. ~~7.~~ Personnel. The mobile lithotripter service shall:

- a. Employ at least one (1) lithotripter technician; and
- b. ~~shall~~ Employ or make arrangements with the hospital utilizing the service for at least:

(i) One (1) registered nurse and one (1) qualified urologist to be present in the unit during the delivery of lithotripsy services; and

(ii) One (1) qualified anesthetist to be available for procedures requiring anesthesia.

10.[8-] Lithotripsy equipment used for direct patient care shall comply with the following:

- a. Lithotripsy equipment shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;
- b. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be:
 - (i) Operative;
 - (ii)[.] Properly calibrated;
 - (iii)[.] Properly shielded[.]; and
 - (iv) Safe for the patient, operator, and environment[.];

11.[6-] All personnel engaged in the operation of diagnostic equipment shall have [adequate] training and be currently licensed, certified, or registered in accordance with KRS Chapter 311B and 201 KAR Chapter 46[applicable Kentucky statutes and administrative regulations].

12.[-and d-] There shall be a written training plan for the [adequate] training of personnel in the safe and proper usage of the equipment.

13.[-and e-] There shall be [sufficiently] trained on-duty personnel with [adequate] equipment to provide emergency resuscitation if there is[in the event of] a patient emergency.

(d) Therapy practices. A therapy practice licensed pursuant to this administrative regulation shall:

1. Develop patient care policies that:

a. Include a description of services provided directly or through an agreement;

b. Include guidelines for the medical management of health problems that include the conditions requiring medical consultation or patient referral;

c.[d.] Address clinical records;

d.[e.] Include procedures for review and evaluation of the services provided at least annually; and

e.[f.] Ensure that physical therapy, occupational therapy, and speech pathology services shall be provided within the professional scope of practice established in KRS Chapter 327, KRS Chapter 319A, and KRS Chapter 334A, respectively;

2. Employ a sufficient number of qualified personnel pursuant to Section 3(5) of this administrative regulation;

3. Maintain a written plan of care for each patient that:

a. Indicates anticipated goals;

b. Specifies the type, amount, frequency, and duration of:

(i) Physical therapy;

(ii) Occupational therapy; or

(iii) Speech pathology;

c. Is established by the:

(i) Physical therapist who will provide physical therapy services;

(ii) Occupational therapist who will provide occupational therapy; or

(iii) Speech-language pathologist who will provide speech pathology services; and

4. Except for Section 3(4)(a) and, if applicable, Section 3(9) of this administrative regulation, demonstrate compliance with Section 2 and Section 3 of this administrative regulation, in addition to the requirements of this paragraph. Section 4 and Section 6 of this administrative regulation, and subsection (2) through subsection (3)(a), (b), (c), and (e) of this section shall not apply to a therapy practice licensed pursuant to this administrative regulation.

(e)1. Other treatment services shall:

a. Be performed only on the order of a physician;

b. Demonstrate compliance with the policy, personnel, in-service training, and program evaluation requirements established in subparagraphs 4. through 11. of this paragraph; and

c. May include[—including] IV therapy services. If provided, [shall be performed only on the order of a physician. 4-] IV therapy shall:

(i) Only be performed by a registered nurse; and

(ii)[shall] Be limited to nursing services that[which] are required for the initial start-up of an IV therapy program.

2. If nursing services are required that[which] exceed the initial start-up of IV therapy, the services[they] shall be provided by an agency that is licensed[an appropriately licensed agency] to provide care under a physician's plan of care.

3. All services provided shall be under the supervision of a licensed physician.

4. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least:

a. One (1) physician; and

b. One registered nurse[or more physician(s) and one (1) or more registered nurse(s)].

5. At least one (1) member of the group responsible for developing patient care policies shall not be a member of the service's staff.

6. The policies shall include:

a. A description of the services provided;

b. A requirement to inform patients of other in-home services which can be provided only by other [appropriately] licensed agencies;

c. A requirement for a written common plan for treatment and coordination of treatment with other licensed health care providers delivering services to[servicing] the patient[.—and] Immediate verbal communication between providers regarding[of] revisions to[in] the common plan shall be documented in the plan of treatment;

d. Guidelines for the medical management of health problems, including:

(i)[which include] The conditions requiring medical consultation or patient referral[.]; and

(ii)[The] Maintenance of health records;

e. Procedures for review and evaluation of the services provided at least annually; and

f. Guidelines for patient and environment assessment.

7.[5-] Personnel. The service shall have a staff that includes at least one (1) registered nurse.

8. The service shall employ[such] other staff or ancillary personnel that are necessary and essential to the service's operation.

9. The registered nurse shall:

a. Participate in the development, execution, and period review of the written policies governing the services provided;

b. Participate with the physician in periodic review of patient health records;

c. Provide services in accordance with established policies, protocols, the Nurse Practice Act, KRS Chapter 314 and 201 KAR Chapter 20[KRS Chapter 314], and with administrative regulations promulgated thereunder];

d.[(i)] Arrange for or refer patients to needed services that cannot be provided by the service; and

e.[(ii)] Assure that [adequate] patient health records are maintained and transferred when patients are referred.

10.[6-] In-service training programs shall include instruction in:

a. Use of equipment;

b. Side effects and precautions of drugs and biologicals; and

c. Infection control measures.

11.[7-] The service shall:

a. Carry out, or arrange for an annual evaluation of its total program;

b.[-shall] Consider the findings of the evaluation[.]; and

c. Take corrective action, if necessary. The evaluation shall include:

(i)[a-] The utilization of the service including[at least] the number of patients served and the volume of services;

(ii)[b-] A representative sample of both active and closed records; and

(iii)[c-] The service's health care policies.

Section 6. Waste Processing. (1) Sharp wastes, including[such as] broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and placed in puncture-resistant[aggregated in rigid disposable] containers immediately after use.

(2) A needle or other contaminated sharp waste [Needles and syringes] shall not be recapped, purposefully bent, broken, or otherwise manipulated by hand as a means of disposal except as permitted by the Centers for Disease Control and the Occupational

Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(3) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

(4) Any nondisposable sharp waste shall be placed in a hard walled container for transport to a processing area for decontamination.

(5)(a) Disposable waste shall be:

1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

2. Handled, stored, and disposed of in a way that minimizes direct exposure of personnel or patients to waste materials.

(b) The licensee shall establish specific written policies regarding handling and disposal of waste material.

(6) All unpreserved tissue specimens shall be incinerated off site[cut, dismantled, or destroyed after use, but shall be placed intact into a rigid container. The rigid containers of sharp wastes shall either be incinerated or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:080.

(2) The mobile health service shall establish a written policy for the handling and disposal of all pathological and microbiologic laboratory waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

(a) Pathological and microbiologic laboratory waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty-five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the mobile health service from which the waste is being removed, shall be attached to the bag in a conspicuous manner. These wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible.

(b) All unpreserved tissue specimens shall be incinerated off site.

(3) The following liquids shall be disposed of by incineration or by sanitary sewer:

(a) Blood;

(b) Vaginal or cervical secretions or exudates;

(c) Semen;

(d) Cerebrospinal, synovial, pleural, pericardial, peritoneal or amniotic fluids;

(e) Saliva in dental procedures;

(f) Fluids visibly contaminated with blood; and

(g) Mixed fluids where any of the above may be involved].

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(As Amended at ARRS, April 11, 2016)

907 KAR 1:835. Michelle P. waiver services and reimbursement.

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation

establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions. (1) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

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

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

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

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

(6)[(5)] "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(7)[(6)] "Behavior support specialist" means an individual who has:

(a) A master's degree from an accredited institution with formal graduate course work in a behavioral science; and

(b) At least one (1) year of experience in behavioral programming.

(8)[(7)] "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 6 of this administrative regulation and participant[consumer]-directed[option] services identified in Section 7 of this administrative regulation provided pursuant to a participant's[recipient's] approved person-centered service plan[of care].

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

(10)[(9)] "Certified psychologist" means an individual who is a certified psychologist in accordance with KRS 319.056.[(40) "Consumer" is defined by KRS 205.5605(2).]

(11)[(Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

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

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

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

(14)[(15)] "Developmental disability" means a severe, chronic disability that:

(a) Is attributable to:

1. Cerebral palsy or epilepsy; or

2. Any other condition, excluding mental illness, closely related to an intellectual disability resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with an intellectual disability and which requires treatment or services similar to those required by persons with an intellectual disability;

(b) Is manifested prior to the individual's 22nd birthday;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;
 5. Self-direction; or
 6. Capacity for independent living.
(15)[(16)] "Direct care staff" means an individual hired by a Michelle P. waiver provider to provide services to the participant[recipient] and who:
 (a) 1.a. Is eighteen (18) years of age or older; and
 b. Has a high school diploma or GED; or
 2.a. Is twenty-one (21) years of age or older; and
 b. Is able to communicate with a participant[recipient] in a manner that the participant[recipient] or participant's[recipient's] legal representative or family member can understand;
 (b) Has a valid Social Security number or valid work permit if not a U.S. citizen;
 (c) Can understand and carry out simple instructions;
 (d) Has the ability to keep simple records; and
 (e) Is managed by the provider's supervisory staff.
(16)[(17)] "Electronic signature" is defined by KRS 369.102(8).
(17)[(18)] "Federal financial participation" is defined in 42 C.F.R. 400.203.
(18)[(19)] "Home health agency" means an agency that is:
 (a) Licensed in accordance with 902 KAR 20:081; and
 (b) Medicare and Medicaid certified.
(19)[(20)] "ICF-IID" means an intermediate care facility for individuals with an intellectual disability.
(20)[(21)] "Intellectual disability" means an individual has:
 (a) Significantly sub-average intellectual functioning;
 (b) An intelligence quotient of seventy (70) or below;
 (c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
 1. Communication;
 2. Self-care;
 3. Home living;
 4. Social or interpersonal skills;
 5. Use of community resources;
 6. Self-direction;
 7. Functional academic skills;
 8. Work;
 9. Leisure; or
 10. Health and safety; and
 (d) Had an onset prior to eighteen (18) years of age.
(21) "Intellectual disability professional" means an individual who:
(a) Has at least one (1) year of experience working with individuals with an intellectual or developmental disability;
(b) Meets the personnel and training requirements established in Section 2 of this administrative regulation; and
(c) 1. Is a doctor of medicine or osteopathy;
2. Is a registered nurse; or
3. Holds a bachelor's degree from an accredited institution in a human services field.
(22) "Level of care determination" means a determination that an individual meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation.
(23) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.
(24) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).
(25)[(24)] "Licensed practical nurse" or "LPN" means a person who:
 (a) Meets the definition of KRS 314.011(9); and
 (b) Works under the supervision of a registered nurse.
(26)[(25)] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).
(27)[(26)] "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.
(28)[(27)] "Licensed psychological practitioner" means an individual who:
 (a) Meets the requirements established in KRS 319.053; or
 (b) Is a certified psychologist with autonomous functioning.
(29)[(28)] "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and
 (b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.
(30) "MWMA[portal]" means the Kentucky Medicaid Waiver Management Application internet portal located at <http://chfs.ky.gov/dms/mwma.htm>.
(31)[(29)] "Michelle P. waiver recipient" means an individual who:
 (a) Is a recipient as defined by KRS 205.8451(9);
 (b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and
 (c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.
(30)] "Normal babysitting" means general care provided to a child which includes custody, control, and supervision.
(32)[(31)] "Occupational therapist" is defined by KRS 319A.010(3).
(33)[(32)] "Occupational therapy assistant" is defined by KRS 319A.010(4).
(34) "Participant" means an individual who:
 (a) Is a recipient as defined by KRS 205.8451(9);
 (b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and
 (c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.
(35) "Participant-directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based waiver services programs that allows participants[recipients] to receive non-medical services in which the individual:
 (a) Assists with the design of the program;
 (b) Chooses the providers of services; and
 (c) Directs the delivery of services to meet his or her needs.
(36)[(33)] "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.
(37) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 8 of this administrative regulation.
(38)[(34)] "Physical therapist" is defined by KRS 327.010(2).
(39)[(35)] "Physical therapist assistant" means a skilled health care worker who:
 (a) Is certified by the Kentucky Board of Physical Therapy; and
 (b) Performs physical therapy and related duties as assigned by the supervising physical therapist.
(40)[(36)] "Physician assistant" or "PA" is defined by KRS 311.840(3).
(41)[(37)] "Plan of care" or "POC" means a written individualized plan developed by:
 (a) A Michelle P. waiver recipient or a Michelle P. waiver recipient's legal representative;
 (b) The case manager or support broker; and
 (c) Any other person designated by the Michelle P. waiver recipient if the Michelle P. waiver recipient designates another person.
(38)] "Plan of treatment" means a care plan used by an ADHC center.
(42)[(39)] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.
(43)[(40)] "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).
(44)[(41)] "Registered nurse" or "RN" means a person who:
 (a) Meets the definition established in KRS 314.011(5); and
 (b) Has at least one (1) year of experience as a licensed practical nurse or a registered nurse.
(45)[(42)] "Representative" is defined by KRS 205.5605(6).
(46)[(43)] "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907 KAR 12:010, Section 7.
(44)] "Sex crime" is defined by KRS 17.165(1).
(47)[(45)] "Social worker" means a person with a bachelor's

degree in social work, sociology, or a related field.

(48)[(46)] "Speech-language pathologist" is defined by KRS 334A.020(3).

(49)[(47)] "State plan" is defined by 42 C.F.R. 400.203.

(50)[(48)] "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct care staff and who:

(a) 1.a. Is eighteen (18) years of age or older; and

b. Has a high school diploma or GED; or

2. Is twenty-one (21) years of age or older;

(b) Has a minimum of one (1) year experience in providing services to individuals with an intellectual or developmental disability;

(c) Is able to adequately communicate with the participants[recipients], staff, and family members;

(d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and

(e) Has the ability to perform required record keeping.

(51)[(49)] "Support broker" means an individual chosen by a participant[consumer] from an agency designated by the department to:

(a) Provide training, technical assistance, and support to the participant[a consumer]; and

(b) Assist the participant[a][consumer] in any other aspects of PDS[CDO].

(52)[(50)] "Support spending plan" means a plan for a participant[consumer] that identifies the:

(a) PDS[CDO services] requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes;

(g) Budget allowance; and

(h) **Twelve (12)[Six (6)]** month budget.

(53)[(51)] "Violent crime" is defined by KRS 17.165(3).

[(54)] "Voluntary moratorium" means a provider's voluntary agreement to not serve any new (to the provider) 1915(c) home and community based waiver services participants.]

Section 2. Non-PDS[Non-CDO] Provider Participation Requirements. (1) In order to provide Michelle P. waiver services, excluding participant[consumer] directed[option] services, a provider shall be:

(a) Licensed in accordance with:

1. 902 KAR 20:066 if an adult day health care provider;

2. 902 KAR 20:078 if a group home;

3. 902 KAR 20:081 if a home health agency; or

4. 902 KAR 20:091 if a community mental health center; or

(b) Certified by the department **in accordance with 907 KAR 12:010**[in accordance with 907 KAR 12:010, Section 3,] if the provider's type is not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver provider shall:

(a) [Provide services to Michelle P. waiver recipients:

1. Directly; or

2. Indirectly through a subcontractor;

(b) Comply with [the following administrative regulations and program requirements]:

1. 907 KAR 1:671;

2. 907 KAR 1:672; [and]

3. 907 KAR 1:673;

4. This administrative regulation;

5. The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164; [and]

6. 42 U.S.C. 1320d to 1320d-8; and

7. The provider participation requirements for SCL providers established in 907 KAR 12:010, Section 3;

(b)[(c)] Not enroll a participant[Michelle P. waiver recipient] for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(c)[(d)] Be permitted to accept or not accept a participant[Michelle P. waiver recipient].

(3) In order to provide a Michelle P. waiver service in

accordance with Section 4 of this administrative regulation, a Michelle P. waiver service provider:

(a) Shall, for a potential employee or volunteer, obtain the results of a Caregiver Misconduct Registry check as described in 922 KAR 5:120 or an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism; and

(b) May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

(a) A clinical record in the MWMA[portal] for each participant[Michelle P. waiver recipient] that shall contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on form MAP 351, Medicaid Waiver Assessment and signed by the:

a. Assessment team; and

b. Department;

3. A person-centered service plan completed in accordance with Section 8 of this administrative regulation[MAP-109];

4. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the participant[recipient] or his or her legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;

6. Documentation of all level of care determinations;

7. All documentation related to prior authorizations, including requests, approvals, and denials;

8. Documentation of each contact with, or on behalf of, a participant[Michelle P. waiver recipient];

9. Documentation that the participant[Michelle P. waiver recipient] receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;

10. Documentation that the participant[recipient] or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided. The documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's[Michelle P. waiver recipient's] home;

d. Itemization of each service delivered;

e. The participant's[Michelle P. waiver recipient's] arrival and departure time, excluding travel time, if the service was provided outside the participant's[recipient's] home;

f. Progress notes, which shall include documentation of changes, responses, and treatments utilized to meet the participant's[Michelle P. waiver recipient's] needs; and

g. The signature of the service provider; and

(b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained for the longer of:

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

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

(2) Upon request, a Michelle P. waiver provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) United States Department for Health and Human Services or its designee;

(d) United States Government Accountability Office or its designee;

(e) Kentucky Office of the Auditor of Public Accounts or its designee; or

(f) Kentucky Office of the Attorney General or its designee.

Section 4. Participant[Michelle P. Waiver Recipient] Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible participant[Michelle P. waiver recipient] who:

(a) Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and

(b) Would, without waiver services, be admitted to an ICF-IID or a nursing facility.

(2) To apply for participation in the program, an individual or individual's representative shall:

(a) Apply for 1915(c) home and community based waiver services via the MWMA[portal]; and

(b) Complete and upload into the MWMA[portal] a MAP – 115 Application Intake – Participant Authorization.

(3) The department shall perform a Michelle P. waiver service level of care determination for each participant[Michelle P. waiver recipient] at least once every twelve (12) months or more often if necessary.

(4)[(3)] A Michelle P. waiver service shall not be provided to an individual who:

(a) Does not require a service other than:

1. An environmental and minor home adaptation;

2. Case management; or

3. An environmental and minor home adaptation and case management;

(b) Is an inpatient of:

1. A hospital;

2. A nursing facility; or

3. An ICF-IID;

(c) Is a resident of a licensed personal care home; or

(d) Is receiving services from another 1915(c)[Medicaid] home and community based[services] waiver services program.

(5)[(4)] A Michelle P. waiver provider shall inform a participant[Michelle P. waiver recipient] or the participant's[his] legal representative of the choice to receive:

(a) Michelle P. waiver services; or

(b) Institutional services.

(6)[(5)] An eligible participant[Michelle P. waiver recipient] or the participant's[recipient's] legal representative shall select a participating Michelle P. waiver provider from which the participant[recipient] wishes to receive Michelle P. waiver services.

(7)[(6)] A Michelle P. waiver provider shall[use a MAP-24 to] notify the department in writing electronically or in print of a participant's[Michelle P. waiver recipient's]:

(a) Termination from the Michelle P. waiver program;[or]

(b)[1-] Admission to an ICF-IID or nursing facility for less than sixty (60) consecutive days;[or]

(c)[2-] Return to the Michelle P. waiver program from an ICF-IID or nursing facility within sixty (60) consecutive days;

(d)[(e)] Admission to a hospital; or

(e)[(d)] Transfer to another waiver program within the department.

(8)[(7)] Involuntary termination of a service to a participant[Michelle P. waiver recipient] by a Michelle P. waiver provider shall require:

(a) Simultaneous notice in writing electronically or in print to the participant[recipient] or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The participant's[recipient's] right to appeal the intended action through the provider's appeal or grievance process; and

(b)[Submittal of a MAP-24 to the department at the time of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the participant[recipient] with the name, address, and telephone number of each current provider in the state;

2. Provide assistance to the participant[recipient] in making contact with another provider;

3. Arrange transportation for a requested visit to a provider site;

4. Provide a copy of pertinent information to the participant[recipient] or legal representative;

5. Ensure the health, safety, and welfare of the participant[recipient] until an appropriate placement is secured;

6. Continue to provide supports until alternative services are secured; and

7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service Level of Care Criteria.

(1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:

(a) Requires physical or environmental management or rehabilitation and:

1. Has a developmental disability or significantly sub-average intellectual functioning;

2. Requires a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:

a. Learning fundamental living skills;

b. Obtaining educational experiences which will be useful in self-supporting activities; or

c. Increasing awareness of his or her environment; or

3. Has a primary psychiatric diagnosis if:

a. The individual possesses care needs listed in subparagraph 1 or 2 of this paragraph;

b. The individual's mental care needs are adequately handled in an ICF-IID; and

c. The individual does not require psychiatric inpatient treatment; or

(b) Has a developmental disability and meets the:

1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or

2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).

(2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet the Michelle P. waiver service level of care criteria.

(3) The department shall not determine that an individual fails to meet the Michelle P. waiver service level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Covered Services. (1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the participant[Michelle P. waiver recipient];

(b) Be provided pursuant to a person-centered service plan[of care] or, for a PDS[CDO service], pursuant to a person-centered service plan[of care] and support spending plan;

(c) Except for a PDS[CDO service], not be provided by a member of the participant's[Michelle P. waiver recipient's] family. A PDS[CDO service] may be provided by a participant's[Michelle P. waiver recipient's] family member; and

(d) Be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit to the department a:

(a) Completed MAP 10, Waiver Services Physician's Recommendation that has been signed and dated by:

1. A physician;

2. An advanced practice registered nurse;

3. A physician assistant; or

4. An intellectual disability professional; and

(b) Person-centered service plan[MAP-109,] and MAP 351, Medicaid Waiver Assessment[to the department].

(3) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment₁ which shall:

1. Be completed by the department;
2. Identify a participant's[Michelle P. waiver recipient's] needs and the services the participant[Michelle P. waiver recipient] or the participant's[recipient's] family cannot manage or arrange for on the participant's[recipient's] behalf;
3. Evaluate a participant's[Michelle P. waiver recipient's] physical health, mental health, social supports, and environment;
4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, APRN, or intellectual disability[~~another qualified~~] professional[~~in the area of intellectual disabilities~~];
5. Be conducted by an assessment team; and
6. Include at least one (1) face-to-face home visit by a member of the assessment team with the participant[Michelle P. waiver recipient] and, if appropriate, the participant's[recipient's] family;

(b) A reassessment service₁ which shall:

1. Be completed by the department;
2. Determine the continuing need for Michelle P. waiver services and, if appropriate, PDS[~~CDO~~ services];
3. Be performed at least every twelve (12) months;
4. Be conducted using the same procedures used in an assessment service; and
5. Not be retroactive;

(c)[A] Case management[~~service~~] which shall meet the requirements established in Section 9 of this administrative regulation, and which shall:

1. Consist of coordinating the delivery of direct and indirect services to a participant[Michelle P. waiver recipient];
2. Be provided by a case manager who shall:
 - a. Arrange for a service but not provide a service directly;
 - b. Contact the participant[Michelle P. waiver recipient] monthly through a face-to-face visit at the participant's[Michelle P. waiver recipient's] home, in the ADHC center, or the adult day training provider's location; and
 - c. Assure that service delivery is in accordance with a participant's person-centered service[Michelle P. waiver recipient's] plan[~~of care~~]; and d. ~~Meet the requirements of subsection (4) of this section~~;
3. Not include a group conference;
4. ~~Include development of a plan of care that shall:~~
 - a. ~~Be completed on the MAP 109 using Person-Centered Planning: Guiding Principles;~~
 - b. ~~Reflect the needs of the Michelle P. waiver recipient;~~
 - c. ~~List goals, interventions, and outcomes;~~
 - d. ~~Specify services needed;~~
 - e. ~~Determine the amount, frequency, and duration of services;~~
 - f. ~~Provide for reassessment at least every twelve (12) months;~~
 - g. ~~Be developed and signed by the case manager and Michelle P. waiver recipient, family member, or legal representative; and~~
 - h. ~~Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of the Michelle P. waiver service level of care;~~
5. Include documentation with a detailed monthly summary note in the MWMA, which includes:
 - a. The month, day, and year for the time period each note covers;
 - b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan[~~of care~~];
 - c. The signature, date of signature, and title of the individual preparing the note; and
 - d. Documentation of at least one (1) face-to-face meeting between the case manager and participant[Michelle P. waiver recipient], family member, or legal representative;
- 5.[6.] Include requiring a participant[Michelle P. waiver recipient] or legal representative to sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver services or institutional services; and
- 6.[7.] Not be provided to a participant[recipient] by an agency if the agency provides any other Michelle P. waiver service to the

participant[recipient];

(d) A homemaker service₁ which shall consist of general household activities and shall:

1. Be provided by direct care staff;
2. Be provided to a participant[Michelle P. waiver recipient]:
 - a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and
 - b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and
3. Include documentation with a detailed note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers; and
 - b. ~~Progression, regression, and maintenance toward outcomes identified in the plan of care;~~ and
 - c. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service₁ which shall:

1. Be age appropriate;
2. Consist of assisting a participant[recipient] with eating, bathing, dressing, personal hygiene, or other activities of daily living;
3. Be provided by direct care staff;
4. Be provided to a participant[Michelle P. waiver recipient]:
 - a. Who does not need highly skilled or technical care;
 - b. For whom services are essential to the participant's[recipient's] health and welfare and not for the participant's[recipient's] family; and
 - c. Who needs assistance with age-appropriate activities of daily living; and
5. Include documentation with a detailed note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers;
 - b. ~~Progression, regression, and maintenance toward outcomes identified in the plan of care;~~
 - c. The signature, date of signature, and title of the individual preparing the note; and
 - c.[d.] The beginning and ending time of service;

(f) An attendant care service₁ which shall consist of hands-on care that is:

1. Provided by direct care staff to a participant[Michelle P. waiver recipient] who:
 - a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and
 - b. Has a family member or other primary caretaker who is employed or attending school and is not able to provide care during working hours;
2. Not of a general housekeeping nature;
3. Not provided to a participant[Michelle P. waiver recipient] who is receiving any of the following Michelle P. waiver services:
 - a. Personal care;
 - b. Homemaker;
 - c. ADHC;
 - d. Adult day training;
 - e. Community living supports; or
 - f. Supported employment; and
4. Include documentation with a detailed note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers;
 - b. ~~Progression, regression, and maintenance toward outcomes identified in the plan of care;~~
 - c. The signature, date of signature, and title of the individual preparing the note; and
 - c.[d.] Beginning and ending time of service;

(g) A respite care service₁ which shall be short term care based on the absence or need for relief of the primary caretaker and[~~be~~]:

1. Be provided by direct care staff who provide services at a level that[~~which~~] appropriately and safely meets the medical needs of the participant[Michelle P. waiver recipient];
2. Be provided to a participant[Michelle P. waiver recipient]

who has care needs beyond normal babysitting;

3. Be used no less than every six (6) months; and

4. ~~Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10a through c, if provided to a child under age twenty-one (21) in an ADHC center; and 5.]~~ Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. The signature, date of signature, and title of the individual preparing the note; and

c. The beginning and ending time of service;

(h) An environmental and minor home adaptation service, which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a participant~~[Michelle P. waiver recipient]~~ and which shall:

1. Meet all applicable safety and local building codes;

2. Relate strictly to the participant's~~[Michelle P. waiver recipient's]~~ disability and needs;

3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the participant~~[Michelle P. waiver recipient]~~;

4. Be submitted on a~~form~~ MAP 95 Request for Equipment Form that is uploaded into the MWMA~~[portal]~~ for prior authorization; and

5. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers; and

b. The signature, date of signature, and title of the individual preparing the note;

(i) Occupational therapy, which shall be:

1. A physician ordered evaluation of a participant's~~[Michelle P. waiver recipient's]~~ level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide a participant~~[Michelle P. waiver recipient]~~ in the use of therapeutic, creative, and self-care activities to assist the participant~~[recipient]~~ in obtaining the highest possible level of functioning;

3. Training of other Michelle P. waiver providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and

6. Documented with a detailed staff note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan~~[of care]~~; and

c. The signature, date of signature, and title of the individual preparing the note;

(j) Physical therapy, which shall:

1. Be a physician-ordered evaluation of a participant~~[Michelle P. waiver recipient]~~ by applying muscle, joint, and functional ability tests;

2. Be physician-ordered treatment in a specified amount and duration to assist a participant~~[Michelle P. waiver recipient]~~ in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be exclusive of maintenance or the prevention of regression;

5. Be provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and

6. Be documented with a detailed monthly summary note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression or lack of progression toward outcomes identified in the person-centered service plan~~[of care]~~; and

c. The signature, date of signature, and title of the individual

preparing the note;

(k) Speech language pathology services~~[therapy]~~ which shall:

1. Be a physician-ordered evaluation of a participant~~[Michelle P. waiver recipient]~~ with a speech or language disorder;

2. Be a physician-ordered habilitative service in a specified amount and duration to assist a participant~~[Michelle P. waiver recipient]~~ with a speech and language disability in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be provided by a speech-language pathologist; and

5. Be documented with a detailed monthly summary note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan~~[of care]~~; and

c. The signature, date of signature, and title of the individual preparing the note;

(l) An adult day training service, which shall:

1. Support the participant~~[Michelle P. waiver recipient]~~ in daily, meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a community setting that~~[which]~~ may:

a. Be a fixed location; or

b. Occur in public venues;

4. Not be diversional in nature;

5. If provided on site:

a. Include facility-based services provided on a regularly-scheduled basis;

b. Lead to the acquisition of skills and abilities to prepare the participant~~[recipient]~~ for work or community participation; or

c. Prepare the participant~~[recipient]~~ for transition from school to work or adult support services;

6. If provided off site:

a. Include services provided in a variety of community settings;

b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Be designed to result in increased ability to access community resources without paid supports;

d. Provide the opportunity for the participant~~[recipient]~~ to be involved with other members of the general population; and

e. Be provided as:

(i) An enclave or group approach to training in which participants~~[recipients]~~ work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;

(ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or

(iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the participant~~[recipient]~~ or participants~~[recipients]~~;

7. Ensure that any participant~~[recipient]~~ performing productive work that benefits the organization is paid commensurate with compensation to members of the general work force doing similar work;

8. Require that an adult day training service provider conduct, at least annually, an orientation informing the participant~~[recipient]~~ of supported employment and other competitive opportunities in the community;

9. Be provided at a time mutually agreed to by the participant~~[recipient]~~ and Michelle P. waiver provider;

10.a. Be provided to participants ~~off~~~~[recipients]~~ age twenty-two (22) years or older; or

b. Be provided to participants ~~off~~~~[recipients]~~ age sixteen (16) to twenty-one (21) years as a transition process from school to work or adult support services; and

11. Be documented in the MWMA with:

a. A detailed monthly summary note, which shall include:

- (i) The month, day, and year for the time period each note covers;
- (ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan~~[of care]~~; and
- (iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record, which shall include:

- (i) The date of service;
- (ii) The beginning and ending time of the service;
- (iii) The location of the service; and
- (iv) The signature, date of signature, and title of the individual providing the service;

(m) A supported employment service, which shall:

1. Be intensive, ongoing support for a participant~~[Michelle P. waiver recipient]~~ to maintain paid employment in an environment in which an individual without a disability is employed;
2. Include attending to a participant's~~[recipient's]~~ personal care needs;
3. Be provided in a variety of settings;
4. Be provided on a one-to-one basis;
5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant's~~[Michelle P. waiver recipient's]~~ file;
6. Exclude work performed directly for the supported employment provider;
7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;
8. Be documented in the MWMA by:
 - a. A detailed monthly summary note, which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan~~[of care]~~; and
 - (iii) The signature, date of signature, and title of the individual preparing the note; and
 - b. A time and attendance record, which shall include:
 - (i) The date of service;
 - (ii) The beginning and ending time of the service;
 - (iii) The location of the service; and
 - (iv) The signature, date of signature, and title of the individual providing the service;

(n) A behavioral support service, which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
2. Be provided to assist the participant~~[Michelle P. waiver recipient]~~ to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;
3. Include a functional assessment of the participant's~~[Michelle P. waiver recipient's]~~ behavior, which shall include:
 - a. An analysis of the potential communicative intent of the behavior;
 - b. The history of reinforcement for the behavior;
 - c. Critical variables that preceded the behavior;
 - d. Effects of different situations on the behavior; and
 - e. A hypothesis regarding the motivation, purpose, and factors that/which maintain the behavior;
4. Include the development of a behavioral support plan, which shall:
 - a. Be developed by the behavior support specialist;
 - b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;
 - c. Be revised as necessary;
 - d. Define the techniques and procedures used;
 - e. Be designed to equip the participant~~[recipient]~~ to communicate his or her needs and to participate in age-appropriate activities;
 - f. Include the hierarchy of behavior interventions ranging from

the least to the most restrictive;

- g. Reflect the use of positive approaches; and
- h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure that/which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;

6. Include the monitoring of a participant's~~[Michelle P. waiver recipient's]~~ progress, which shall be accomplished by:

- a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and
- b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist; and

9. Be documented in the MWMA by a detailed staff note, which shall include:

- a. The date of service;
- b. The beginning and ending time; and
- c. The signature, date of signature, and title of the behavior support specialist;

(o) An ADHC service, which shall:

1. Be provided to a participant~~[Michelle P. waiver recipient]~~ who is at least twenty-one (21) years of age;
2. Include the following basic services and necessities provided to participants~~[Michelle P. waiver recipients]~~ during the posted hours of operation:
 - a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;
 - b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
 - c. Snacks;
 - d. Supervision by an RN;
 - e. Age and diagnosis appropriate daily activities; and
 - f. Routine services that meet the daily personal and health care needs of a participant~~[Michelle P. waiver recipient]~~, including:
 - (i) Monitoring of vital signs;
 - (ii) Assistance with activities of daily living; and
 - (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant~~[Michelle P. waiver recipient]~~;
3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;
4. Include respite care services pursuant to paragraph (g) of this subsection;
5. Be provided to a participant~~[Michelle P. waiver recipient]~~ by the health team in an ADHC center, which may include:
 - a. A physician;
 - b. A physician assistant;
 - c. An APRN;
 - d. An RN;
 - e. An LPN;
 - f. An activities director;
 - g. A physical therapist;
 - h. A physical therapist assistant;
 - i. An occupational therapist;
 - j. An occupational therapy assistant;
 - k. A speech-language pathologist;
 - l. A social worker;
 - m. A nutritionist;
 - n. A health aide;
 - o. An LPCC;
 - p. An LMFT;
 - q. A certified psychologist with autonomous functioning; or
 - r. A licensed psychological practitioner; and

6. Be provided pursuant to a plan of treatment ~~that~~[- The plan of treatment] shall:

a. Be developed and signed by each member of the plan of treatment team, which shall include the participant[recipient] or a legal representative of the participant[recipient];

b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and

c. Be developed annually from information on the MAP 351, Medicaid Waiver Assessment and revised as needed; and

(p) Community living supports, which shall:

1. Be provided to facilitate independence and promote integration into the community for a participant[an SCL recipient] residing in his or her own home or in his or her family's home;

2. Be supports and assistance ~~that~~[which] shall be related to chosen outcomes, ~~and~~ not be diversional in nature, ~~and~~[- This] may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Leisure choices;

j. Participation in community activities;

k. Therapeutic goals; or

l. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-one basis;

5. Not be provided at an adult day ~~[-]~~training or children's day habilitation site;

6. Be documented in the MWMA by:

a. A time and attendance record, which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service; and

(iii) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary note, which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan[~~of care~~]; and

(iii) The signature, date of signature, and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training and supported employment.

[(4) A case manager shall:

(a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:

1. A qualified professional in the area of intellectual disabilities;

2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

4. A qualified social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

7. A certified psychologist or licensed psychological associate

who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability; or

8. A licensed psychological practitioner who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

(b) Be an RN;

(c) Be an LPN;

(d) Be a qualified social worker;

(e) Be an LMFT;

(f) Be an LPCC;

(g) Be a licensed psychologist; or

(h) Be a licensed psychological practitioner.]

Section 7. Participant[Consumer]-Directed Services[Option].

(1) Covered services and supports provided to a participant receiving PDS[Michelle P. waiver recipient participating in CDO] shall be nonmedical and include:

(a) A home and community support service, which shall:

1. Be available only as participant-directed services[under the consumer-directed option];

2. Be provided in the participant's[consumer's] home or in the community;

3. Be based upon therapeutic goals and not be diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS[CDO] Michelle P. waiver services; and

5. Include:

a. Assistance, support, or training in activities including meal preparation, laundry, or routine household care or maintenance;

b. Activities of daily living including bathing, eating, dressing, personal hygiene, shopping, or the use of money;

c. Reminding, observing, or monitoring of medications;

d. Nonmedical care ~~that~~[which] does not require a nurse or physician intervention;

e. Respite; or

f. Socialization, relationship building, leisure choice, or participation in generic community activities;

(b) Goods and services, which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the participant[recipient];

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints;

(c) A community day support service, which shall:

1. Be available only as participant-directed services[under the consumer-directed option];

2. Be provided in a community setting;

3. Be tailored to the participant's[consumer's] specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant[consumer] for work or community activities, socialization, leisure, or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS[CDO] Michelle P. waiver services; or

(d) Financial management, which shall:

1. Include managing, directing, or dispersing a participant's[consumer's] funds identified in the participant's[consumer's] approved PDS[CDO] budget;

2. Include payroll processing associated with the individuals hired by a participant[consumer] or participant's[consumer's] representative;

3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a participant[consumer];

4. Be performed by an entity:

a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

b. With at least two (2) years of experience working with

individuals possessing the same or similar level of care needs as those referenced in Section 5 of this administrative regulation;

5. Include preparing fiscal accounting and expenditure reports for:

a. A participant[consumer] or participant's[consumer's] representative; and

b. The department.

(2) To be covered, a PDS[CDO-service] shall be specified in a person-centered service plan[of care].

(3) Reimbursement for a PDS[CDO-service] shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-PDS[CDO] Michelle P. waiver setting[;] except that respite may be provided in excess of the cap established in Section 14[42](2) of this administrative regulation if:

(a) Necessary per the participant's person-centered service[consumer's] plan[of care]; and

(b) Approved by the department in accordance with subsection (13) of this section.

(4) A participant[consumer], including a married participant[consumer], shall choose providers and a participant's[consumer's] choice shall be reflected or documented in the person-centered service plan[of care].

(5)(a) A participant[consumer] may designate a representative to act on the participant's[consumer's] behalf.

(b) The PDS[CDO] representative shall:

1. (a) Be twenty-one (21) years of age or older;

2. (b) Not be monetarily compensated for acting as the PDS[CDO] representative or providing a PDS[CDO-service]; and

3. (c) Be appointed by the participant[consumer] on a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant [-] Directed Services (PDS)[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 person-centered service[recipient's] plan[of care] indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the participant's[recipient's] safety and welfare due to being left alone without a caregiver present; or

(d) The participant[recipient], caregiver, family, or guardian threatens or intimidates a support broker or other PDS[CDO] staff.

(8) The department may terminate a participant[consumer] from PDS[CDO-services] if it determines that the participant's PDS[consumer's-CDO] provider has not adhered to the person-centered service plan[of care].

(9) Except for a termination required by subsection (7) of this section, prior to a participant's[consumer's] termination from PDS[CDO-services], the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the participant[consumer] in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the participant[consumer] to resolve the issue, develop and implement a prevention plan, or designate a PDS[CDO] representative;

(d) Complete, and submit to the department, a MAP-2000, Initiation/Termination of 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 Michelle P. waiver services.

(10) Upon an involuntary termination of PDS[CDO-services], the department shall:

(a) Notify a participant[consumer] in writing of its decision to terminate the participant's PDS[consumer's-CDO] participation; and

(b) Inform the participant[consumer] of the right to appeal the department's decision in accordance with Section 16[19/16][44] 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/Service[Option]** Employee/Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d) **1.** Be a citizen of the United States with a valid Social Security number; or

2. Possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the participant[consumer], participant's[consumer] representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the participant[consumer];

(h) Submit to a criminal background check **from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to being a PDS provider;**

(i) Submit to a check of the;

1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;**and**

2. Caregiver Misconduct Registry **maintained** in accordance with 922 KAR 5:120 and not be found on the registry; **and**

3. Central Registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

(j) Not have pled guilty or been convicted of committing a sex crime or violent crime;

(k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant[consumer];

(l) Be approved by the department;

(m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant[consumer].

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)(a) The department shall establish a twelve (12) month budget for a participant[consumer] based on the participant's person-centered service[consumer's] plan[of care].

(b) A participant's[consumer's] twelve (12) month budget shall not exceed \$40,000 unless:

1. The participant's[consumer's] support broker requests a budget adjustment to a level higher than \$40,000; and

2. The department approves the adjustment.

(c) The department shall consider the following factors in determining whether to grant a twelve (12) month budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the participant's[consumer's] health, safety, and welfare; and

4. If a significant change has occurred in the participant's[recipient's]:

a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement, resulting in the participant's[recipient's] relocation.

(d) A participant's[consumer's] twelve (12) month budget may

encompass a service or any combination of services listed in subsection (1) of this section, if each service is established in the participant's person-centered service[consumer's] plan[of care] and approved by the department.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a PDS[CDQ service] is expanded to a point in which expansion necessitates a twelve (12) month budget increase, the entire service shall only be covered via traditional (non-PDS[CDQ]) waiver services.

(15) A support broker shall:

(a) Provide needed assistance to a participant[consumer] with any aspect of PDS[CDQ] or blended services;

(b) Be available to a participant[consumer] twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continually monitor a participant's[consumer's] health, safety, and welfare; and

(e) Complete or revise a person-centered service plan in accordance with Section 8 of this administrative regulation[of care using the Person-Centered Planning: Guiding Principles].

(16)(a) A support broker or case manager may conduct an assessment or reassessment for a PDS[CDQ] participant.

(b) A PDS[CDQ] assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

(17) Services provided by a support broker shall meet the conflict free requirements established for case management in Section 9(4)(f) and [Section] 9(5) of this administrative regulation.

Section 8. Person-centered Service Plan Requirements. (1) A person-centered service plan shall be established:

(a) For each participant; and

(b) By the participant's person-centered team.

(2) A participant's person-centered service plan shall:

(a) Be developed by:

1. The participant, the participant's guardian, or the participant's representative;

2. The participant's case manager;

3. The participant's person-centered team; and

4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(b) Use a process that:

1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:

a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

a. Learns;

b. Makes decisions; and

c. Chooses to live and work in the participant's community;

8. Discovers the participant's needs, likes, and dislikes;

9. Empowers the participant's person-centered team to create a person-centered service plan that:

a. Is based on the participant's:

(i) Assessed clinical and support needs;

(ii) Strengths;

(iii) Preferences; and

(iv) Ideas;

b. Encourages and supports the participant's:

(i) Rehabilitative needs;

(ii) Habilitative needs; and

(iii) Long term satisfaction;

c. Is based on reasonable costs given the participant's support needs;

d. Includes:

(i) The participant's goals;

(ii) The participant's desired outcomes; and

(iii) Matters important to the participant;

e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;

f. Includes:

(i) Information necessary to support the participant during times of crisis; and

(ii) Risk factors and measures in place to prevent crises from occurring;

g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;

h. Records the alternative home and community-based settings that were considered by the participant;

i. Reflects that the setting in which the participant resides was chosen by the participant;

j. Is understandable to the participant and to the individuals who are important in supporting the participant;

k. Identifies the individual or entity responsible for monitoring the person-centered service plan;

l. Is finalized and agreed to with the informed consent of the participant or participant's legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;

m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;

n. Includes those services that[which] the individual elects to self-direct; and

o. Prevents the provision of unnecessary or inappropriate services and supports; and

(c) Include in all settings the ability for the participant to:

1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience;

2.a. Choose when and what to eat;

b. Have access to food at any time;

c. Choose with whom to eat or whether to eat alone; and

d. Choose appropriating clothing according to the:

(i) Participant's preference;

(ii) Weather; and

(iii) Activities to be performed.

(3) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.

(4)(a) A participant's person-centered service plan shall be:

1. Entered into the MWMA[portal] by the participant's case manager; and

2. Updated in the MWMA[portal] by the participant's case manager.

(b) A participant or participant's authorized representative shall complete and upload into the MWMA[portal] a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA[portal].

Section 9. Case Management Requirements. (1) A case manager shall:

(a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:

1. A qualified professional in the area of intellectual disabilities who:

a. Has at least one (1) year of experience working directly with individuals with an intellectual disability or a developmental

disability:

b. Meets the federal educational requirements for a qualified intellectual disability professional established in 42 C.F.R. 483.430; and

c. Provides documentation of education and experience:

2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

4. A licensed clinical social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

7. A certified psychologist or licensed psychological associate who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability; or

8. A licensed psychological practitioner or certified psychologist with autonomous functioning who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

(b) Be a registered nurse;

(c) Be a licensed practical nurse;

(d) Be a licensed clinical social worker;

(e) Be a licensed marriage and family therapist;

(f) Be a licensed professional clinical counselor;

(g) Be a licensed psychologist; or

(h) Be a licensed psychological practitioner.

(2) A case manager shall:

(a) Communicate in a way that ensures the best interest of the participant;

(b) Be able to identify and meet the needs of the participant;

(c) 1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and

2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;

(d) Ensure that:

1. The participant is educated in a way that addresses the participant's:

a. Need for knowledge of the case management process;

b. Personal rights; and

c. Risks and responsibilities as well as awareness of available services; and

2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;

(e) Have a code of ethics to guide the case manager in providing case management, which shall address:

1. Advocating for standards that promote outcomes of quality;

2. Ensuring that no harm is done;

3. Respecting the rights of others to make their own decisions;

4. Treating others fairly; and

5. Being faithful and following through on promises and commitments;

(f) 1. Lead the person-centered service planning team; and

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

(g) 1. Include the participant's participation or legal representative's participation in the case management process; and

2. Make the participant's preferences and participation in decision making a priority;

(h) Document:

1. A participant's interactions and communications with other agencies involved in implementing the participant's person-

centered service plan; and

2. Personal observations;

(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;

(j) Be accountable to:

1. A participant to whom the case manager provides case management in ensuring that the participant's needs are met;

2. A participant's person-centered team and provide leadership to the team and follow through on commitments made; and

3. The case manager's employer by following the employer's policies and procedures;

(k) Stay current regarding the practice of case management and case management research;

(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;

(m) Document services provided to a participant by entering the following into the MWMA[portal]:

1. A monthly department approved person-centered monitoring tool; and

2. A monthly entry, which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. A projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the case manager completing the note; and

f. The date the note was generated;

(n) Accurately reflect in the MWMA[portal] if a participant is:

1. Terminated from the Michelle P. waiver program;

2. Admitted to an intermediate care facility for individuals with an intellectual disability;

3. Admitted to a hospital;

4. Admitted to a skilled nursing facility;

5. Transferred to another Medicaid 1915(c) home and community based waiver service program; or

6. Relocated to a different address; and

(o) Provide information about participant-directed services to the participant or the participant's guardian;

1. At the time the initial person-centered service plan is developed;

2. At least annually thereafter; and

3. Upon inquiry from the participant or participant's guardian.

(3) If a participant:

(a) Voluntarily terminates participation in the Michelle P. waiver program in order to be admitted to a hospital, to a nursing facility, or to an intermediate care facility for individuals with an intellectual disability, the participant's case manager shall enter the request into the MWMA[portal]; or

(b) Is transferred to another 1915(c) home and community based waiver services program, the case manager shall enter the transfer request into the MWMA[portal].

(4) Case management shall:

(a) Consist of coordinating the delivery of direct and indirect services to a participant;

(b) Be provided by a case manager who shall:

1. Arrange for a service but not provide a service directly;

2. Contact the participant monthly through a face-to-face visit at the participant's home, in the ADHC center, or at the adult day training provider's location;

3. Assure that service delivery is in accordance with a participant's person-centered service plan; and

4. Meet the requirements of this section;

(c) Not include a group conference;

(d) Include documenting:

1. The following regarding notes:

a. The signature of the individual preparing the note;

b. The date of the signature; and

c. The[signature, date of signature, and] title of the individual preparing the note; and

2. [Documentation of] At least one (1) face-to-face meeting between the case manager and participant, family member, or legal representative;

(e) Include requiring a participant or legal representative to sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services; and

(f) Not be provided to a participant by an agency if the agency provides any other Michelle P. waiver service to the participant.

(5)(a) Case management for any participant who begins receiving Michelle P. waiver services after the effective date of this administrative regulation shall be conflict free except as allowed in paragraph (b) of this subsection.

(b)1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified Michelle P. waiver provider within thirty (30) miles of the participant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and

d. The participant, participant's representative, or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA[portal].

3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall:

a. Document conflict of interest protections, separating case management and service provision functions within the provider entity;[i] and

b. Demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives Michelle P. waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or

2. Provider of non-case management Michelle P. waiver services.

(6) Case management shall involve:

(a) A constant recognition of what is and is not working regarding a participant; and

(b) Changing what is not working.

Section 10. Annual Expenditure Limit Per Individual. (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

(2) The limit referenced in subsection (1) of this section shall:

(a) Be an overall limit applied to all services whether PDS[GDO services], Michelle P. waiver services not provided as PDS[via GDO], or a combination of PDS[GDO] and Michelle P. waiver

services; and

(b) Equal \$63,000 per year.

Section 11.[9.] Incident Reporting Process. (1)(a) There shall be two (2) classes of incidents.

(b) The following shall be the two (2) classes of incidents:

1. An incident; or

2. A critical incident.

(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:

(a) A minor injury;

(b) A medication error without a serious outcome; or

(c) A behavior or situation that is not a critical incident.

(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:

(a) Can reasonably be expected to result in harm to a participant; and

(b) Shall include:

1. Abuse, neglect, or exploitation;

2. A serious medication error;

3. Death;

4. A homicidal or suicidal ideation;

5. A missing person; or

6. Other action or event that the provider determines may result in harm to the participant[documented on a Michelle P. Waiver Incident Report Form].

(4)(a) If an incident occurs, the Michelle P. waiver provider shall:

1. Report the incident by making an entry into the MWMA[portal] that includes details regarding the incident; and

2. Be immediately assessed for potential abuse, neglect, or exploitation.

(b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:

1. ~~The individual who discovered or witnessed the incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant;~~

2. ~~The incident shall immediately be considered a critical incident;~~

3. ~~The critical incident procedures established in subsection (5) of this section shall be followed; and~~

4. ~~The Michelle P. waiver provider shall report the incident to the participant's case manager and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.~~

(5)(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident:

1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA[portal by the individual who witnessed or discovered the critical incident]; or

2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA[portal by the individual who witnessed or discovered the critical incident] within eight (8) hours of discovery.

(c) The Michelle P. waiver provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and

2. Prepare a report of the investigation, which shall be recorded in the MWMA[portal] and shall include:

a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;

b. Details of the critical incident; and

c. Relevant participant information including:

(i) A listing of recent medical concerns;

(ii) An analysis of causal factors; and

(iii) Recommendations for preventing future occurrences.

(6)(a) Following a death of a participant receiving Michelle P. waiver services from a Michelle P. waiver provider, the Michelle P. waiver provider shall enter mortality data documentation into the

MWMA[portal] within fourteen (14) days of the death.

(b) Mortality data documentation shall include:

1. The participant's person-centered service plan at the time of death;

2. Any current assessment forms regarding the participant;

3. The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription, **if applicable**;

4. Progress notes regarding the participant from all service elements for the past thirty (30) days, **including case management notes**;

5. The results of the participant's most recent physical exam, **if available**;

6. All incident reports, if any exist, regarding the participant for the past six (6) months;

7. **[Any medication error report, if any exists, related to the participant for the past six (6) months;**

8.] The most recent psychological evaluation of the participant, **if applicable and available**;

8.[9.] A full life history **and any updates**;

9.**of the participant including any update from the last version of the life history**;

10. **Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life**;

11.] Emergency medical services notes regarding the participant if available;

10.[12.] The police report if available;

11.[13.] A copy of:

a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable; **and**

b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and

12.**[c. The cardiopulmonary resuscitation and first aid card for any Michelle P. waiver provider's staff member who was present at the time of the incident that resulted in the participant's death**;

14.] A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months, **if available**; and

15. **A record of any crisis training for any staff member present at the time of the incident that resulted in the participant's death**].

(7)(a) **A Michelle P. waiver provider shall report a medication error to the MWMA[portal]**;

(b)] A Michelle P. waiver provider shall document all medication error details on a medication error log retained on file at the Michelle P. waiver provider site(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency;

(b) A class II incident which shall:

1. Be serious in nature;

2. Involve the use of physical or chemical restraints;

3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;

4. Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours;

b. The guardian within twenty-four (24) hours;

c. The department within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow-up; and

(c) A class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect, or exploitation;

c. Involve a medication error which requires a medical intervention; or

d. Be a death;

2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209 or 620.030;

c. The guardian within eight (8) hours of discovery; and

d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.

(3) Documentation with a complete written report for a death shall include:

(a) The recipient's current plan of care;

(b) The recipient's current list of prescribed medications including pro re nata (PRN) medications;

(c) The recipient's current crisis plan;

(d) Medication administration review forms for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Any additional information requested by the department necessary to determine if a corrective action needs to be taken by the Cabinet for Health and Family Services against the provider;

(g) A coroner's report when received; and

(h) If performed, an autopsy report when received].

Section 12.[10.] Michelle P. Waiver Program Waiting List.

(1)(a) If a slot is not available for an individual to enroll in the Michelle P. Waiver Program at the time of applying for the program, the individual shall be placed on a statewide Michelle P. Waiver Program waiting list:

1. In accordance with subsection (2) of this section; and

2. Maintained by the department.

(b) Each slot for the Michelle P. Waiver Program shall be contingent upon:

1. Biennium budget funding;

2. Federal financial participation; and

3. Centers for Medicare and Medicaid Services approval.

(2)[(a)] For an individual to be placed on the Michelle P. Waiver Program waiting list, the individual **or individual's representative** shall:

(a) Apply for 1915(c) home and community based waiver services via the MWMA[portal]; and

(b) Complete and upload to the MWMA[portal] a MAP – 115 Application Intake – Participant Authorization[shall submit to the department a completed Application for MPW Waiver Waiting List.

(b)1. The department shall place the individual on the waiting list if the department confirms that the MAP-621, Application for MPW Waiver Waiting List, has been correctly completed.

2. If the department determines that a MAP-621, Application for MPW Waiver Waiting List, has not been completed correctly, the department shall return the form to the applicant notifying the applicant of the incorrectness or missing information].

(3) Individuals shall be placed on the Michelle P. Waiver Program waiting list in the chronological order that each application is received and validated by the department.

(4) The department shall send a written notice of placement on the Michelle P. Waiver Program waiting list to the:

(a) Applicant; or

(b) Applicant's legal representative.

(5) At least annually, the department shall contact each individual, or individual's legal representative, on the Michelle P. Waiver Program waiting list to:

(a) Verify the accuracy of the individual's information; and

(b) Verify whether the individual wishes to continue to pursue

enrollment in the Michelle P. Waiver Program.

(6) The department shall remove an individual from the Michelle P. Waiver Program waiting list if:

(a) The individual is deceased;~~[or]~~

(b) The department notifies the individual or the individual's legal representative of potential funding approved to enroll the individual in the Michelle P. Waiver Program and the individual or individual's legal representative:

1. Declines the potential funding for enrollment in the program; and

2. Does not request to remain on the Michelle P. Waiver Program waiting list;~~or~~

(c) Pursuant to subsection (5) of this section, the individual elects to not continue to pursue enrollment in the Michelle P. Waiver Program.

(7) If, after being notified by the department of potential funding approved to enroll the individual in the Michelle P. Waiver Program, the individual or individual's legal representative declines the potential funding but requests to remain on the Michelle P. Waiver Program waiting list, the individual shall:

(a) Lose his or her current position on the waiting list; and

(b) Be moved to the bottom of the waiting list.

(8) If the department removes an individual from the Michelle P. Waiver Program waiting list pursuant to this section, the department shall send written notice of the removal to:

(a) The individual or the individual's legal representative; and

(b) The individual's Michelle P. Waiver Program coordination provider if the individual has a Michelle P. Waiver Program coordination provider.

(9) The removal of an individual from the Michelle P. Waiver Program waiting list shall not preclude the individual from applying for Michelle P. Waiver Program participation in the future.

(10)(a) An individual who is placed on the Michelle P. Waiver Program waiting list shall be informed about and told how to apply for Medicaid state plan services for which the individual might qualify.

(b) An individual who is under twenty-one (21) years of age and who is placed on the Michelle P. Waiver Program waiting list shall also be informed about Early and Periodic Screening, Diagnostic, and Treatment services.

Section 13.~~[44:]~~ Use of Electronic Signatures.~~[(4)]~~ The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.~~[(2)]~~ A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.]

Section 14.~~[12:]~~ Reimbursement. (1) The following Michelle P. waiver services, alone or in any combination, shall be limited to forty (40) hours per calendar week:

(a) Homemaker;

(b) Personal care;

(c) Attendant care;

(d) Supported employment;

(e) Adult day health care;

(f) Adult day training;

(g) Community living supports;

(h) Physical therapy;

(i) Occupational therapy;

(j) Speech therapy; and

(k) Behavior supports.

(2) Respite services shall not exceed \$4,000 per member, per calendar year.

(3) Environmental and minor home adaptation services shall not exceed \$500 per member, per calendar year.

(4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.

(b) The unit amounts,~~[following rates shall be the]~~ fixed upper payment rate limits, and other limits established in the following table shall apply:

Service	Fixed Payment Limit	Upper Rate	Unit of Service
Case Management	\$50.00		15 minutes
Respite	\$4,000	per calendar year	15 minutes
Homemaker	\$6.50		15 minutes
Personal Care	\$7.50		15 minutes
Attendant Care	\$2.90		15 minutes
Supported Employment	\$5.54		15 minutes
Adult Day Health Care	\$2.75		15 minutes
Adult Day Training	\$2.75		15 minutes
Community Living Supports	\$5.54		15 minutes
Physical Therapy	\$22.17		15 minutes
Occupational Therapy	\$22.17		15 minutes
Speech Therapy	\$22.17		15 minutes
Behavior Supports	\$33.25		15 minutes
Environmental and Minor Home Adaptation	\$500 per calendar year		
Financial Management	\$12.50 (not to exceed eight (8) units or \$100.00 per month)		15 minutes
Support Broker	\$265.00		One (1) month

Section 15.~~[Corrective Action Plans. (1)(a) If a provider receives a findings report from the department indicating that an issue of non-compliance has been cited, the provider shall have ten (10) business days from the date on the letter that accompanied the findings report to submit a corrective action plan to the department in accordance with the instructions in the letter.~~

~~(b) If a provider is notified by the department that the corrective action plan was not approved, the provider shall submit a revised corrective action plan to the department within ten (10) business days of the date on the letter informing that the initial corrective action plan was not approved and in accordance with the instructions in the letter.~~

~~(c) 1. If a provider is notified by the department that the second corrective action plan was not approved, the provider shall submit a revised corrective action plan to the department within five (5) business days from the date on the letter notifying that the second corrective action plan was not approved.~~

~~2. If the third corrective action plan submitted to the department is not approved, the department shall:~~

~~a. Not certify the provider if the provider is new;~~

~~b. Not recertify the provider if the provider is an existing provider; or~~

~~c. Terminate the provider's certification.~~

~~3. A provider shall have the right to appeal a termination in accordance with 907 KAR 1:671.~~

~~4. A citation of an issue of non-compliance shall not be appealable.~~

~~(2) The department shall have up to thirty (30) business~~

days to review a corrective action plan.

Section 16. Provider Certification. The following shall apply regarding Michelle P. waiver provider certification periods:

<u>Provider Status at Recertification Date</u>	<u>New Certification Period Based on Status at Recertification Date</u>
<u>Zero citations during the most recent recertification review and have successfully implemented any approved corrective action plan for any citation issued during the recertification period if any citation was issued</u>	<u>One (1) year</u>
<u>Received citations during the most recent recertification review or has existing (open) citations without either an accepted corrective action plan or a successfully implemented corrective action plan</u>	<u>Six (6) Months</u> <u>(1) Upon approval of corrective action plan, the department shall monitor for successful implementation within thirty (30) days.</u> <u>(2) Upon successful implementation of corrective action plan, the department shall extend recertification to balance of one (1) year.</u> <u>(3) If provider fails to implement an approved corrective action plan, the department shall extend the timeframe for implementation or consider non-renewal or termination.</u> <u>(4) If provider has not submitted an approved corrective action plan after the three (3) allowed attempts (see above), the department shall consider non-renewal or termination.</u>

Section 17. Voluntary Moratorium. (1)(a) Upon the department becoming aware of a potential health, safety, or welfare violation, the department shall contact the provider's executive director to:

1. Officially notify the provider of the option for a voluntary moratorium; and

2. Discuss the health, safety, or welfare concern.

(b) The department's notice to the provider shall initially be made via phone followed up by notice via electronic means.

(c) Upon receipt of the electronic notice, the provider shall formally accept or not accept the voluntary moratorium option by:

1. Signing the document provided; and

2. Returning it to the department within two (2) business days of receipt by electronic means as directed in the electronic notice.

(2) If the provider:

(a) Agrees to a voluntary moratorium, the department shall proceed as established in 907 KAR 7:005 regarding a voluntary moratorium pending an investigation; or

(b) Does not agree to a voluntary moratorium, the department shall:

1. Terminate the provider in accordance with 907 KAR

7:005; and

2. Notify in writing the provider's executive director at the agency's primary business address of the:

a. Reason for termination; and

b. Provider's right to appeal the termination within:

(i) Two (2) business days of receipt of the written non-acceptance of the voluntary moratorium; or

(ii) Five (5) business days of the initial notice sent to the provider if the provider did not respond to the notice of the voluntary moratorium option.

(3) A notice of termination to the provider shall be sent via a delivery method that records the sending and receipt of the notice.

(4)(a) If a provider is terminated, the department shall:

1. Monitor the provider's efforts to ensure the health, safety, and welfare of participants in need of being transitioned to a new provider; and

2. Provide technical assistance to the provider during the transition.

(b) A provider shall:

1. Fully cooperate with the department's transition assistance team and any other state government agency involved;

2. Provide full access to its records and information pertaining to the participants being transitioned; and

3. Be responsible for facilitating the effective transition of participants to another provider or providers of the participant's choice prior to the termination date.

(c) A provider's termination date shall be stated in the termination notice.

(d) A participant's case manager shall help ensure that the participant's transition to a new provider or providers is completed prior to the termination date.

Section 18. [43.] Federal Financial Participation and Approval. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement.

Section 16. [19, 16.] [14.] Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a participant [Michelle P. waiver recipient or a consumer] shall be in accordance with 907 KAR 1:563.

Section 17. Federal Approval and Federal Financial Participation. The department's coverage of and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage and reimbursement.

Section 18. [20, 17.] [15.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(b) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(c) "MAP – 531 Conflict-Free Case Management Exemption", October [May] 2015;

(d) "Person-Centered Planning: Guiding Principles", March 2005;

(b) "MAP-24, Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Medicaid Services Memorandum", August 2008;

(c) "MAP 95 Request for Equipment Form", June 2007;

(d) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", July 2008;

(e) "MAP - 350, Long Term Care Facilities and Home and

Community Based Program Certification Form", June 2015[July 2008];

(f) "MAP 351, [Department for Medicaid Services,] Medicaid Waiver Assessment", July 2015[2008];

(g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)Participant [-]Directed Services (PDS)[Consumer Directed Option (CDO)]", June 2015[July 2008];

(h) "MAP 10, Waiver Services Physician's Recommendation", June 2015[August 2014]; and

(i) "Kentucky Consumer Directed OptionsParticipant [-]Directed Services[Consumer Directed Option] Employee/Provider Contract", June 2015[August 2010];

(j) "Michelle P. Waiver Incident Report Form", May 2013; and

(k) "MAP 621 Application for MPW Waiver Waiting List", February 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law;

(a) [-] At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2015

FILED WITH LRC: November 13, 2015 at noon

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, April 11, 2016)

907 KAR 8:005. Definitions for 907 KAR Chapter 8.

RELATES TO: KRS 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 8.

Section 1. Definitions. (1) **"Adult" means an individual who is at least twenty-one (21) years of age.**

(2) **"Adult day health care program" or "ADHC program" means a program that is:**

(a) Licensed pursuant to 902 KAR 20:066; and

(b) An adult day health program pursuant to KRS 216B.0441.

(2)(3) **"Advanced practice registered nurse" is defined by KRS 314.011(7).**

(3)(4)(3) **"Child" means an individual who is under twenty-one (21) years of age.**

(5) **"Comprehensive outpatient rehabilitation facility" or "CORF" means an entity that is:**

(a) Defined as a CORF in accordance with 42 U.S.C. 1395x(cc)(2); and

(b) Licensed as a rehabilitation agency pursuant to 902 KAR 20:190.

(4)(6)(4) **"Department" means the Department for Medicaid Services or its designee.**

(5)(7)(5) **"Electronic signature" is defined by KRS 369.102(8).**

(6)(8)(6) **"Enrollee" means a recipient who is enrolled with a managed care organization.**

(7)(9)(7) **"Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.**

(8)(10)(8) **"Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.**

(9)(11) **"Mobile health service" means an entity that is licensed pursuant to 902 KAR 20:275.**

(10)(12) **"Multi-therapy agency" or "MTA" means a provider group:**

(a) Comprised of any combination of the following:

1. One (1) or more occupational therapists;

2. One (1) or more physical therapists; or

3. One (1) or more speech-language pathologists; and

(b) Unless exempt from licensure in statute, licensed:

1. In the state in which they practice; and

2. To provide occupational therapy, physical therapy, or speech-language pathology services.

(11)(13)(9) **"Occupational therapist" is defined by KRS 319A.010(3).**

(12)(14)(10) **"Occupational therapy assistant" is defined by KRS 319A.010(4).**

(13)(15)(11) **"Physical therapist" is defined by KRS 327.010(2).**

(14)(16)(12) **"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.

(15)(17)(13) **"Physician" is defined by KRS 311.550(12).**

(16)(18)(14) **"Physician assistant" is defined by KRS 311.840(3).**

(17)(19)(15) **"Prior authorized" means authorized by:**

(a) The department, if the service is for a recipient who is not an enrollee; or

(b) A managed care organization, if the service is for an enrollee.

(18)(20)(16) **"Provider" is defined by KRS 205.8451(7).**

(19)(21)(17) **"Recipient" is defined by KRS 205.8451(9).**

(20)(22) **"Rehabilitation agency" means an entity that is licensed as a rehabilitation agency pursuant to 902 KAR 20:190.**

(21)(23) **"Special health clinic" means an entity that is licensed as a special health clinic pursuant to 902 KAR 20:260.**

(22)(24)(18) **"Speech-language pathologist" is defined by KRS 334A.020(3).**

(23)(25) **"Speech-language pathology clinical fellow" means an individual who is recognized by the American Speech-Language-Hearing Association as a speech-language pathology clinical fellow.**

(24)(26) **"State plan" is defined by 42 C.F.R. 400.203.**

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 23, 2015

FILED WITH LRC: December 2, 2015 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 Policy and Operations
(As Amended at ARRS, April 11, 2016)

907 KAR 8:040. Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.130, 42 U.S.C. 1396a(a)(30)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding occupational therapy services, physical therapy services, and speech-language pathology services provided by adult day health care programs, rehabilitation agencies, special health clinics, mobile health services[service], multi-therapy agencies, and comprehensive outpatient rehabilitation facilities to Medicaid recipients.

Section 1. Provider Participation. To be eligible to provide and be reimbursed for services covered under this administrative regulation, a provider shall be:

- (1) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;
- (2) Currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and
- (3)(a) An adult day health care program;
- (b) A multi-therapy agency;
- (c) A comprehensive outpatient rehabilitation facility;
- (d) A mobile health service;
- (e) A special health clinic; or
- (f) A rehabilitation agency.

Section 2. Coverage of Services. (1) The services covered under this administrative regulation shall include:

- (a) Physical therapy;
- (b) Occupational therapy; or
- (c) Speech-language pathology services.
- (2) To be covered under this administrative regulation, a service shall be:
 - (a) Provided to a recipient;
 - (b) Provided by:
 1. An occupational therapist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;
 2. A physical therapist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;
 3. A speech-language pathologist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;
 4. An occupational therapy assistant who renders services:
 - a. Under supervision in accordance with 201 KAR 28:130; and
 - b. On behalf of a provider listed in Section 1(3) of this administrative regulation;
 5. A physical therapist assistant who renders services:
 - a. Under supervision in accordance with 201 KAR 22:053; and
 - b. On behalf of a provider listed in Section 1(3) of this administrative regulation; or
 6. A speech-language pathology clinical fellow who renders services:
 - a. Under the supervision of a speech-language pathologist; and
 - b. On behalf of a provider listed in Section 1(3) of this administrative regulation;
 - (c) Ordered~~;~~

~~4.]~~ by:

- 1.[a.] A physician currently participating in the Medicaid

Program in accordance with 907 KAR 1:671;

2.[b.] An advanced practice registered nurse currently participating in the Medicaid Program in accordance with 907 KAR 1:671;~~or]~~

3.[c.] A physician assistant currently participating in the Medicaid Program in accordance with 907 KAR 1:671; or

4.[d.] A psychiatrist currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(d) Consistent with a plan of care that shall:

1. Be developed:

a. By:

(i) An occupational therapist currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(ii) A physical therapist currently participating in the Medicaid Program in accordance with 907 KAR 1:671; or

(iii) A speech-language pathologist currently participating in the Medicaid Program in accordance with 907 KAR 1:671; and

b. In collaboration with:

(i) A physician currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(ii) An advanced practice registered nurse currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(iii) A physician assistant currently participating in the Medicaid Program in accordance with 907 KAR 1:671; or

(iv) A psychiatrist currently participating in the Medicaid Program in accordance with 907 KAR 1:671; and

2. Identify[For:

a.] a specific amount and duration;

(e) For the:

1.[and

b.(i)] Maximum reduction of the effects of a physical or intellectual disability; or

2.[(ii)] Restoration of a recipient to the recipient's best possible functioning level; and

(f)[(d)] Medically necessary[; and

(e) Prior authorized by the department].

(3)[(2)](a) There shall be an annual limit of twenty (20) visits for each of the following:

1. Occupational therapy service visits per recipient per calendar year except as established in paragraph (c)[(b)] of this subsection;

2. Physical therapy service visits per recipient per calendar year except as established in paragraph (c)[(b)] of this subsection; and

3. Speech-language pathology service visits per recipient per calendar year except as established in paragraph (c)[(b)] of this subsection.

(b) For example, a recipient may receive twenty (20) occupational therapy visits, twenty (20) physical therapy visits, and twenty (20) speech-language pathology service visits per calendar year.

(c) The limit established in paragraph (a) of this subsection may be exceeded if services in excess of the limits are determined to be medically necessary by the:

1. Department, if the recipient is not enrolled with a managed care organization; or

2. Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(d) Medical necessity shall be determined on an individual basis per recipient based on the given recipient's needs.

(e)[(c)] Prior authorization by the department shall be required for visits above[each service visit that exceeds] the limit established in paragraph (a) of this subsection for a recipient who is not enrolled with a managed care organization.

Section 3. Documentation, Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall:

(a) Document the provider's initial assessment of the recipient and any subsequent assessments;

(b) Document each service provided to the recipient; and

(c) Include detailed staff notes that state:

1. Progress made toward outcomes identified according to the provider's assessment and in the plan of care developed pursuant to Section 2(2)(d) of this administrative regulation~~[physician's order, advanced practice registered nurse's order, or physician assistant's order]~~;

2. The date of each service;

3. The beginning and ending time of each service; and

4. The signature and title of the individual providing each service.

(3) The individual who provides a service shall date and sign the health record on the date that the individual provides the service.

(4)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

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

(5) A provider shall comply with 45 C.F.R. Part 164.

Section 4. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 5. No Duplication of Service. (1) The department shall not reimburse for an occupational therapy service, physical therapy service, or speech-language pathology service provided to a recipient by more than one (1) provider of any Medicaid program in which the respective service is covered during the same time period.

(2) For example, if a recipient is receiving an occupational therapy service from a multi-therapy agency enrolled with the Medicaid Program, the department shall not reimburse for the same occupational therapy service provided to the same recipient during the same time period via the home health program.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Out-of-State Providers. The department shall cover a service under this administrative regulation that is provided by an out-of-state provider if the:

(1) Service meets the coverage requirements of this administrative regulation; and

(2) ~~The~~ Provider:

(a) Complies with the requirements of this administrative regulation; and

(b) Is:

1.a. Licensed as an adult day health care program in the state in which it is located;

b. A comprehensive outpatient rehabilitation facility licensed in the state in which it is located;

c. Licensed as a mobile health service in the state in which it is located;

d. A special health clinic licensed in the state in which it is located;

e. A rehabilitation agency licensed in the state in which it is

located;

f. An occupational therapist or occupational therapist group;

g. A physical therapist or physical therapist group;

h. A speech-language pathologist or speech-language pathologist group; or

i. A multi-therapy agency;

2. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

3. Currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

Section 8. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 9. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 10. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 11. Appeals. **(1)** An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: March 11, 2016

FILED WITH LRC: March 14, 2106 at 3 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, April 11, 2016)

907 KAR 12:010. New Supports for community living waiver service and coverage policies.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n
 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. [KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community based services waivers.] This administrative regulation establishes the service and coverage policies for [a new version of] the Supports for Community Living (SCL) waiver program [and applies to SCL waiver services covered pursuant to this administrative regulation rather than SCL waiver services covered pursuant to 907 KAR 1:145]. The SCL waiver program is federally authorized via a 1915(c) home and community based waiver that[which] enables individuals with an intellectual or developmental disability to reside and receive services in a community setting rather than in an intermediate care facility for individuals with [an] intellectual disabilities [or developmental disability], including a participant [consumer] directed services option pursuant to KRS 205.5606.

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Abuse" is defined by KRS 209.020(8).

(3) "Adult day health care center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(4) "Adult foster care home" means a home:

- (a) Not owned or leased by an SCL provider;
- (b) In which a participant:

- 1. Is at least eighteen (18) years of age; and
- 2. Receives SCL services and resides in the family occupied (leased or owned) home; and

(c) In which the family:

- 1. Includes the participant in the family's household routines;
- 2. Provides training and supervision; and
- 3. Ensures that the participant's needs are met in accordance with the [a:] participant's person-centered service plan [of care; and

b. Supports for Community Living Policy Manual].

(5) "Advance directive" is defined by KRS 311.621(2).

(6) "Aversive technique" means:

(a) Withholding:

1. Food or hydration as a means[mean] to control or impose calm;

2. Access to a legal advocate or ombudsman;

3. Access to toilet, bath, or shower;

4. Access to personal belongings; or

5. Access to natural supports;

(b) Depriving medical attention or prescribed medication; or

(c) Depriving sleep.

(7) "Behavior intervention committee" or "BIC" means a group of individuals:

(a) Established to evaluate the technical adequacy of a proposed behavioral intervention for a participant; and

(b) That[Which] meets in accordance with the BIC policies established in Section 8[3] of this administrative regulation [the Supports for Community Living Manual].

(8) [(6)] "Board" means three (3) meals a day or other full

nutritional regimen of a caregiver for the purpose of providing shared living services.

(9) [(7)] "Case manager" means an individual who:

(a) Meets the requirements for a case manager established in Section 6 of this administrative regulation; and

(b) Works closely with a participant to ensure that the:

1. ~~Participant's person-centered service plan~~ [of care] focuses on the participant's ongoing expectations and satisfaction with the participant's life; and

2. Participant maintains the freedom of choice of providers in a conflict free climate;

(b) 1. Has a bachelor's or higher degree in a human service field from an accredited college or university;

2. Has a bachelor's degree in any other field from an accredited college or university with at least one (1) year of experience in the field of intellectual disability; or

3. Is a registered nurse who has at least one (1) year of experience as a professional nurse in the field of intellectual disability;

(c) Shall be supervised by a case management supervisor; and

(d) Meets all personnel and training requirements established in Section 3 of this administrative regulation.

(10) [(8)] "Case management supervisor" means an individual who:

(a) Provides professional oversight of case managers;

(b) 1. Has a bachelor's or higher degree in a human service field from an accredited college or university;

2. Has a bachelor's degree in any other field from an accredited college or university with at least one (1) year of experience in the field of intellectual disability; or

3. Is a registered nurse;

(c) Has at least two (2) years of experience of case management responsibility in an organization that[which] serves individuals with intellectual or developmental disabilities;

(d) Completes a case management supervisory training curriculum approved by DBHDD within six (6) months of beginning supervisory responsibilities; and

(e) Meets all personnel and training requirements established in Section 3 of this administrative regulation; and

(f) Participates in six (6) hours per year of professional development or continuing education in the areas of person-centered processes, supervision, and mentoring of employees].

(11) [(9)] "Certified nutritionist" is defined by KRS 310.005(12).

(12) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.

(13) [(40)] "Certified psychologist with autonomous functioning" means a person licensed pursuant to KRS 319.056.

(14) [(44)] "Certified school psychologist" means an individual certified by the Kentucky Education Professional Standards Board under 16 KAR 2:090.

(15) [(42)] "Chemical restraint" means a drug or [the use of over-the-counter or prescription] medication;

(a) Used to restrict an individual's:

1. Behavior; or

2. Freedom of movement; and

(b) 1. That is not a standard treatment for the individual's condition; or

2. Dosage that is not an appropriate dosage for the individual's condition [to control a participant or participant's behavior;

(a) For the convenience of staff; or

(b) As a punishment].

(16) [(43)] "Community access specialist" means an individual who:

(a) Provides support and training that enables [to] a participant to develop a network of natural supports [that empowers the participant] to achieve a clearly defined and valued social role within the participant's;

1. Participate in meaningful routines or events; and

2. Be [Hold] [a member of] [membership in] [a club, group, association, church, business, or organization in the] community; [and

3. Build a natural support system;]

(b) Has:

1. ~~Previously qualified or been credentialed by the department to provide community access services prior to the effective date of this administrative regulation~~[A bachelor's degree in a human services field from an accredited college or university]; or

2. ~~a. [A bachelor's degree in any other field from an accredited college or university plus]~~ At least one (1) year of experience in the field of intellectual or developmental disabilities[disability]; and

b. ~~Completed a department approved training program~~[**credential**] within one (1) year of application while ~~providing community access services under the direct supervision of a community access specialist~~[or 3. Relevant experience or credentialing that will substitute for the educational requirements stated in subparagraph 1. or 2. of this paragraph on a year-for-year basis]; and

(c) Meets the personnel and training requirements established in Section 3 ~~or 10~~ of this administrative regulation.

(17)[(14)] "Community guide" means an individual who:

(a) Has been selected by a participant to provide training, technical assistance, and support including individual budget development and implementation in aspects of participant direction; and

(b) Has:

1. A bachelor's degree in a human services field from an accredited college or university;

2. A bachelor's degree in any other field from an accredited college or university plus at least one (1) year of experience in the field of intellectual or developmental disability; or

3. ~~[Relevant]~~ Experience in the field of intellectual or developmental disabilities[or credentialing] that will substitute for the educational requirements stated in subparagraph 1. or 2. of this paragraph on a year-for-year basis;

(c) Meets the personnel and training requirements established in ~~Sections~~[**Section**] 3 ~~and 10~~ of this administrative regulation;

(d) Completes a community guide training curriculum approved by DBHDID within six (6) months of being employed by the first participant supported; and

(e) Provides services to a participant in accordance with Section 4 ~~or 10~~ of this administrative regulation.

(18)[(15)] "~~Conflict free~~" means a scenario in which an agency, including any subsidiary, partnership, not-for-profit, or other business entity under control of the agency, providing case management to an individual does not also provide another waiver service to the individual.

46)] "Controlled substance" is defined by KRS 218A.010(6).

(19)[(17)] "Covered services and supports" is defined by KRS 205.5605(3).

(20)[(18)] "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(21)[(19)] "DCBS" means the Department for Community Based Services.

(22)[(20)] "Department" means the Department for Medicaid Services or its designee.

(23)[(21)] "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability or a condition related to an intellectual disability that:

1. Results in an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Is a direct result of, or is influenced by, the person's cognitive deficits.

(24)[(22)] "Direct support professional" means an individual who:

(a) Provides services to a participant in accordance with Section 4 of this administrative regulation;

(b) Has direct contact with a participant when providing services to the participant;

(c) Is at least:

1. Eighteen (18) years old and has a high school diploma or

GED; or

2. Twenty-one (21) years old;

(d) Meets the personnel and training requirements established in Section 3 of this administrative regulation;

(e) Has the ability to:

1. Communicate effectively with a participant and the participant's family;

2. Read, understand, and implement written and oral instructions;

3. Perform required documentation; and

4. Participate as a member of the participant's person-centered team if requested by the participant; and

(f) Demonstrates competence and knowledge on topics required to safely support the participant as described in the participant's person-centered ~~service plan~~[of care].

(25)[(23)] "Direct support professional supervisor" means an individual who:

(a) Provides oversight of direct support professionals in the provision of services to participants;

(b) Is at least:

1. Eighteen (18) years old and has a high school diploma or GED; or

2. Twenty-one (21) years old;

(c) Meets the personnel and training requirements established in ~~Sections~~[**Section**] 3 ~~and 10~~ of this administrative regulation;

(d) Has the ability to:

1. Communicate effectively with a participant and the participant's family;

2. Read, understand, and implement written and oral instructions;

3. Perform required documentation; and

4. Participate as a member of the participant's person-centered team if requested by the participant;

(e) Has at least two (2) years of experience in providing direct support to persons with a developmental disability;

(f) Demonstrates competence and knowledge on topics required to safely support the participant as described in the participant's person-centered ~~service plan~~[of care]; and

(g) Completes a supervisory training curriculum approved by DBHDID within six (6) months of beginning supervisory responsibilities.

(26)[(24)] "Drug paraphernalia" is defined by KRS 218A.500(1).

(27)[(25)] "Early and periodic screening, diagnostic, and treatment services" is defined by 42 U.S.C. 1396d(r).

(28)[(26)] "Electronic signature" is defined by KRS 369.102(8).

(29)[(27)] "Employee" means an individual who is employed by an SCL provider.

(30)[(28)] "Executive director" means an individual who shall:

a. ~~Lead the design, development, and implementation of~~[**develop, and implement**] strategic plans for an SCL provider;

(b) Maintain responsibility for the day-to-day operation of the SCL provider organization;

(c) 1. Have a bachelor's or higher degree from an accredited institution; or

2. Be a registered nurse;

(d) Have at least two (2) years of:

1. Experience in the field of intellectual or developmental disabilities; and

2. Administrative ~~experience~~[responsibility];

a. [1-] In an organization ~~that~~[**which**] served individuals with an intellectual or developmental disability; and

b. [2-] That includes experience in the execution of the overall administration of an agency including:

(i) [a-] Development, implementation, and ~~maintenance~~[**accountability**] of the agency's budget;

(ii) [b-] Development, review, [and] implementation, ~~and revisions as needed~~ of the ~~organization's~~[**agency's**] policies and procedures; and

(iii) [c-] Supervision of employees including conducting performance evaluations;

(e) Meet all personnel and training requirements specified in Section 3 of this administrative regulation; and

(f) If providing professional oversight or supervision of

employees, meet the supervisory qualifications specified for each service.

(31)[(29)] "Exploitation" is defined by KRS 209.020(9).

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

(33)[(31)] "Family home provider" means a home:

- (a) Not owned or leased by an SCL provider;
- (b) In which a participant receives SCL services and resides in the family occupied (leased or owned) home; and
- (c) In which the family:
 1. Includes the participant in the family's household routines;
 2. Provides training and supervision; and
 3. Ensures that the participant's needs are met in accordance with the:

- a.] participant's person-centered service plan [of care; and
- b.] Supports for Community Living Policy Manual].

(34)[(32)] "Financial management agency" means an agency contracted by the department that manages individual participant-directed service plans [budgets].

(35)[(33)] "Functional assessment" means an assessment performed using evidenced based tools, direct observation, and empirical measurement to obtain and identify functional relations between behavioral and environmental factors.

(36)[(34)] "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

- (a) Illness or hospitalization of the individual that[which] is expected to last sixty (60) days or less;
- (b) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less; or
- (c) The individual or his or her guardian has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(37)[(35)] "Group home" means a residential setting:

- (a) That is licensed in accordance with 902 KAR 20:078;
- (b) That is managed by a provider who meets the SCL provider requirements established in Section 3 of this administrative regulation; and
- (c) In which no more than eight (8) participants reside.

(38)[(36)] "Guardian" is defined by KRS 387.010(3) for a minor and by/in KRS 387.812(3) for an adult.

(39)[(37)] "Homicidal ideation" means thoughts about homicide that[which] may range from vague ideas to detailed or fully formulated plans without taking action.

(40)[(38)] "Human rights committee" means a group of individuals:

- (a) Comprised of representatives from home and community based waiver provider agencies in the community where a participant resides; and
- (b) Who meet:
 1. To ensure that the rights of participants are respected and protected through due process; and
 2. In accordance with the human rights committee requirements established in Section 7 of this administrative regulation [the Supports for Community Living Policy Manual].

(41)[(39)] "Human services field" means:

- (a) Psychology;
- (b)[.] Behavioral analysis;
- (c)[.] Counseling;
- (d)[.] Rehabilitation counseling;
- (e)[.] Public health;
- (f)[.] Special education;
- (g)[.] Sociology;
- (h)[.] Gerontology;
- (i)[.] Recreational therapy;
- (j)[.] Education;
- (k)[.] Occupational therapy;
- (l)[.] Physical therapy;
- (m)[.] Speech-language pathology;

(n)[therapy.] Social work[.]; or

(o) Family studies.

(42)[(40)] "ICF-IID" means an intermediate care facility for individuals [an individual] with [an] intellectual disabilities [disability].

(43)[(41)] "Illicit substance" means:

- (a) A drug, prescription or not prescription, used illegally or in excess of therapeutic levels;
- (b) A prohibited drug; or
- (c) A prohibited substance.

(44)[(42)] "Immediate family member" is defined by KRS 205.8451(3).

(45)[(43)] "Impact service" means a service designed to decrease the amount of paid supports a participant requires as the participant becomes:

- (a) More independent; and
- (b) Less reliant on an employee.

(46)[(44)] "Individual family service plan" or "IFSP" is defined by KRS 200.654(9).

(47)[(45)] "Integrated employment site" means the location of an activity or job that provides regular interaction with people without disabilities, excluding service providers, to the same extent that a worker without disabilities in a comparable position interacts with others.

(48)[(46)] "Integrated setting" means a setting that:

- (a) Enables a participant to interact with nondisabled persons to the fullest extent possible;
- (b) Includes access to community activities and opportunities at times, frequencies, and with persons of a participant's choosing; and
- (c) Affords a participant choice in the participant's daily life activities.

(49)[(47)] "Intellectual disability" or "ID" means:

- (a) A demonstration:
 1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of [approximately] seventy (70) plus or minus five (5) [or below]; and
 2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
 - a. Communication;
 - b. Self-care;
 - c. Home living;
 - d. Social or interpersonal skills;
 - e. Use of community resources;
 - f. Self-direction;
 - g. Functional academic skills;
 - h. Work;
 - i. Leisure; or
 - j. Health and safety; and
- (b) An intellectual disability that had an onset before eighteen (18) years of age.

(50)[(48)] "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

- (a) A parent (biological, adoptive, or foster) [of a minor child] who provides care to the parent's minor child;
- (b) A[The] guardian [of a minor child] who provides care to the guardian's minor child; or
- (c) A spouse of a participant.

(51)[(49)] "Level of care determination" means a determination by the department that an individual meets patient status criteria for an intermediate care facility for individuals [an individual] with [an] intellectual disabilities [disability] as established in 907 KAR 1:022.

(52)[(50)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established [is currently licensed] in [accordance with] KRS 335.100.

(53)[(51)] "Licensed dietitian" is defined by KRS 310.005(11).

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

(55) "Licensed medical professional" means

- (a) A physician;
- (b) An advanced practice registered nurse;
- (c) A physician assistant;

(d) A registered nurse;

(e) A licensed practical nurse; or

(f) A pharmacist.

(56) "Licensed practical nurse" is defined by KRS 314.011(9).

(57)(63) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(58)(64) "Licensed psychological associate" means an individual who:

(a) [is] Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26[319.064].

(59)(65) "Licensed psychological practitioner" means an individual who meets the requirements established [is currently licensed] in [accordance with] KRS 319.053.

(60)(66) "Licensed psychologist" means an individual who:

(a) [is] Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 206[319.050].

(61)(67) "Life history" means an account of the series of events making up a participant's life including:

(a) Developmental and historical information regarding family of origin, childhood experiences, and life events to present;

(b) History of supports received across the life span; and

(c) Life style practices that/which may lead to greater insight regarding a participant's current preferences, behavioral patterns, wants, and needs.

(62) **"Medical order for scope of treatment" is defined by KRS 311.621(12).**

(63)(68) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(63) "Medical order for scope of treatment" is defined by KRS 311.621(12).

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

(65)(69) "National Core Indicators" means:

(a) A collaboration between the National Association of State Directors of Developmental Disability Services and the Human Services Research Institute;

(b) An effort by public developmental disabilities agencies to measure and track their own performance; and

(c) Standard measures:

1. Used across states to assess the outcomes of services provided to individuals and families; and

2. That/Which address key areas of concern including employment, rights, service planning, community inclusion, choice, and health and safety.

(66)(60) "Natural supports" means assistance, relationships, or interactions that:

(a) Allow a participant to be in the community;

(b) Include working in a job of the participant's choice in ways similar to people without disabilities; and

(c) Are based on ordinary social relationships at work and in the community.

(67)(61) "Neglect" is defined by KRS 209.020(16).

(68)(62) "Occupational therapist" is defined by KRS 319A.010(3).

(69)(63) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(70)(64) "Office of Vocational Rehabilitation" means the agency mandated:

(a) By the Rehabilitation Act of 1973, as amended; and

(b) To provide individualized services to eligible individuals with disabilities with a substantial impediment to employment in order for the individual to gain and maintain employment.

(71)(65) "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for individuals [an individual] with [an] intellectual disabilities [or developmental disability] as established in 907 KAR 1:022;

(b) Is authorized by the department to receive SCL waiver

services; and

(c) Utilizes SCL waiver services and supports in accordance with a person-centered service plan[of care].

(72)(66) "Participant-directed service" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs that/which allows recipients to receive non-medical services in which the individual:

(a) Assists with the design of the program;

(b) Chooses the providers of services; and

(c) Directs the delivery of services to meet his or her needs [an option to receive a service which is based on the principles of self-determination and person-centered thinking].

(73)(67) "Person-centered coach" means a person who:

(a) Assists a participant and the participant's person-centered team in implementing and monitoring the effectiveness of the participant's person-centered service plan[of care];

(b) Models person-centered thinking;

(c) Is responsible for training a participant, family, guardian, natural and unpaid supports, and other members of the person-centered team when barriers challenge the success of the participant in achieving his or her goals;

(d) Has:

1. A high school diploma or GED; and

2.a. Two (2) years of experience in the field of intellectual or developmental disabilities; or

b. Completed twelve (12) hours of college coursework in a human services field;

(e) Meets all personnel and training requirements established in Section 3 of this administrative regulation; and

(f) Performs [required] documentation necessary to facilitate compliance with the documentation requirements established in Section 4(12)(d) of this administrative regulation.

(74)(68) "Person-Centered Employment Plan" means a document that identifies the unique preferences, strengths, and needs of a participant in relation to the participant's work.

(75)(69) "Person-centered service plan[of care]" or "POG" means a written individualized plan of services for a participant that meets the requirements established in Section 5 of this administrative regulation[:

(a) ~~The eight (8) page form incorporated by reference titled "Person-Centered Plan of Care"; and~~

(b) ~~A written individualized plan that is developed:~~

1. ~~By:~~

a. ~~An SCL participant or an SCL participant's guardian;~~

b. ~~The case manager; and~~

c. ~~Any other person designated by the SCL participant if the SCL participant designates any other person; and~~

2. ~~Using a process that:~~

a. ~~Allows the participant, or the participant's guardian, to direct the planning and allocation of resources to meet the participant's life goals;~~

b. ~~Achieves understanding of how the participant:~~

(i) ~~Leams;~~

(ii) ~~Makes decisions; and~~

(iii) ~~Chooses to live and work in the community;~~

c. ~~Discovers the participant's likes and dislikes; and~~

d. ~~Empowers the participant or the participant's guardian to create a life plan and corresponding plan of care for the participant that:~~

(i) ~~Is based on the participant's preferences, ideas, and needs;~~

(ii) ~~Encourages and supports the participant's long-term satisfaction;~~

(iii) ~~Is supported by a short-term plan that is based on reasonable costs, given the participant's support needs;~~

(iv) ~~Includes participant input;~~

(v) ~~Includes a range of supports, including funded, community, and natural supports;~~

(vi) ~~Includes information necessary to support a participant during times of crisis, to include crisis prevention strategies, crisis intervention strategies, and positive behavioral supports, if deemed necessary by the participant and the participant's support team; and~~

(vii) ~~Assists the participant in making informed choices by~~

facilitating knowledge of and access to services and supports].

~~(76)~~[(70)] "Person-centered team" means a participant, the participant's guardian or representative, and other individuals who are natural or paid supports and who:

(a) Recognize that evidenced based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice;

(b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant's needs; and

(c) Include providers who receive payment for services who shall:

1. Be active contributing members of the person-centered team meetings;

2. Base their input upon evidence-based information; and

3. Not request reimbursement for person-centered team meetings.

(77) "Physical restraint" means any manual method or physical or mechanical device, material, or equipment that:

(a) Immobilizes or reduces the ability of a person to move his or her arms, legs, body, or head freely; and

(b) Does not ~~include~~[~~including~~] orthopedically prescribed devices or other devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a person for the purpose of:

1. Conducting routine physical examinations or tests;

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

3. Permitting the person to participate in activities without the risk of physical harm.

~~(78)~~[(74)] "Physical therapist" is defined by KRS 327.010(2).

~~(79)~~[(72)] "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

~~(80)~~[(73)] "Positive behavior support specialist" means an individual who:

(a) Provides evidence-based individualized interventions that assist a participant with acquisition or maintenance of skills for community living and behavioral intervention for the reduction of maladaptive behaviors;

(b) Has a master's degree in a behavioral science and one (1) year of experience in behavioral programming;

(c) Has at least one (1) year of direct service experience with individuals with intellectual or developmental disabilities; and

(d) Meets all personnel and training requirements established in Section 3 of this administrative regulation; and

(e) Participates in at least six (6) hours per year of professional development or continuing education in the areas of psychology, behavioral supports, applied behavioral science, or school psychology.

~~(81)~~[(74)] "Prohibited drug[drugs]" means a drug or substance that is[all drugs and substances which are] illegal under KRS Chapter 218A or other statutes or administrative regulations of the Commonwealth of Kentucky.

~~(82)~~[(75)] "Registered agent" means an individual meeting the requirements of KRS 14A.4-010(1)(b).

~~(83)~~[(76)] "Registered nurse" is defined by KRS 314.011(5).

~~(84)~~[(77)] "Registered office" means an office meeting the requirements of KRS 14A.4-010(1)(a).

~~(85)~~[(78)] "Representative" is defined by[in] KRS 205.5605(6).

~~(86)~~ "Rights restriction" means any intervention that restricts a participant's:

(a) Movement;

(b) Access to other individuals, locations, or activities; or

(c) Rights.

~~(87)~~[(79)] "Room" means the aggregate expense of housing costs for the purpose of providing shared living, including:

(a) Rent, lease, or mortgage payments;

(b) Real estate taxes;

(c) Insurance;

(d) Maintenance; and

(e) Utilities.

~~(88)~~[(80)] "SCL intellectual disability professional" or "SCL IDP" means an individual who:

(a) Has at least one (1) year of experience working with persons with an intellectual or developmental disability[disabilities];

(b) Meets all personnel and training requirements established in Section 3 of this administrative regulation; and

(c) 1. Is a doctor of medicine or osteopathy;

2. Is a registered nurse; or

3. Holds at least a bachelor's degree from an accredited institution in a human services field.

~~(89)~~[(84)] "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

~~(90)~~ "Seclusion" means the involuntary confinement of a participant alone in:

(a) A room; or

(b) An area from which the participant is physically prevented from leaving.

~~(91)~~[(82)] "Serious medication error" means a medication error that requires or has the potential to require a medical intervention or treatment.

~~(92)~~[(83)] "Shared living caregiver" means an unrelated individual who:

(a) Resides with a participant in the participant's home;

(b) Provides supervision and necessary personal assistance services as specified in the participant's person-centered service plan[of care];

(c) 1. Is at least eighteen (18) years of age and has a high school diploma or GED; or

2. Is at least twenty-one (21) years old;

(d) Meets all personnel and training requirements established in Section 10[3] of this administrative regulation;

(e) Has the ability to:

1. Communicate effectively with a participant and the participant's family;

2. Read, understand, and implement written and verbal instructions; and

3. Perform~~[required]~~ documentation necessary to facilitate compliance with the documentation requirements established in Section 4(20)(i) of this administrative regulation;

(f) Has been determined by the participant's person-centered team, prior to being alone with the participant, to meet the following qualifications:

1. Demonstrate competence and knowledge on topics required to safely support the participant as described in the participant's person-centered service plan[of care]; and

2. Have the ability to participate as a member of the participant's person-centered team if requested by the participant; and

(g) Does not have any of the following relationships to the participant:

1. Immediate family member;

2. Extended family member;

3. Guardian; or

4. Legally responsible individual.

~~(93)~~[(84)] "Speech-language pathologist" is defined by KRS 334A.020(3).

~~(94)~~[(85)] "Staffed residence" means a residential setting:

(a) That is owned or leased by a provider who meets the SCL provider requirements established in Section 3 of this administrative regulation; and

(b) In which no more than three (3) participants reside.

(95) "State plan" is defined by 42 C.F.R. 430.10[400.203].

~~(96)~~[(86)] "Subcontractor" means an entity or an individual:

(a) Who is a currently credentialed professional or other service provider;

(b) Who has signed an agreement with a certified SCL agency to provide SCL services and supports; and

(c) To whom the employee requirements in this administrative regulation apply.

~~(97)~~[(87)] "Suicidal ideation" means thoughts about suicide that[which] may range from being fleeting in nature to detailed planning.

(98)[(88)] "Supported Employment Long-Term Support Plan" means a document

that identifies the amount and kind of support necessary for a participant to maintain employment and achieve individualized employment goals.

(99)[(89)] "Supported employment specialist" means an individual who:

(a) Provides ongoing support services to eligible participants in supported employment jobs in accordance with Section 4 or 10 of this administrative regulation;

(b) 1. Has ~~at least a bachelor's degree from an accredited college or university and one (1) year of experience in the field of developmental disabilities;~~ [or]

~~2. Has~~ previously qualified or been credentialed by the department to provide supported employment services prior to the effective date of this administrative regulation; or

~~2.3.a. Has at least one (1) year of~~ [Has relevant] experience in the field of intellectual or developmental disabilities; and

~~b. Has completed a department required training program~~ [approved credential] within one (1) year of application while providing supported employment services under the direct supervision of a supported employment specialist [or credentialed that substitutes for the educational requirement stated in subparagraph 1. of this paragraph on a year-for-year basis]; and

(c) Meets the personnel and training requirements established in ~~Sections~~ [Section] 3 and 10 of this administrative regulation; and

~~(d) Sequentially completes the Kentucky Supported Employment Training Project curriculum from the Human Development Institute at the University of Kentucky within eight (8)~~ [six (6)] [months of the date of employment as an employment] [the] [specialist] [begins providing SCL supported employment services].

(100)[(90)] "Supports for Community Living" or "SCL" means home and community-based waiver services for an individual with an intellectual or developmental disability.

(101)[(94)] "Supports Intensity Scale" or "SIS" means an assessment tool developed by the American Association on Intellectual and Developmental Disabilities [(AAIDD)] that:

(a) Measures practical support requirements of individuals with intellectual or developmental disabilities in daily living, medical, and behavioral areas; and

(b) Is administered by a trained professional in the human services field as approved by the department.

~~[(102) "Voluntary moratorium" means a provider's voluntary agreement to not serve any new (to the provider) 1915(c) home and community based waiver services participants.]~~

Section 2. SCL Participant Eligibility, Enrollment, and Termination. (1) To be eligible to receive a service in the SCL program, an individual [shall]:

(a) ~~[Shall be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for SCL waiver services;~~

~~(b) Or individual's representative shall:~~

~~1. Apply for 1915(c) home and community based waiver services via the MWMA~~ [portal]; and

~~2. Complete and upload into the MWMA~~ [portal] a MAP - 115 Application Intake - Participant Authorization;

~~(b) [(c)] Shall receive notification of potential SCL funding in accordance with Section 12~~ [10] [7] of this administrative regulation;

~~(c) [(d)] Shall~~ [(b)] meet ICF-IID patient status requirements established in 907 KAR 1:022;

~~(d) [(e)] Shall~~ [(c)] meet Medicaid eligibility requirements established in 907 KAR 20:010 [1:605]; and

~~(e) [(f)] [(d)] Upon receiving notification of potential SCL funding, shall upload the following into the MWMA~~ [portal] [submit an application packet to the department which is included in the Supports for Community Living Policy Manual and which shall contain]:

1. A completed MAP – 350 Long Term Care Facilities and

Home and Community Based Program Certification Form; ~~MAP-350];~~

2. The results of a physical examination that was conducted within the last twelve (12) months;

3. A life history ~~that~~ [which] has been completed within the past twelve (12) months [is less than one (1) year old]; and

4. Documentation of a [MAP-24C documenting a] participant's status change.

(2)(a) To maintain eligibility as a participant:

1. A participant shall be administered a Supports Intensity Scale assessment by the department at least once every twenty-four (24) months from the level of care end date;

2. A participant shall maintain Medicaid eligibility requirements established in 907 KAR 20:010 [1:605]; and

3. An ICF-IID level of care determination shall be performed by the department at least once every twelve (12) months.

(b) The department shall:

1. Obtain the rights to use a Supports Intensity Scale; and

2. Use it in accordance with the terms and conditions required by the copyright associated with it.

(3) An SCL waiver service shall not be provided to an individual who is:

(a) Receiving a service in another 1915(c) home and community based waiver program;

(b) Receiving a duplicative service provided through another funding source; or

(c) An inpatient of an ICF-IID or other facility.

(4) Involuntary termination and loss of an SCL waiver program placement shall be:

(a) In accordance with 907 KAR 1:563; and

(b) Initiated if:

1. An applicant fails to access an SCL waiver service within sixty (60) days of receiving notice of potential funding without receiving an extension based on demonstration of good cause; or

2. A participant:

a. Fails to access any services outlined in the participant's service plan [POC] for a period greater than sixty (60) consecutive days without receiving an [and] extension based on demonstration of good cause;

b. Moves to a residence outside of the Commonwealth of Kentucky; or

c. Does not meet ICF-IID patient status criteria in accordance with 907 KAR 1:022.

(5)(a) An involuntary termination of a service to a participant by an SCL provider shall require:

1. The SCL provider to:

a.] simultaneously notify electronically or in writing the participant or participant's guardian, the participant's case manager, the department, and DBHDID at least thirty (30) days prior to the effective date of the termination;

~~[b. Submit a MAP-24C to the department and DBHDID at the time of termination;]~~ and

2. The participant's case manager, in conjunction with the SCL provider, to:

a. Provide the participant or participant's guardian with the name, address, and telephone number of each current SCL provider in Kentucky;

b. Provide assistance to the participant or participant's guardian in making contact with another SCL provider;

c. Arrange and provide transportation for a requested visit to an SCL provider site;

d. Provide a copy of pertinent information to the participant or participant's guardian;

e. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;

f. Continue to provide supports until alternative services or another placement is secured; and

g. Provide assistance to ensure a safe and effective service transition.

(b) The notice referenced in paragraph ~~(a) 1. [(a) 1. a.]~~ of this subsection shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the intended action is taken; and
4. The participant's right to appeal the intended action through the provider's appeal or grievance process.

(6)(a) DBHDID shall initiate an intent to discontinue a participant's participation in the SCL waiver program if the participant or participant's guardian submits a written notice of intent to discontinue services to:

1. The SCL provider; and
2. DBHDID.

(b) An action to terminate waiver participation shall not be initiated until thirty (30) calendar days from the date of the notice referenced in paragraph (a) of this subsection.

(c) A participant or guardian may reconsider and revoke the notice referenced in paragraph (a) of this subsection in writing during the thirty (30) calendar day period.

Section 3. Non-PDS Provider Participation Requirements. (1) An SCL provider shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672;
- (c) 907 KAR 1:673;
- (d) 902 KAR 20:078;
- (e) ~~907 KAR 7:005 [The Supports for Community Living Policy Manual];~~
- (f) The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164; ~~and~~
- (g) 42 U.S.C. 1320d to 1320d-8; ~~and~~
- (h) Local laws and ordinances governing smoke-free environments.

(2) In order to provide an SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:

- (a) Be certified by the department prior to the initiation of a service;
- (b) Be recertified at least biennially by the department;
- (c) In accordance with KRS 273.182, maintain a registered agent and a registered office in Kentucky with the Office of the Secretary of State and file appropriate statement of change documentation with the filing fee with the Office of Secretary of State if the registered office or agent changes;
- (d) Be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020;
- (e) Abide by the laws ~~that~~which govern the chosen business or tax structure of the SCL provider;
- (f) Maintain policy that complies with this administrative regulation concerning the operation of the SCL provider and the health, safety, and welfare of all people supported or served by the SCL provider;
- (g) Maintain an executive director who shall have the authority and responsibility for the management of the affairs of the SCL provider in accordance with written policy and procedures that comply with this administrative regulation; and
- (h) Participate in the National Core Indicators' surveys and all department survey initiatives.

(3) An SCL provider~~shall~~:

(a) Shall ensure that SCL waiver services shall not be provided to a participant by a staff person of the SCL provider who is a guardian, legally responsible individual, or immediate family member of the participant unless allowed for a participant-directed service in accordance with Section 4 of this administrative regulation;

(b) Shall not enroll a participant whose needs the SCL provider is unable to meet;

(c) Shall have and follow written criteria that comply with this administrative regulation for determining the eligibility of a participant for admission to services;

(d) Shall document:

1. A denial for a service; and
2. The reason for the denial;

(e) Shall maintain documentation of its operations including:

1. A written description of available SCL waiver services;
2. A current table of organization;

3. ~~Any~~Any memorandum of understanding ~~between a participant's case management agency and the participant's service providers~~with all providers with whom the SCL provider shares person-centered plans~~of care~~;

4. Information regarding participants' satisfaction with services and the utilization of that information;

5. A quality improvement plan that;

a. Includes updated findings and corrective actions as a result of department and case management quality assurance monitoring; ~~and~~

b. Addresses how the provider shall accomplish the following goals:

(i) Ensure that the participant receives person-centered SCL waiver services;

(ii) Enable the participant to be safe, healthy, and respected in the participant's community;

(iii) Enable the participant to live in the community with effective, individualized assistance; and

(iv) Enable the participant to enjoy living and working in the participant's community; and

(v) Improve the participant's competence;

6. Evidence of continuous improvement of utilizing best practice standards toward meeting~~[SCL program goals and]~~ the critical strategic areas identified in the annual report released by the Kentucky National Core Indicators available at the Kentucky National Core Indicators Web site of <http://www.nationalcoreindicators.org/states/KY/>; ~~and~~

7. A written plan of how the SCL provider shall participate in the:

a. Human rights committee in the area in which the SCL provider is located; and

b. Behavior intervention committee in the area in which the SCL provider is located;

(f) Shall maintain accurate fiscal information including documentation of revenues and expenses;

~~(g) [Shall Maintain a written policy that room and board charges shall be determined as the lesser of:~~

~~1. Seventy (70) percent of the federal benefits rate as determined by the United States Social Security Administration; or~~

~~2. An amortized amount determined by the SCL provider based on the participants being served by the SCL provider sharing the following on an equal basis:~~

~~a. Lease, mortgage payment, or market rent;~~

~~b. Utilities and basic television services;~~

~~c. The costs of food and household goods based upon the number of people, including participants and staff, in the home during waking hours; and~~

~~d. The costs of residential telephone services on the basis of the SCL provider paying fifty (50) percent of the costs (excluding long distance telephone costs) and the participants sharing the burden of the remaining costs;~~

~~(h) [Shall] meet the following requirements if responsible for the management of a participant's funds:~~

~~1. Separate accounting shall be maintained for each participant or for the participant's interest in a common trust or special account;~~

~~2. Account balance and records of transactions shall be provided to the participant or the participant's guardian on a quarterly basis; and~~

~~3. The participant or the participant's guardian shall be notified if a balance is accrued that may affect Medicaid eligibility;~~

~~(h) [Shall] have a written statement of its mission and values, which shall:~~

~~1. Support participant empowerment and informed decision-making;~~

~~2. Support and assist participants to form and remain connected to natural support networks;~~

~~3. Promote participant dignity and self-worth;~~

~~4. Support team meetings that help ensure and promote the participant's right to choice, inclusion, employment, growth, and privacy;~~

~~5. Foster a restraint-free environment where the use of~~

~~physical~~~~[mechanical]~~ restraints, seclusion,~~[manual—restraints including any manner of prone or supine restraint, or]~~ chemical restraints, ~~or aversive techniques~~ shall be prohibited; and

6. Support the SCL program goal that all participants:

a. Receive person-centered waiver services;
b. Are safe, healthy, and respected in the participant's community;

c. Live in the community with effective, individualized assistance, and

d. Enjoy living and working in the participant's community;

~~(l)(4)~~ Shall have written policy and procedures for communication and interaction with a participant, family, or participant's guardian, which shall include:

1. A timely response to an inquiry;

2. The opportunity for interaction by direct support professionals;

3. Prompt notification of any unusual occurrence;

4. Visitation with the participant at a reasonable time, without prior notice, and with due regard for the participant's right of privacy;

5. Involvement in decision making regarding the selection and direction of the person-centered service provided; and

6. Consideration of the cultural, educational, language, and socioeconomic characteristics of the participant and family being supported;

~~(l)(4)~~ Shall ensure the rights of a participant by:

1. Providing conflict free services and supports that are person-centered;

2. Making available a description of the rights and means by which the rights can be exercised and supported including the right to:

a. Live and work in an integrated setting;

b. Time, space, and opportunity for personal privacy;

c. Communicate, associate, and meet privately with the person of choice;

d. Send and receive unopened mail;

e. Retain and use personal possessions including clothing and personal articles; ~~[and]~~

f. Private, accessible use of a telephone ~~or cell phone~~;

g. Access accurate and easy-to-read information;

~~h. Be treated with dignity and respect and to maintain one's dignity and individuality;~~

~~i. Voice grievances and complaints regarding services and supports that are furnished without fear of retaliation, discrimination, coercion, or reprisal;~~

~~j. Choose among service providers;~~

~~k. Accept or refuse services;~~

~~l. Be informed of and participate in preparing the person-centered service plan and any changes in the person-centered service plan;~~

~~m. Be advised in advance of the:~~

~~(i) Provider or providers who will furnish services; and~~

~~(ii) Frequency and duration of services;~~

~~n. Confidential treatment of all information, including information in the participant's records;~~

~~o. Receive services in accordance with the current person-centered service plan;~~

~~p. Be informed of the name, business, telephone number, and business address of the person supervising the services and how to contact the person;~~

~~q. Have the participant's property and residence treated with respect;~~

~~r. Be fully informed of any cost sharing liability and the consequences if any cost sharing is not paid;~~

~~s. Review the participant's records upon request;~~

~~t. Receive adequate and appropriate services without discrimination;~~

~~u. Be free from and educated on mental, verbal, sexual, and physical abuse, neglect, exploitation, isolation, **and** corporal or unusual punishment, including interference with daily functions of living; and~~

~~v. Be free from mechanical, chemical, or physical restraints;~~

3. Having a grievance and appeals system that includes an

external mechanism for review of complaints;~~[and]~~

4. Ensuring access to participation in ~~the local~~~~[an area]~~ human rights committee in accordance with the human rights committee ~~requirements~~~~[policies]~~ established in Section 7 of this administrative regulation~~[the Supports for Community Living Policy Manual]; and~~

5. Ensuring access to participation in the local behavior intervention committee:

a. Established as a subset of the local human rights committee; and

b. In accordance with the behavior intervention committee requirements established in Section 8 of this administrative regulation;

~~(k)(4)~~ Shall maintain fiscal records, service records, investigations, medication error logs, and incident reports for a minimum of six (6) years from the date that:

1. A covered service is provided; or

2. The participant turns twenty-one (21) years of age, if the participant is under the age of twenty-one (21);

~~(l)(m)~~ Shall make available all records, internal investigations, and incident reports:

1. To the:

a. Department;

b. DBHDID;

c. Office of Inspector General or its designee;

d. General Accounting Office or its designee;

e. Office of the Auditor of Public Accounts or its designee;

f. Office of the Attorney General or its designee;

g. DCBS; ~~[or]~~

h. Centers for Medicare and Medicaid Services; or

i. The Department of Aging and Independent Living; or

2. Pertaining to a participant to:

a. The participant, the participant's guardian, or the participant's case manager upon request; or

b. Protection and Advocacy upon written request;

~~(m)(n)~~ Shall cooperate with monitoring visits from monitoring agents;

~~(n)(o)~~ Shall maintain a record in the MWMA ~~[portal]~~ for each participant served that shall:

1. ~~Be recorded in a readable print format in ink or typed print;~~

2. ~~Be free from correction fluid or correction tape;~~

3. ~~Have a strike through each error that is initialed and dated;~~

4. ~~Contain no blank lines in between each entry;~~

5. ~~Document late entries;~~

6. ~~Contain all information necessary to support person-centered practices;~~

2. ~~[7.] Be cumulative;~~

3. ~~[8.] Be readily available;~~

4. ~~[9.] Contain documentation that~~[which]~~ meets the requirements of Section 4 of this administrative regulation;~~

5. ~~[10.] Contain the following:~~

a. The participant summary sheet;

b. The participant's name, Social Security number, and Medicaid identification number;

c. The Supports Intensity Scale Assessment **profile**~~[Form];~~

d. The results of a department approved~~[health—risk] screening~~~~[performed using a Health Risk screening] tool to assess health risk~~, which shall:

(i) Be administered by trained personnel using the department approved protocol at least annually and updated as needed; ~~and~~

(ii) Assist in determining a participant's areas of vulnerability for a potential health risk;~~[and]~~

~~(iii) Be provided in accordance with the health risk screening tool requirements established in the Supports for Community Living Policy Manual];~~

e. The current person-centered service plan~~[of care];~~

f. The goals and objectives identified by the participant and the participant's person-centered team that~~[which]~~ facilitates achievement of the participant's chosen outcomes as identified in the participant's person-centered service plan~~[POC];~~

g. A list containing emergency contact telephone numbers;

h. The participant's history of allergies with appropriate allergy alerts;

i. The participant's medication record, including a copy of the signed or authorized current prescription or medical orders and the medication administration record[(MAR)] if medication is administered at the service site;

j. A recognizable photograph of the participant;

k. Legally adequate consent, updated annually, and a copy of which is located at each service site for the provision of services or other treatment requiring emergency attention;

l. The participant's individual educational plan or individual family service plan, if applicable;

m. The participant's life history updated at least annually;

n. The results of an annual physical exam;

o. The results of an annual dental exam;

p. The MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form[- MAP-350] updated annually in the MWMA[portal];

q. A psychological evaluation;

r. A current level of care certification;

s. The prior authorization notifications; and

t. Incident reports, if any exist;

6.[44-] Be maintained by the provider in a manner that:

a. Ensures the confidentiality of the participant's record and other personal information; and

b. Allows the participant or guardian to determine when to share the information in accordance with law; and

7.[42-] Be safe from loss, destruction, or use by an unauthorized person ensured by the provider; and

13. Have a corresponding legend which the provider shall make readily accessible;

(o) [(p)] Shall ensure that an employee or volunteer:

1. Behaves in a legal and ethical manner in providing a service;

2. Has a valid Social Security number or valid work permit if not a citizen of the United States of America; and

3. If responsible for driving a participant during a service delivery, has a valid driver's license with proof of current mandatory liability insurance for the vehicle used to transport the participant;

(p) [(q)] Shall ensure that an employee or volunteer:

1. Completes a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider within thirty (30) days of the date of hire or date the individual began serving as a volunteer; or

2. Who tests positive for TB or has a history of positive TB skin tests:

a. Shall be assessed annually by a licensed medical professional for signs or symptoms of active disease; and

b. If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work or volunteer, is [he or she shall be] administered follow-up testing by his or her physician with the testing indicating the person does not have active TB disease;

(q) [(r)] Shall maintain documentation:

1. Of an annual TB risk assessment or negative TB test for each employee who performs direct support or a supervisory function; or

2. Annually for each employee with a positive TB test that ensures no active disease symptoms are present;

(r) [(s)] Shall provide a written job description for each staff person that describes the required qualifications, duties, and responsibilities for the person's job;

(s) [(t)] Shall maintain an employee record for each employee that includes:

1. The employee's experience;

2. The employee's training;

3. Documented competency of the employee;

4. Evidence of the employee's current licensure or registration if required by law; and

5. An annual evaluation of the employee's performance;

(t) [(u)] Shall require a background check:

1. And drug testing for each employee who is paid with funds administered by the department and who:

a. Provides support to a participant who utilizes SCL services; or

b. Manages funds or services on behalf of a participant who utilizes SCL services; or

2. For a volunteer recruited and placed by an agency or provider who has the potential to interact with a participant;

(u) [(v)] Shall ensure that a volunteer placed by an agency or provider does not have unsupervised interaction with a participant;

(v) [(w)] 1. Shall for a potential employee or volunteer obtain:

a. [1-] The results of a criminal record check from the Kentucky Administrative Office of the Courts and [or] equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months [year] prior to employment or volunteerism;

b. [2-] The results of a nurse aide abuse registry check as described in 906 KAR 1:100 and [or] an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months [year] prior to employment or volunteerism;

c. The results of a caregiver misconduct registry check as described in 922 KAR 5:120 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteerism; and

d. [3-] Within thirty (30) days of the date of hire or initial date of volunteerism, the results of a central registry check as described in 922 KAR 1:470 and [or] an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months [year] prior to employment or volunteerism; or

2. May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph;

(w) [(x)] Shall for each potential employee obtain negative results of drug testing for illicit or prohibited drugs;

(x) [(y)] Shall on an annual basis:

1. Randomly select and perform criminal history background checks, nurse aide abuse registry checks, and central registry checks, and caregiver misconduct registry checks of at least twenty-five (25) percent of employees; and [and]

2. Conduct drug testing of at least five (5) percent of employees; and

3. Obtain the results of a caregiver misconduct registry check as described in 922 KAR 5:120 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment or volunteerism;

(y) [(z)] Shall not use an employee or volunteer to provide 1915(c) home and community based waiver services if the employee [employ, subcontract with,] or [place an individual as a] volunteer [who];

1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);

2. Has a prior felony conviction[-plea bargain, amended-plea bargain,] or diversion program that has not been completed;

3. Has a drug related conviction, felony plea bargain, or amended plea bargain conviction within the past five (5) years;

4. Has a positive drug test for prohibited drugs;

5. Has a conviction of abuse, neglect, or exploitation;

6. Has a Cabinet for Health and Family Services finding of:

a. Child abuse or neglect pursuant to the central registry; or

b. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry; or

7. Is listed on the nurse aide abuse registry;

(z) [(aa)] Shall not permit an employee to transport a participant if the employee [individual] has a driving under the influence conviction, amended plea bargain, or diversion during the past year;

(aa) [(bb)] Shall maintain adequate staffing and supervision to implement services being billed;

(bb) [(cc)] Shall establish written guidelines that address and ensure the health, safety, and welfare of a participant, which shall

include:

1. A basic infection control plan that includes:
 - a. Universal precautions;
 - b. Hand washing;
 - c. Proper disposal of biohazards and sharp instruments; and
 - d. Management of common illness likely to be emergent in the particular service setting;
2. Effective cleaning and maintenance procedures sufficient to maintain a sanitary and comfortable environment that prevents the development and transmission of infection;
3. Ensuring that each site operated by the provider is equipped with:
 - a. An operational smoke detector placed in all bedrooms and other strategic locations; and
 - b. At least two (2) correctly charged fire extinguishers placed in strategic locations, at least one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;
4. Ensuring the availability of an ample supply of hot and cold running water with the water temperature complying with the safety limits established in the participant's person-centered service plan[POC];
5. Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080, which shall ensure:
 - a. Safe storage and use; and
 - b. That firearms and ammunition are permitted:
 - (i) Only in nonprovider owned or leased residences; and
 - (ii) Only if stored separately and under double lock;
6. Establishing written procedures concerning the safe storage of common household items;
7. Ensuring that the nutritional needs of a participant are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;
8. Ensuring that an adequate and nutritious food supply is maintained as needed by the participant;
9. Ensuring a smoke-free environment for any participant who chooses a smoke-free environment including settings in which the participant is expected to spend any amount of time, including home, a day training site, a meeting site, or any other location;
10. Ensuring that:
 - a. Every case manager and any employee who will be administering medication, unless the employee is a currently licensed or registered nurse, has:
 - (i) Specific training provided by a registered nurse per a DBHDID medication administration approved curriculum; and
 - (ii) Documented competency on medication administration, medication cause and effect, and proper administration and storage of medication; and
 - b. An individual administering medication documents all medication administered, including self-administered and over-the-counter drugs, on a medication administration record, with the date, time, and initials of the person who administered the medication and ensuring[ensure] that the medication shall:
 - (i) Be kept in a locked container;
 - (ii) If a controlled substance, be kept under double lock with a documented medication count performed every shift;
 - (iii) Be carried in a proper container labeled with medication and dosage pursuant to KRS 315.010(8) and 217.182(6);
 - (iv) Accompany and be administered to a participant at a program site other than the participant's residence if necessary; and
 - (v) Be documented on a medication administration record and properly disposed of, if discontinued; and
- 11.[10.] Adhering to policies and procedures for ongoing monitoring of medication administration;
- (cc)[(dd)] Shall establish and follow written guidelines for handling an emergency or a disaster, which shall:
 1. Be readily accessible on site;
 2. Include instruction for notification procedures and the use of alarm and signal systems to alert a participant according to the participant's disability;

3. Include documentation of training and competency of staff and training of participants on emergency disaster drills;
4. Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and, for a participant who receives residential support services, is scheduled to include a time when the participant is asleep; and
5. Mandate that the result of an evacuation drill be evaluated and if not successfully completed within three (3) minutes shall modify staffing support as necessary and repeat the evacuation drill within seven (7) days;

(dd)[(ee)] Shall provide orientation for each new employee, which shall include the mission, goals, organization, and practices, policies, and procedures of the agency;

~~(ee)[(ff)] 1. Shall annually provide or arrange for the provision of at least six (6) hours of professional development or continuing education units of competency-based training to each employee to teach and enhance skills related to the performance of duties, except for a case management supervisor, licensed professional, or positive behavior support specialist;~~

~~2. Annually provide or arrange for the provision of at least six (6) hours of competency-based professional development or continuing education units in the area of person-centered processes, supervision, or mentoring to each employee who is a case management supervisor; or~~

~~3. Annually provide or arrange for the provision of at least six (6) hours of competency-based professional development or continuing education units in the area of psychology, behavioral supports, applied behavioral science, or school psychology to each employee who is a positive behavior support specialist;~~

(gg)] Shall require documentation of all face-to-face training, which shall include:

1. The type of training provided;
2. The name and title of the trainer;
3. The training objectives;
4. The length of the training;
5. The date of completion;
6. The signature of the trainee verifying completion; and
7. Verification of competency of the trainee as demonstrated by post-training assessments, competency checklists, or post-training observations and evaluations;

(ff)[(hh)] Shall require documentation of Web-based training, which shall include:

1. Transcripts verifying successful completion of training objectives with scores of eighty-five (85) percent or higher; and
2. Competency checklist listing date of completion, signature of evaluator, and signature of trainee for all Phase I or Phase II Kentucky College of Direct Support modules within the timeframe specified;

(gg)[(ii)] Shall ensure that each case manager or employee prior to independent functioning and no later than six (6) months from the date of employment successfully completes training that[which] shall include:

1. First aid and cardiopulmonary resuscitation certification by[-which shall be provided by a certified trainer with] a nationally-accredited entity;

~~2. a.[organization to include the American Red Cross and the American Heart Association and evidenced by official documentation of completion from the nationally-accredited organization;~~

~~2. Cardiopulmonary resuscitation which shall be provided by a certified trainer with a nationally-accredited organization to include the American Red Cross and the American Heart Association and evidenced by official documentation of completion from the nationally-accredited organization;~~

~~3.] Department of Behavioral Health, Developmental and Intellectual Disabilities' crisis prevention and intervention training;~~

or

b. Crisis prevention and intervention training that:

(i) Is competency based;

(ii) Is nationally accredited;

(iii) Excludes restraints; and

(iv) Is approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities;

3.[4.] Successful completion of all Kentucky College of Direct Support Phase I training modules;

4.[5.] Individualized instruction about the person-centered service plan[POC] of the participant to whom the trainee provides supports; and

5.[6.] Verification of trainee competency as demonstrated by pre- and post-training assessments, competency checklists, and post-training observations or evaluations;

(hh)(jj) Shall ensure that all case managers or employees, unless the case manager or employee is a licensed professional providing a service governed by the licensure of the individual's profession, complete the Kentucky College of Direct Support Phase II training modules, no later than six (6) months from the date of employment or when the individual began providing services;

(ii)(kk) Shall ensure that each case manager complete DBHDID approved case management training after three (3) months but within nine (9) months from the date of hire; and

(iii)(ll) Shall ensure that each case manager employed prior to the effective date of this administrative regulation completes the DBHDID case management training within one (1) year of this administrative regulation's effective date; and

~~(mm) Ensure that each~~ adult family member residing in a level II residential adult foster care home or family home provider who may be left alone with the participant will receive training regarding the individualized needs of the participant.

(4) DBHDID shall:

(a) Obtain the rights to use[~~]~~:

1. The Health Risk Screening Tool required to be used by an SCL waiver provider pursuant to this administrative regulation; or

2.] the Kentucky College of Direct Support training modules required to be used by an SCL waiver provider pursuant to this administrative regulation; and

(b) Facilitate access to ~~a[the]~~:

1. ~~A[Health Risk]~~ screening tool to assess health risk required to be used by an SCL waiver provider of residential services pursuant to this administrative regulation; or

2. Kentucky College of Direct Support training modules required to be used by an SCL waiver provider pursuant to this administrative regulation.

(5) An SCL provider, employee, or volunteer shall:

(a) Not manufacture, distribute, dispense, be under the influence of, purchase, possess, use, or attempt to purchase or obtain, sell, or transfer any of the following in the workplace or while performing work duties:

1. An alcoholic beverage;

2. A controlled substance except an SCL provider, employee, or volunteer may use or possess a medically necessary and legally prescribed controlled substance;

3. An illicit drug;

4. A prohibited drug or prohibited substance;

5. Drug paraphernalia; or

6. A substance that resembles a controlled substance, if there is evidence that the individual intended to pass off the item as a controlled substance; and

(b) Not possess a prescription drug for the purpose of selling or distributing it.

Section 4. Covered Services. (1)(a) An SCL waiver service shall:

1. Be prior authorized by the department; and

2. Be provided to a participant pursuant to the participant's person-centered service plan[POC] by an individual who meets the requirements established in Section 3 of this administrative regulation.

(b) Any combination of day training, community access, personal assistance, or any hours of paid community employment or on-site supported employment service shall not exceed sixteen (16) hours per day.

(2) SCL covered services shall include:

(a) Case management;

(b) Community access services;

(c) Community guide services;

(d) Community transition services;

(e) Consultative clinical and therapeutic services;

(f) Day training;

(g) Environmental accessibility adaptation services;

(h) Goods and services;

(i) Natural supports training;

(j)[Occupational therapy;

(k)] Person-centered coaching;

(l)[(4)] Personal assistance services;

(m)[(m)] Physical therapy;

(n)] Positive behavior supports;

(m)[(e)] Residential support services, **which may include:**

1. Level I residential supports;

2. Technology assisted residential services; or

3. Level II residential supports;

(n)[(p)] Respite;

(o)[(q)] Shared living;

(p)[(r)] Specialized medical equipment and supplies;

(q)[(s)] Speech therapy;

(t)] Supported employment;

(r)[(u)] Transportation services; or

(s)[(v)] Vehicle adaptation[**services**].

(3) Case management requirements shall be as established in Section **6[8]** of this administrative regulation.

(4)[~~]~~:

(a) Not include any other SCL waiver service;

(b) Be provided by a case manager who:

1. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. Shall not provide any other SCL waiver service to the participant receiving case management from the case manager;

(c) Be conflict free unless the department grants an exemption to the conflict free requirement in accordance with subsection (4)(b) of this section;

(d) Include initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;

(e) Include assisting a participant in the identification, coordination, and arrangement of the person-centered team and person-centered team meetings;

(f) Include facilitating person-centered team meetings that assist a participant to develop, update, and monitor the POC which shall:

1. Reflect the principles and tools of self-determination to assist a participant in creating supports and services:

a. Designed to meet the needs of the participant; and

b. That promote choice, community experiences, employment, and personal satisfaction;

2. Be developed and prior authorized within thirty (30) days of the initiation of a service;

3. Include the objectives and interventions, goals, and outcomes that meet the participant's identified needs from all assessments and person-centered team members;

4. Include documented participation in the development of the POC by the participant, participant's guardian, family members, other providers, or other people the participant has identified as important in the participant's life and as members of the person-centered team; and

5. Include information about:

a. What is important to the participant;

b. What the person-centered plan will help the participant accomplish;

c. What people like and admire about the participant;

d. The characteristics of people providing support that are important to and for the participant;

e. What people need to know or do to help the participant stay healthy and safe;

f. Instructions for those who support the participant;

g. The barriers that block the participant's progress towards the participant's goals;

h. What action steps are needed to ensure that a participant's

goals are reached;

i. Who is responsible for each action; and

j. When the action is anticipated to be completed;

(g) Include assisting a participant to gain access to and maintain employment, membership in community clubs, groups, activities and opportunities at the times, frequencies, and with the people the participant chooses;

(h) Include coordination and monitoring of all waiver and non-waiver services which shall include:

1. Monthly face-to-face contacts with the participant to determine if the participant's needs are being met which shall include:

a. Contact at a location where the participant is engaged in services; and

b. Utilization of a DBHDID-approved monitoring tool to:

(i) Identify that person-centered practices are demonstrated by the service provider;

(ii) Ensure that the participant's health, safety, and welfare is not at risk;

(iii) Gather data regarding the participant's satisfaction with the services for use in guiding the person-centered planning process; and

(iv) Generate monthly summary notes;

2. Responsibility to initiate a person-centered team meeting and receive prior authorization within fourteen (14) days of a contact visit if the results of a monthly contact visit indicate that different or additional services or other changes in the participant's POC are required to meet the participant's needs;

3. Assistance with participant directed services which shall include:

a. Assisting the participant in identifying, if necessary, a community guide and a representative who shall work with the participant on the development of a POC, budget, and emergency back-up plan;

b. Assisting the participant in recruiting and managing employees;

c. Assigning modules within the Kentucky College of Direct Supports for training purposes and assisting the participant, the community guide, or the representative in monitoring the completion of training within timeframes specified in Section 5 of this administrative regulation; and

d. Monitoring the provision of services and submission of required documentation to the financial management agency; and

4. Authority to require immediate remediation of identified deficiencies that impact the health, safety, and welfare of a participant;

(i) Include assisting a participant in planning resource use and assuring protection of resources to include:

1. Clearly outlining the participant's insurance options and availability; and

2. Exploring the potential availability of other resources and social service programs for which the participant may qualify;

(j) Include ensuring that notification with the MAP-24C occurs to the local DCBS office, the department, and DBHDID if a participant is:

1. Terminated from the SCL waiver program;

2. Admitted to an ICF-IID;

3. Admitted to a hospital;

4. Admitted to a skilled nursing facility;

5. Transferred to another Medicaid 1915(c) home and community-based waiver program; or

6. Relocated to a different address;

(k) Include monitoring to ensure that services continue if a participant has been terminated from any service until an alternate provider, if needed, has been chosen by the participant and services have been approved;

(l) Include providing a participant and the participant's team members twenty-four (24) hour telephone access to a case management staff person;

(m) Include documentation of services by:

1. A monthly DBHDID approved person-centered monitoring tool; and

2. A detailed monthly summary note which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. A projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the case manager completing the note; and

f. The date the note was generated;

(n) Include person-centered team meetings which shall not constitute the required monthly face-to-face visit with a participant;

(o) Include the case manager being responsible for providing information about participant directed services:

1. At the time the initial POC is developed; and

2. At least annually thereafter and upon inquiry from the participant or participant's guardian; and

(p) Include the case manager supervisor performing supervision duties:

1. As outlined in the Supports for Community Living Policy Manual; and

2. In accordance with a DBHDID approved case manager supervisor training;

(4)(a) If a case management service is approved to be provided despite not being conflict free, the case management provider shall document and demonstrate that the participant:

1. Receives the same level of advocacy; and

2. Exercises free choice of providers and services;

(b) An exemption to the conflict free requirement shall be granted if:

1. A participant requests the exemption; and

2. The participant's case manager provides documentation to DBHDID, in accordance with the Supports for Community Living Policy Manual, that:

a. Provides evidence that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence; or

b. There is a relationship between the participant and the participant's case manager.

(c) A request to receive a case management service that is not conflict free shall accompany each prior authorization request for the case management service.

(d) One (1) unit of a case management service shall equal one (1) month.

(e) A provider shall bill for a case management service in accordance with 907 KAR 12:020.

(5) A community access service:

(a) Shall be provided by a community access specialist;

(b) Shall be designed to support a participant to participate in meaningful routines, events, and activities through various community organizations;

(c) Shall be designed to empower a participant in developing natural supports;

(d) May be participant directed;

(e) If participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 10[5] of this administrative regulation;

(f) Shall stress training that empowers a participant in acquiring, practicing, utilizing, and improving skills related to:

1. Connecting with others;

2. Independent functioning;

3. Self advocacy;

4. Socialization;

5. Community participation;

6. Personal responsibility;

7. Financial responsibility; and

8. Other skills related to optimal well-being as defined in the participant's person-centered service plan(POC);

(g) Shall be designed to result in an increased ability to develop natural supports and access community resources including educational, recreational, religious, civic, or volunteer opportunities with an outcome of:

1. Less reliance on formal supports; and

2. Greater reliance on natural or unpaid supports as

established in the participant's person-centered service plan[POC];

(h) Shall have an emphasis on the development of personal social networks, membership opportunities, friendships, and relationships for the participant as established in the participant's person-centered service plan[POC];

(i) Shall be provided outside the participant's home or residential setting and occur during the day, in the evening, or on weekends;

(j) Shall not duplicate residential support or,] day training services, or authorized therapies;

(k) Shall be provided to a participant with a:

1. One (1) to one (1) staff to participant ratio; or

2. Ratio of one (1) staff to no more than two (2) participants according to the participant's person-centered service plan[POC], if the participant invites a friend;

(l) Shall occur in an integrated community setting;

(m) Shall be an impact service and the participant's person-centered service plan[POC] shall define steps to decrease the provision of the service as the participant becomes more independent in accessing and becoming part of the community;

(n) Shall be documented in the MWMA[portal] by:

1. A note documenting each contact, which shall include:

a. A full description of each service rendered;

b. Evidence of training or service to support outcomes designated in the participant's person-centered service plan[POC];

c. The date of the service;

d. The location of the service;

e. The beginning and ending times of the service;

f. The signature and title of the individual providing the service;

and

g. The date the entry was made in the record; and

2. A monthly summary note, which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. Projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the community access specialist completing the note; and

f. The date the note was written; and

(o) Shall not exceed 160 fifteen (15) minute units per week alone or in combination with community access group services.

~~5~~[(6)](a) A community guide service shall:

1. Be provided by a community guide who meets the personnel and training requirements established in Sections 3 and ~~10~~[5] of this administrative regulation;

2. Be designed to empower a participant to define and direct the participant's services;

3. Only be for a participant who chooses participant-directed supports for some or

all of the participant's support services;

4. Include:

a. Direct assistance to a participant in meeting his or her participant-directed responsibilities;

b. Information and assistance that helps the participant in:

(i) Problem solving;

(ii) Decision making;

(iii) Developing supportive community relationships; and

(iv) Accessing resources that promote[promotes] implementation of the participant's person-centered service plan[POC]; and

c. Information to ensure that the participant understands the responsibilities involved with directing the participant's services;

5. Be documented in the MWMA by:

a. A note documenting each contact, which shall include:

(i) A full description of each service rendered;

(ii) The date of the service;

(iii) The location of the service;

(iv) The beginning and ending times of the service;

(v) The signature and title of the community guide[individual] providing the service; and

(vi) The date the entry was made in the record; and

b. A completed monthly summary note, which shall include:

(i) The month and year for the time period the note covers;

(ii) An analysis of the efficacy of the service provided including recommendations and identification of additional support needs;

(iii) The signature and title of the community guide completing the note; and

(iv) The date the note was written; and

6. Be limited to 576 fifteen (15) minute units per one (1) year authorized person-centered service plan period[year].

(b)1. A participant and the participant's person-centered team shall determine the community guide services to be received.

2. The community guide services to be received by a participant shall be specified in the participant's person-centered service plan[POC].

(c) If needed, directed assistance provided by a community guide:

1. Shall be based on the needs of the participant; and

2. May include assistance with:

a. Recruiting, hiring, training, managing, evaluating, and changing employees;

b. Scheduling and outlining the duties of employees;

c. Developing and managing the individual budget;

d. Understanding provider qualifications; or

e. Recordkeeping and other program requirements.

(d) A community guide service shall not duplicate a case management service.

(e) A community guide providing community guide services to a participant shall not provide other direct waiver services to any participant.

(f) A community guide shall not be employed by an agency that provides other direct waiver services to the participant[receiving community guide services from the community guide].

~~6~~[(7)] Community transition services:

(a) Shall be nonrecurring set-up expenses for a participant who is transitioning from an institutional or other provider-operated living arrangement to a living arrangement in a private residence where the participant is directly responsible for his or her own living expenses;

(b) Shall be expenses that are necessary to enable a participant to establish a basic household that do not constitute room and board;

(c) May include:

1. A security deposit that is required to obtain a lease on an apartment or home;

2.[An] Essential household furnishings or moving expense required to occupy and use a community domicile, including furniture, window coverings, food preparation items, or bed or bath linens;

3. A one (1) time set-up fee or deposit for utility or service access, including telephone, electricity, heating, or water;

4. A service necessary for the participant's health and safety including pest eradication or one (1) time cleaning prior to occupancy;

5. A necessary home accessibility adaptation; or

6. An activity to assess a need and arrange for and procure needed resources;

(d) Shall be:

~~4~~] furnished only:

1.[a.] To the extent that the service is reasonable and necessary;

2.[b.] As clearly identified in the participant's person-centered service plan[POC]; and

3.[c.] If the service cannot be obtained from other sources;

(e) Shall not include:

1. Monthly rental or mortgage expense;

2. Food;

3. Regular utility charges;

4.[Household appliances or] Items that are intended for purely diversional or recreational purposes; or

5. Furnishings for living arrangements that are owned or leased by an SCL provider;

(f) Shall be coordinated and documented in the MWMA[portal] by the participant's case manager by:

1. Description or itemized line item of purchase and cost;
2. A receipt for a procurement including date of purchase;
3. The signature and title of the case manager; and
4. The date the entry was made in the record; and

(g) Shall not exceed \$2,000 per approved[qualified] transition.

(7)(b) A consultative clinical and therapeutic service shall:

(a) Be provided by a person who:

1. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

2. Is a:

a. Certified nutritionist;

b. Licensed dietitian;

c. Licensed marriage and family therapist;

d. Licensed professional clinical counselor;

e. Licensed psychological associate;

f. Licensed psychologist;

g. Licensed psychological practitioner;

h. Licensed clinical social worker; or

i. Positive behavior support specialist;

(b)(c) Include:

1. Professional consultation, evaluation, and assessment of the participant, the environment and the system of support, and written summary of findings and recommendations for the participant and the participant's person-centered team;

2. Providing treatment that:

a. Is consistent with assessment results and diagnosis;

b. Is evidence based or current best practice; and

c. Encompasses psychological treatment or counseling as indicated by the condition of the participant;

3. Coordinating program wide support, as needed, that addresses the assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;

4. Participating in developing and revising, as needed, home treatment or support plans as components of a participant's person-centered service plan[POG];

5. Providing training and technical assistance to carry out recommendations and plans that[which] shall occur within the settings in which the recommendations, home treatment, or support plans are to be carried out;

6. Monitoring:

a. Of the fidelity of data reporting and participant's person-centered service plan[POG] implementation;

b. Of the effectiveness of the participant's person-centered service plan[POG];

c. Of the impact of the participant's person-centered service plan[POG] on the participant, and the participant's environment and system of supports; and

d. That[Which] shall be conducted:

(i) In the settings where the participant's person-centered service plan[POG] is implemented;

(ii) Through discussions and observations of people implementing the participant's person-centered service plan[POG]; and

(iii) Through reporting data;

7. A functional assessment, which shall:

a. Be conducted by a person who meets the personnel and training requirements established in Section 3 of this administrative regulation and is a:

(i) Licensed psychologist;

(ii) Certified psychologist with autonomous functioning; or

(iii) Positive behavior support specialist;and

b. Include:

(i) A description of the behavior patterns identified through the functional assessment and the goals of intervention; and

(ii) Modifications to the social or physical environment that may prevent the behavior or increase the likelihood of alternative adaptive behaviors; and

c. Identify specific skills to be taught or reinforced that shall:

(i) Achieve the same function as the behavior of concern;

(ii) Allow the participant to cope more effectively with circumstances; and

(iii) Be documented when they occur[all functional assessment components specified in the Supports for Community Living Policy Manual];and

8. Documentation in the MWMA of[a service by a note documenting] each contact, which shall include:

a. A full description of each service rendered;

b. An analysis of the efficacy of the service provided including any recommendation or identification of additional support needs if needed;

c. The date of the service;

d. The location of the service;

e. The beginning and end times of the service;

f. The signature and title of the professional providing the service;

g. The date the entry was made in the record; and[and]

(c)(d) Not exceed 160 fifteen (15) minute units per one (1) year authorized person-centered service plan period[year][; and

(d) For a participant who has a diagnosis of mental illness and a diagnosis of an intellectual disability, incorporate a positive behavior support plan that utilizes evidenced-based best practice regarding treatment of the behavioral health condition.

1. In this instance, the behavioral health condition shall be considered the primary support service, with behavioral interventions as supplemental services as needed.

2. The positive behavior support plan shall use both behavioral health and positive behavior supports in a collaborative manner.

3. The positive behavior support plan shall be revised whenever necessary by the participant's person-centered team based upon the participant's needs or recommendations from the local Behavior Intervention Committee or the local Human Rights Committee.

4. Revisions to the positive behavior support plan shall be covered as a consultative clinical and therapeutic service).

(8)(9) Day training:

(a) Shall be provided by a direct support professional;

(b) Shall include:

1. Providing regularly scheduled activities in a non-residential setting that are designed to foster the acquisition of skills, build positive social behavior and interpersonal competence, and foster greater independence and personal choice;and

2. Career planning or pre-vocational activities to develop experiential learning opportunities and career options consistent with the participant's skills and interests that:

a. Are person-centered and designed to support employment related goals;

b. Provide active training designed to prepare a participant to transition from school to adult responsibilities, community integration, and work;

c. Enable each individual to attain the highest level of work in the most integrated setting with the job matched to the participant's interests, strengths, priorities, abilities, and capabilities; and

d. Include:

(i) Skill development to communicate effectively with supervisors, co-workers, and customers;

(ii) Generally accepted community workplace conduct and dress;

(iii) Workplace problem solving skills and strategies;

(iv) General workplace safety;

(v) The ability to follow directions;

(vi) The ability to attend tasks; or

(vii) Mobility training;

3. Supported retirement activities including:

a. Altering schedules to allow for more rest time throughout the day; or

b. Support to participate in hobbies, clubs, or other senior-related activities in the participant's community; or

4. Training and supports designed to maintain skills and functioning and to prevent or slow regression, rather than acquiring new skills or improving existing skills;

(c) Shall include required informational sessions sponsored by

the provider at least annually for the participant regarding community involvement or employment services and arrangement of opportunities for the participant to explore community integration, supported employment, and other employment opportunities in the community;

(d) Shall, if provided in an adult day health care center, only be available for a participant who:

1. Is at least twenty-one (21) years of age; and
2. Requires skilled nursing services or nursing supervision in a licensed adult day health care center as outlined in the participant's person-centered service plan[POC];

(e) Shall include environments that:

1. Are not diversional in nature; and
2. Occur in a variety of settings in the community and shall not be limited to fixed-site facilities;~~and~~
3. ~~Coordinate with any needed therapies in the participant's POC;~~

(f) May be participant directed and if participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 10[5] of this administrative regulation;

(g) Shall not be reimbursable if vocational in nature and for the primary purpose of producing goods or performing services;

(h) Shall include documentation in the MWMA that shall be:

1. A note for each contact, which shall include:
 - a. A full description of each service rendered;
 - b. The date of the service;
 - c. The location of the service;
 - d. The beginning and ending times of the service;
 - e. The signature and title of the individual providing the service;

and

- f. The date the entry was made in the record; and
2. A completed monthly summary note, which shall include:
 - a. The month and year for the time period the note covers;
 - b. An analysis of the efficacy of the service provided including recommendations and identification of additional support needs;
 - c. The signature and title of the individual completing the note;

and

- d. The date the note was written; and
- (i) Shall be limited to:
 1. Five (5) days per week excluding weekends; and
 2. 160 fifteen (15) minute units per week for day training alone or in combination with any hours of paid community employment or on-site supported employment service.

(9)[(40)](a) An environmental accessibility adaptation service:

1. Shall be:

a. Designed to enable participants to interact more independently with their environment thereby enhancing their quality of life and reducing their dependence on physical support from others; and

b. A physical adaptation to a participant's or family's home, which shall be necessary to:

- (i) Ensure the health, welfare, and safety of the participant; or
- (ii) Enable the participant to function with greater independence in the home and without which the participant would require institutionalization;

2. May include the following if necessary for the welfare of a participant:

- a. Installation of a ramp or grab-bar;
- b. Widening of a doorway;
- c. Modification of a bathroom facility; or
- d. Installation of a specialized electric and plumbing system, which shall be necessary to accommodate the medical equipment or supplies necessary for the welfare of the participant;

3. Shall not include:

- a. An adaptation or improvement to a home that[which] is not of direct medical or remedial benefit to a participant;
- b. An adaptation that adds to the total square footage of a home except if necessary to complete an adaptation; and
- c. An adaptation to a provider-owned residence;

4. Shall be provided:

- a. In accordance with applicable state and local building codes;
- and

b. By a vendor who shall be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020; and

5. Shall be coordinated and documented in the MWMA[portal] by a case manager by:

a. A description of each adaptation purchased;

b. A receipt[receipts] for every adaptation made, which shall include the:

- (i) Date of purchase;
 - (ii) Description of the item;
 - (iii) Quantity and per unit price; and
 - (iv) Total amount of the purchase;
- c. The signature and title of the case manager; and
- d. The date the entry was made in the record;~~and~~

6. Shall be limited to \$8,000 per lifetime.

(b) An immediate family member, guardian, or legally responsible individual of a participant shall not be eligible to be a vendor or provider of an environmental accessibility adaptation service for the participant.

(c) A home accessibility modification shall not be furnished to a participant who receives residential habilitation services except if the services are furnished in the participant's own home.

(d) A request shall be documented in a participant's person-centered service plan[POC] and include cost of adaptations.

(10)[(44)](a) Goods and services shall:

1. Be services, equipment, or supplies that are individualized to a participant who chooses to use participant-directed[direct] services;

2. Be utilized to reduce the need for personal care or to enhance independence within a participant's home or community;

3. Not be a good or service available to a recipient outside of the department's SCL waiver program;

4. Meet the following requirements:

a. The good or service shall decrease the need for other Medicaid services;

b. The good or service shall promote participant inclusion in the community;

c. The good or service shall increase a participant's safety in the home environment; and

d. The participant shall not have the funds to purchase the good or service;

5. If participant directed and purchased from a participant-directed budget, be prior authorized;

6. Not include experimental or prohibited treatments;

7. Be clearly linked to a participant need that has been documented in the participant's person-centered service plan[POC];

8. Be coordinated and documented in the MWMA[portal] by a case manager by:

a. Description or itemized line item of purchase and cost;

b. Receipts for procurements that[which] include the date of purchase;

c. The signature and title of the case manager; and

d. The date the entry was made in the record; and

9. Not exceed \$1,800 per one (1) year authorized person-centered service plan[POC] period.

(b) A purchase of a good or service shall not circumvent other restrictions on SCL waiver services:

1. Established in this administrative regulation; and

2. Including the prohibition against claiming for the costs of room and board.

(c) An immediate family member, guardian, or legally responsible individual of a participant shall not be a provider of participant-directed goods and services to the participant.

(d) A case manager shall submit reimbursement documentation to the financial management agency.

(e) Equipment purchased as a good shall become the property of the participant.

(11)[(42)](a) Natural supports training shall:

1. Be provided by a qualified entity as identified in the person-centered service plan[POC];

2. Be participant directed and include:

- a. Training and education to individuals who provide unpaid

support, training, companionship, or supervision to participants;

b. Instruction about treatment regimens and other services specified in the participant's person-centered service plan[POC];

c. Instruction on current best practices;

d. The costs of registration and training fees associated with formal instruction in areas relevant to the participant's needs identified in the participant's person-centered service plan[POC]; or

e. Training provided by a member of the participant's community regarding specific interests of the participant and how the natural support network shall support the participant's inclusion in activities and events surrounding the area of interest;

3. Be individualized, direct training of families and natural support networks for acquisition or enhancement of their ability to support the participant;

4. Relate to needs identified in a participant's person-centered service plan[POC] and be tied to a specific goal in the person-centered service plan[POC];

5. Not duplicate or occur simultaneously with any education or training provided through:

a. State plan physical therapy services;

b. State plan occupational therapy services;

c. State plan speech-[and]language pathology[therapy] services;

d. Consultative clinical and therapeutic services; or

e. Positive behavior support services;

6. Be provided in:

a. A participant's own home or a participant's family's home; or

b. Community setting specific to community-based natural supports training goals specified in the participant's person-centered service plan[POC];

7. Not include:

a. Services reimbursable by any other support;

b. Training paid caregivers;

c. Costs of travel, meals, or overnight lodging to attend a training event or conference; or

d. Services not related to the needs of the participant; and

8. Be coordinated and documented in the MWMA[portal] by a case manager by:

a. The specific training provided;

b. The date and the beginning and ending time when the service was provided;

c. The service location;

d. The receipts or verification of service provision, including first and last name and title (if applicable) of the person providing the service and the signature of the person providing the service;

e. Verification of registration and certificate of attendance at any formal training; and

f. The progress made in moving the participant towards independence as reflected in goals and the participant's person-centered service plan[POC]; and

9. Not exceed \$1,000 per one (1) year authorized person-centered service plan[POC][period].

(b) An immediate family member, guardian, or legally responsible individual of a participant shall not be eligible to be a participant-directed provider of natural supports training services for the participant.

(c) For purposes of natural supports training, an individual shall be defined as any person, family member, neighbor, friend, companion, or coworker who provides uncompensated care, training, guidance, companionship, or support to the participant who utilizes natural supports training.

(d) A case manager shall submit reimbursement documentation to the financial management agency.

(12)[(13) Occupational therapy shall:

(a) Be provided by:

1. A person who:

a. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

b. Is either an:

(i) Occupational therapist; or

(ii) Occupational therapy assistant; and

2. Order of a physician;

(b) Be evaluation and therapeutic services that are not

available to a participant outside of a 1915(c) home and community based waiver program;

(c) Include:

1. Evaluation of a participant and the participant's environment;

2. Therapeutic activities to improve functional performance;

3. Sensory integrative techniques to enhance sensory processing and promote adaptive responses to environmental demands; and

4. Participant and family education;

(d) Facilitate maximum independence by establishing life skills with an emphasis on safety and environmental adaptation to improve quality of life and increase meaning and purpose in daily living and community integration;

(e) Promote fine motor skills, coordination, sensory integration, and facilitate the use of adaptive equipment or other assistive technology;

(f) Include, as needed, coordination of program wide support addressing assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;

(g) Include the development of a home treatment or support plan with training and technical assistance provided on-site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;

(h) Be delivered in a participant's home or in the community as described in the participant's POC;

(i) Include monitoring:

1. Of the fidelity of data reporting and participant's POC implementation;

2. Of the effectiveness of the participant's POC;

3. Of the impact of the participant's POC on the participant, the participant's environment, and system of supports; and

4. Which shall be conducted:

a. In the settings where the participant's POC is implemented;

b. Through discussions and observations of people implementing the participant's POC; and

e. Through reporting data;

(j) Be documented by a note documenting each contact which shall include:

1. A full description of each service rendered;

2. Evidence of progress toward the participant's outcome or outcomes;

3. Identification of barriers to achievement of outcomes;

4. The projected plan to achieve the next step in achievement of outcomes;

5. The date of the service;

6. The location of the service;

7. The beginning and ending time of the service;

8. The signature and title of the person providing the service;

9. The date the entry was made in the record; and

10. The signature and title of the occupational therapist supervising the occupational therapy assistant and date of the documentation review, if applicable;

(k) Not be available to a participant under the age of twenty-one (21);

(l) Not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 101 et seq.); and

(m) Be limited to fifty-two (52) fifteen (15) minute units per month.

(14)](a) Person-centered coaching shall:

1. Be provided by a person-centered coach who shall:

a. Operate independently of a residential or day training provider;

b. Work under the direction of a positive behavior support specialist or other licensed professional in the settings where the person-centered service plan[POC] is implemented; and

c. Meet the personnel and training requirements specified in Section 3 of this administrative regulation;

2. Be an individualized service to be utilized when a barrier challenges the success of a participant in achieving the participant's goals;

3. Include:

a. The provision of training developed in conjunction with certified or licensed professionals from the participant's person-centered team, to the participant, family, guardian, natural and paid supports on implementation of all or designated components of the participant's person-centered service plan[POC];

b. Monitoring the effectiveness of person-centered planning as demonstrated by the support system's implementation of the person-centered service plan[POC] or designated components across the array of service settings and reporting of required and pertinent data; and

c. Data collection that[which] shall be utilized by the participant's person-centered team to modify the environment or person-centered service plan[POC] as needed;

4. Not duplicate case management or any other service;

5. Not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 101 et seq.); and

6. Be limited to 1,320 fifteen (15) minute units per year.

(b) Person-centered coaching shall [An individualized service shall] be outcome-based with a plan for the gradual withdrawal of the services.

(c) A person-centered coach shall not be considered as part of a staffing ratio, plan, or pattern.

(d) Documentation of a person-centered coaching service shall be entered in the MWMA and shall include:

1. A note documenting each contact, which shall include:

a. A full description of each service rendered;

b. The date of the service;

c. The location of the service;

d. The beginning and ending time of the service;

e. The signature and title of the person-centered coach[individual] providing the service; and

f. The date the entry was made in the record; and

2. A completed monthly summary note, which shall include:

a. The month and year for the time period the note covers;

b. A summary of the service provided including recommendations and identification of additional support needs if any exist;

c. The signature and title of the individual completing the note;

d. The date the note was written; and

e. The signature, title, and date of review of documentation by the positive behavior specialist or other licensed professional directing the work of the person-centered coach.

(13)[(45)] Personal assistance services:

(a) Shall be provided by a direct support professional;

(b) Shall enable a participant to accomplish tasks that the participant normally would do for himself or herself if the participant did not have a disability;

(c) Shall be available only to a participant who lives in the participant's own residence or in the participant's family residence;

(d) May be participant directed and if participant directed, may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 10[5] of this administrative regulation;

(e) Shall include:

1. Hands-on assistance (performing a task for a participant);

2. Reminding, observing, guiding, or training a participant in activities of daily living;

3. Reminding, observing, guiding, or training a participant in instrumental[independent] activities of daily living;

4. Assisting a participant in managing the participant's medical care including making medical appointments and accompanying the participant to medical appointments; or

5. Transportation, which is not otherwise available under the Medicaid Program, to access community services, activities, and appointments;

(f) Shall take place in a participant's home or in the community as appropriate to the participant's need;

(g) Shall not be available to a participant:

1. Receiving paid residential supports; or

2. Under the age of twenty-one (21) if medically necessary personal assistance is available as an early and periodic screening, diagnostic, and treatment service;

(h) Shall not supplant an educational service available under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.); and

(i) Shall be documented in the MWMA by:

1. A note for each contact, which shall include:

a. A full description of each service rendered;

b. Evidence of training or service to support outcomes designated in the participant's person-centered service plan[POC] as appropriate;

c. The date of the service;

d. The location of the service;

e. The beginning and ending time of the service;

f. The signature and title of the direct support professional providing the service; and

g. The date the entry was made in the record; and

2. A detailed monthly summary note, which shall include:

a. The month and year for the time period the note covers;

b. Evidence of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcome or outcomes;

d. Projected plan to achieve the next step in achievement of outcome or outcomes;

e. The signature and title of the direct support professional completing the note; and

f. The date the note was written; and

g. The signature, title, and date the documentation was reviewed by the direct support professional supervising the direct support professional.

(14)[(46)] Physical therapy shall:

(a) Include evaluation or therapeutic services that are not available to a participant outside of a 1915(c) home and community-based waiver program;

(b) Address physical therapy needs that result from a participant's developmental disability;

(c) Facilitate a participant's independent functioning or prevent progressive disabilities;

(d) Include:

1. Evaluation;

2. Therapeutic procedures;

3. Therapeutic exercises to increase range of motion and flexibility;

4. Participant or family education;

5. Assessment of a participant's environment;

6. If needed, development of a home treatment or support plan with training and technical assistance provided on-site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;

7. As needed, coordination of program wide support addressing assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the community;

8. Monitoring:

a. Of the fidelity of data reporting and participant's POC implementation;

b. Of the effectiveness of the participant's POC;

c. Of the impact of the participant's POC on the participant, the participant's environment, and system of supports; and

d. Which shall be conducted:

(i) In the settings where the participant's POC is implemented;

(ii) Through discussions and observations of people implementing the participant's POC; and

(iii) Through reporting data;

(e) Be provided by:

1. A person who:

a. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

b. Is either:

(i) A physical therapist; or

(ii) A physical therapist assistant; and

2. An order of a physician;

(f) Be delivered in a participant's home or in the participant's community as described in the participant's POC;

(g) Not be available to a participant under the age of twenty-

one (21) years;

(h) ~~Not~~ supplant educational services available under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.);

(i) ~~Be documented by a note documenting each contact which shall include:~~

1. ~~A full description of each service rendered;~~
2. ~~Evidence of progress toward the participant's outcome or outcomes;~~
3. ~~Identification of barriers to achievement of outcomes;~~
4. ~~The projected plan to achieve the next step in achievement of outcomes;~~

5. ~~The date of the service;~~
6. ~~The location of the service;~~
7. ~~The beginning and ending time of the service;~~
8. ~~The signature and title of the person providing the service;~~
9. ~~The date the entry was made in the record; and~~
10. ~~The signature and title of the physical therapist supervising the physical therapist assistant and date of the documentation review if applicable; and~~

(j) ~~Be limited to fifty-two (52) fifteen (15) minute units per month.~~

(17)(a) Positive behavior supports shall include:

1. The utilization of evidenced based and best practices in behavioral techniques, interventions, and methods to assist a participant with significant, intensive challenges that[which] interfere with activities of daily living, social interaction, or work;
2. Evidenced based or best practices regarding treatment of a behavioral health condition that[which] shall be the primary support services if supplemental behavioral interventions are needed; and
3. A positive behavior support plan, which shall:
 - a. Be clearly based upon the information, data collected, and recommendations from the functional assessment;
 - b. Meet the primary purpose of having the participant acquire or maintain skills for community living while behavioral interventions are delivered for the reduction of significant challenges that[which] interfere with activities of daily living, social interaction, or work;
 - c. Be developed with the participant and participant's person-centered team;
 - d. Be related to goals of interventions, such as greater participation in activities, or enhanced coping or social skills;
 - e. Identify strategies for managing consequences to maximize reinforcement of adaptive or positive behavior and minimize that for target behavior;
 - f. Delineate goals of intervention and specific replacement behavior or skills that are incorporated into the participant's total service plan;
 - g. If necessary to ensure safety and rapid de-escalation of a targeted behavior, outline the de-escalation techniques and scaled response with criteria for use and documentation requirements;
 - h. Include specific criteria for how data including rate, frequency, duration, and intensity shall be recorded;
 - i. Include specific criteria for re-evaluation when the data does not demonstrate progress;
 - j. Include specific criteria for fading or discontinuing the service as the participant's adaptive, positive behavior improves;

k.] Clarify in measurable terms the frequency, intensity, and duration of the target behaviors;

(i) That will signify that a reduction in services is in order; and

(ii) When services are at an end;

k./l.] Include all the positive behavior support components specified in the Supports for Community Living Policy Manual;

f.] Be revised whenever necessary and submitted for review to the local behavior intervention committee along with:

- (i) The participant's person-centered service plan;
- (ii) The participant's functional assessment;
- (iii) The participant's life history;
- (iv) The participant's medical assessment; and
- (v) Any other appropriate assessment;

l./m./n.] Be submitted to the local human rights committee if

rights restrictions are recommended; and

m./n./m.]g.] Be implemented across service settings by the various people, both paid and natural supports, assisting a participant to reach the participant's goals and dreams.

(b) Positive behavior supports shall be provided by a positive behavior support specialist.

(c) Behavioral health treatment and positive behavioral supports shall be utilized in a collaborative manner.

(d) One (1) unit of positive behavior supports shall equal one (1) plan.

(e) Positive behavior supports shall be billed in accordance with 907 KAR 12:020.

(15)(a)(18)] Residential support services shall:

1.[(a)] Be authorized for a participant based upon information from the participant's Supports Intensity Scale assessment, a[Health—Risk] screening tool that assesses health risk[assessment], and an approved person-centered service plan[POC]; and

2. Ensure that the participant has:

- a. Privacy in the sleeping or living unit in a residential setting;
- b. An option for a private unit in a residential setting;
- c. A unit with lockable entrance doors and with only the individual and appropriate staff having keys to those doors;
- d. A choice of roommates or housemates;
- e. The freedom to furnish or decorate the participant's sleeping or living units within the lease or other agreement;
- f. Visitors of the participant's choosing at any time and access to a private area for visitors; and
- g. Physical accessibility defined as being easy to approach, enter, operate, or participate in a safe manner and with dignity by a person with or without a disability.

(b) To be considered physically accessible, a setting shall meet the Americans with Disabilities Act, 42 U.S.C. Chapter 126,[American Disability Act] standards of accessibility for all participants served in the setting.

(c) All communal areas shall be accessible to all participants as well as having a means to enter the building, such as a key or security code[(i.e., keys, security codes, etc.)].

(d) Bedrooms shall be accessible to the appropriate persons.

(e) Any modification of the additional residential conditions, except for the setting being physically accessible requirement, shall be supported by a specific assessed need and justified in the person-centered service plan.

(f) The following shall be documented in the participant's person-centered service plan:

1. Identification of a specific and individualized assessed need;
2. Documentation of any positive intervention or support used prior to any modifications to the person-centered service plan;
3. Documentation of any less intrusive method of meeting the participant's needs that has been tried but did not work;
4. A clear description of the condition that is directly proportionate to the specific assessed need;
5. Regular collection and review of data to measure the ongoing effectiveness of the modification;
6. Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

7. The informed consent of the participant; and

8. An assurance that interventions and supports will cause no harm to the participant.

(g) Residential support services shall:

1.[(b)] Include:

- a. [4.] Level I residential supports;
- b. [2.] Technology assisted residential supports; or
- c. [3.] Level II residential supports; and
2. [(e)] Be documented in the MWMA by a:

a. [4.] Daily note, which shall include:

(i)[a-] Information about how a participant spent the day including any effort toward meeting any outcome identified in the participant's person-centered service plan[POC];

(ii)[b-] The date of the service;

(iii)[c-] The location of the service;

(iv)[d-] The signature and title of the individual providing the

service; and

(v)[e-] The date the entry was made in the record; and

b.[2-] Detailed monthly summary note, which shall include:

(i)[a-] The month and year for the time period covered by the note;

(ii)[b-] An analysis of progress toward a participant's outcome or outcomes;

(iii)[c-] A projected plan to achieve the next step in achievement of an outcome or outcomes;

(iv)[d-] Information regarding events that occurred that had an impact on the participant's life;

(v)[e-] The signature and title of the direct support professional [individual] writing the note; **and**

(vi)[f-] The date the note was written; **and**

(vii)[g-] [The signature, title, and date of documentation review by the direct support professional supervisor providing supervision to the direct support professional].

(16)[(49)](a) Level I residential supports shall:

1. Be furnished in a provider-owned or leased residence **that[which]** complies with the Americans with Disabilities Act based upon the needs of each participant receiving a support in the residence;

2. Be for a participant who requires a twenty-four (24) hour a day, intense level of support;

3. Include no more than five (5) unsupervised hours per day per participant:

a. To promote increased independence; and

b. **That[Which]** shall be based on the:

(i) Needs of the participant as determined by the participant's person-centered team; and

(ii) Participant's person-centered service plan[POC];

4. Include:

a. Adaptive skill development;

b. Assistance with activities of daily living including bathing, dressing, toileting, transferring, or maintaining continence;

c. Community inclusion;

d. Adult education supports;

e. Social and leisure development;

f. Protective oversight or supervision;

g. Transportation;

h. Personal assistance; and

i. The provision of medical or health care services that are integral to meeting the participant's daily needs; and

5. Be outlined in a participant's person-centered service plan with an accurate reflection of the responsibilities of the residential provider[POC].

(b) Level I residential supports shall be provided by a:

1. Staffed residence **that[which]**:

a. Has been certified:

(i) By the department to be an SCL waiver provider; and

(ii) By DBHDID to provide level I residential supports; and

b. Shall have no more than three (3) participants receiving publicly-funded supports in a home leased or owned by the provider; or

2. Group home **that[which]**:

a. Has been certified:

(i) By the department to be an SCL waiver provider; and

(ii) By DBHDID to provide level I residential supports; and

b. Shall have no more than eight (8) participants in the group home.

(c)1. For a participant approved for unsupervised time, a safety plan shall be included in the participant's person-centered service plan[POC] based upon the participant's assessed needs.

2. A participant's case manager and other person-centered team members shall ensure that a participant is able to implement a safety plan.

3. A participant's case manager shall provide ongoing monitoring of the safety plan, procedures, or assistive devices required by a participant to ensure relevance, the participant's ability to implement the safety plan, and the functionality of the devices if required.

(d) If a participant experiences a change in support needs or status, the participant's person-centered team shall meet to make

the necessary adjustments in the:

1. Participant's person-centered service plan[POC]; and

2. Residential services to meet the participant's needs.

(e) A level I residential support provider shall employ staff who shall be a:

1. Direct support professional; or

2. Direct support professional supervisor if providing supervision.

(17)[(20)](a) Technology assisted residential services shall:

1. Be furnished in a participant's residence:

a. **That[Which]** complies with the Americans with Disabilities Act based upon the needs of each participant receiving a support in the residence; and

b. To three (3) or fewer participants who, **through the use of technology assisted residential services, reduce the amount of in-home[reside in the residence with twenty-four (24) hour] staff support;**

2. Be for a participant who:

a. Requires up to twenty-four (24) hours a day of support; and

b. Is able to increase his or her level of independence with a reduced need for onsite staff;

3. Include, to the extent required for a participant:

a. Protective oversight or supervision;

b. Transportation;

c. Personal assistance; or

d. The provision of medical or health care services that are integral to meeting the participant's daily needs;

4. Increase a participant's independence without undue risk to the participant's health or safety;

5. Be a real-time monitoring system with a two (2) way method of communication linking a participant to a centralized monitoring station; and

6. Be allowed to include:

a. An electronic sensor;

b. A speaker or microphone;

c. A video camera, which shall not be located in a bedroom or a bathroom;

d. A smoke detector; or

e. A personal emergency response system.

(b)1. A device listed in paragraph (a)6. of this subsection shall link a participant's residence to remote staff employed to provide electronic support.

2. A technology assisted residential service provider shall have a plan established to ensure that staff is available twenty-four (24) hours a day, seven (7) days a week for a participant or participants receiving services from the provider.

(c) Technology shall be used by the technology assisted residential service provider to assist a participant in residing in the most integrated setting appropriate to the participant's needs.

(d) The level and types of technology assisted residential services provided to a participant shall be:

1. Determined by a participant's person-centered team; and

2. Outlined in a participant's person-centered service plan[POC].

(e) A participant's person-centered team shall give careful consideration to the participant's medical, behavioral, and psychiatric condition in determining the level and types of technology assisted residential services needed for a participant.

(f) The use of technology to reduce a participant's need for residential staff support in a residence may be utilized if there is an individualized person-centered service plan[POC] **that[which]** has been developed to promote a participant's increased independence:

1. Based on the participant's needs as indicated in the scores and results of the Supports Intensity Scale assessment and a[Health—Risk] screening tool **that assesses health risk[assessment]**; and

2. As recommended by the participant's person-centered team.

(g)1. If a participant experiences a change in support need or status, the technology assisted residential service provider shall:

a. Immediately adjust the participant's supervision to meet any acute need of the participant; and

b. Reassess the appropriateness of technology assisted

residential services and make any adjustment, if needed, to meet any chronic support need of the participant.

2. Any adjustment shall be made in collaboration with the participant's case manager and person-centered team if the adjustment is to be implemented for a period longer than what was determined by the participant's person-centered team when developing the participant's person-centered service plan[POC].

(h) A technology assisted residential service provider shall:

1. Be responsible for arranging or providing a participant's transportation between the participant's residence and any other service site or community location;

2. Employ staff who:

a. Shall be a:

(i) Direct support professional; or

(ii) Direct support professional supervisor if providing supervision; and

b. Demonstrate:

(i) Proficiency in the individual's ability to operate all monitoring devices utilized in technology assisted residential services; and

(ii) The ability to respond appropriately to the needs of participants in a timely manner; and

3. Have daily contact with the participant.

(18)[(21)](a) Level II residential supports shall:

1. Be for a participant who requires up to a twenty-four (24)-hour level of support;

2. Be a support tailored to a participant to:

a. Assist the participant with acquiring, retaining, or improving skills related to living in a community; and

b. Promote increased independence;

3. Be designed and implemented to assist a participant to reside in the most integrated setting appropriate to the participant's needs;

4. Provide support for a participant up to twenty-four (24) hours a day;~~and~~

5. Be furnished in:

a. An adult foster care home;

b. A family home provider; or

c. A participant's own home;

6. Be based on the:

a. Needs of the participant as determined by the participant's person-centered team; and

b. Participant's person-centered service plan; and

7. Include:

a. Adaptive skill development;

b. Assistance with activities of daily living including bathing, dressing, toileting, transferring, or maintaining continence;

c. Community inclusion;

d. Adult education supports;

e. Social and leisure development;

f. Protective oversight or supervision;

g. Transportation;

h. Personal assistance; and

i. The provision of medical or health care services that are integral to meeting the participant's daily needs.

(b) Level II residential supports shall be provided by:

1. An adult foster care provider that/which:

a. Has been certified:

(i) By the department to be an SCL waiver provider; and

(ii) By DBHDID to provide level II residential supports; and

b. Shall have no more than three (3) participants who are:

(i) Aged eighteen (18) years or older; and

(ii) Receiving publicly-funded supports and living in the home;

or

2. A family home provider that/which:

a. Has been certified:

(i) By the department to be an SCL waiver provider; and

(ii) By DBHDID to provide level II residential supports; and

b. Shall have no more than three (3) participants receiving publicly-funded supports living in the home.

(c) A level II residential support provider shall employ staff who shall be a:

1. Direct support professional; or

2. Direct support professional supervisor if providing supervision.

(d) If a participant experiences a change in support need or status, the level II residential services provider shall adjust services provided to the participant to meet the participant's altered need or status.

(e) For a participant approved for unsupervised time, a safety plan shall:

1. Be included in the participant's person-centered service plan based upon the participant's assessed needs; and

2. Ensure that:

a. The participant's case manager and other person centered service plan team members ensure that the participant is able to implement the safety plan; and

b. The participant's case manager provides ongoing monitoring of the safety plan, procedures, or assistive devices required by the participant to ensure:

(i) Relevance;

(ii) The participant's ability to implement the safety plan; and

(iii) The functionality of the devices if required.

(f) If a participant experiences a change in support needs or status, the participant's person-centered team shall meet to make the necessary adjustments in the:

1. Participant's person-centered service plan; and

2. Residential services to meet the participant's needs.

(19)[(22)] Respite:

(a) Shall:

1. Be provided to a participant who:

a. Does not receive residential services;

b. Resides in the participant's own home or family's home; and

c. Is unable to independently administer self-care;

2. Be provided:

a. In a variety of settings;

b. By a direct support professional; and

c. On a short-term basis due to the absence or need for relief of a non-paid primary caregiver[an individual providing care to a participant];

3. Be documented in the MWMA by a contact note, which shall include:

a. The date of the service;

b. The beginning and ending time of the service;

c. A full description of each service rendered;

d. The signature and title of the individual providing the service; and

e. The date the entry was made in the record; and

4. Not exceed 830 hours per each one (1)[calendar] year authorized person-centered service plan period; and

(b) May be participant directed and if participant directed, may be provided by an immediate family member or guardian of the participant in accordance with Section 10[5] of this administrative regulation.

(20)[(23)](a) Shared living shall be a participant-directed service designed to:

1. Be an alternative to residential support services; and

2. Be provided by a shared living caregiver who provides some of the participant's supports in exchange for the caregiver's share of room and board expenses.

(b) A payment for the portion of the costs of rent or food attributable to an unrelated personal caregiver shall be routed through the financial management agency specifically for reimbursing the participant.

(c) If two (2) participants choose to live together in a home, the two (2) may share a caregiver.

(d) Depending upon the need of a participant, a caregiver may provide:

1. Assistance with the acquisition, retention, or improvement in skills related to activities of daily living; or

2. Supervision required for safety or the social and adaptive skills necessary to enable the participant to reside safely and comfortably in the participant's own home.

(e) Shared living services shall:

1. Address a participant's needs identified in the participant's

person-centered planning process;

2. Be outlined in the participant's person-centered service plan [POC];

3. Be specified in a contractual agreement between the participant and the caregiver; and

4. Complement other services the participant receives and enhance increased independence for the participant.

(f) A participant's person-centered team shall decide and ensure that the individual who will serve as the participant's caregiver has the experience, skills, training, and knowledge appropriate to the participant and the type of support needed.

(g) A participant's caregiver shall meet the participant-directed services provider requirements established ~~(direct support professional qualifications)~~ in ~~accordance with~~ Section ~~10(14)(23))~~ (24) of this administrative regulation.

(h) Room and board expenses for an unrelated caregiver living with a participant shall be:

1. Reflected in the participant's person-centered service plan [POC]; and

2. Specified in the contractual agreement between the participant and the caregiver.

(i) A payment shall not be made if a participant lives in the caregiver's home or in a residence that is owned or leased by an SCL provider.

(j) Documentation shall:

1. Be maintained by a participant's case manager in the MWMA[portal]; and

2. Include:

a. A dated monthly summary note that is written by the case manager and details how services were provided according to the contractual agreement and the participant's person-centered service plan [POC];

b. A monthly receipt for the caregiver's room and board expenses that were reimbursed to the participant;

c. The signature and title of the case manager writing the note;

d. The date the note was written;

e. A signed and dated statement from the participant or the participant's guardian indicating that the participant is satisfied with the services provided by the caregiver; and

f. The signature, title and date of documentation review by the case manager supervisor who is supervising the case manager.

(k) Shared living shall be based on a prior authorized amount not to ~~(not)~~ exceed \$600 per month.

(21)(24)(a) Specialized medical equipment and supplies shall:

1. Include a device, control, or appliance specified in a participant's person-centered service plan [POC] that[which] shall:

a. Be necessary to ensure the health, welfare, and safety of the participant; or

b. Enable the participant to function with greater independence in the home;

2. Include assessment or training needed to assist a participant with mobility, seating, bathing, transferring, security, or other skills including operating a wheelchair, a lock, a door opener, or a side lyre;

3. Include a computer necessary for operating communication devices, a scanning communicator, a speech amplifier, a control switch, an electronic control unit, a wheelchair, a lock, a door opener, or a side lyre;

4. Include customizing a device to meet a participant's needs;

5. Include partial nutrition supplements, special clothing, an enuresis protective chuck, or another authorized supply that is specified in the participant's person-centered service plan [POC];

6. Include an ancillary supply necessary for the proper functioning of an approved device;

7. Be identified in a participant's person-centered service plan [POC];

8. Be recommended by a person whose signature shall verify the type of specialized equipment or supply that is necessary to meet the participant's need; and who:

a. Meets the personnel and training requirements established in Section 3 of this administrative regulation; and is a;

(i) An occupational therapist;

(ii) A physical therapist; or

(iii) A speech-language pathologist[therapist]; or

b. Is a certified or licensed practitioner whose scope of practice includes the evaluation and recommendation of specialized equipment or supplies;

9. Not include equipment, a supply, an orthotic, prosthetic, service, or item

covered under the department's:

a. Durable medical equipment program pursuant to 907 KAR 1:479;

b. Hearing services program pursuant to 907 KAR 1:038 or 907 KAR 1:039; or

c. EPSDT program pursuant to 907 KAR 11:034 or 907 KAR 11:035; and

10. Be coordinated and documented in the MWMA[portal] by a case manager by:

a. A description or itemized line item of purchase and cost;

b. Receipts for procurements that[which] include the date of purchase;

c. The signature and title of the case manager;

d. The date the entry was made in the record; and

e. The signature, title, and date of the documentation review by the case manager supervisor providing supervision to the case manager.

(b) Equipment purchased pursuant to this subsection for a participant shall become the property of the participant.

~~(22)(25) Speech therapy shall:~~

~~(a) Be provided by:~~

~~1. A speech language pathologist who meets the personnel and training requirements established in Section 3 of this administrative regulation; and~~

~~2. An order of a physician;~~

~~(b) Include:~~

~~1. Evaluation or therapeutic services that are not available to a participant outside of a 1915(c) home and community based waiver program;~~

~~2. Speech and language therapy evaluation;~~

~~3. Individual treatment of voice;~~

~~4. Communication;~~

~~5. Auditory processing;~~

~~6. Therapeutic services for the use of a speech device including:~~

~~a. Programming and modification; or~~

~~b. Participant and family education;~~

~~7. Development of a home treatment or support plan with training and technical assistance provided on-site to improve the ability of paid and unpaid caregivers to carry out therapeutic interventions;~~

~~8. As needed, coordination of program-wide support addressing assessed needs, conditions, or symptoms affecting a participant's ability to fully participate in the participant's community;~~

~~9. Monitoring:~~

~~a. Of the fidelity of data reporting and participant's POC implementation;~~

~~b. Of the effectiveness of the participant's POC;~~

~~c. Of the impact of the participant's POC on the participant, the participant's environment and system of supports; and~~

~~d. Which shall be conducted:~~

~~(i) In the settings where the participant's POC is implemented;~~

~~(ii) Through discussions and observations of people implementing the participant's POC; and~~

~~(iii) Through reporting data;~~

~~(c) Preserve abilities for independent function in communication, motor and swallowing functions, facilitate use of assistive technology, and prevent regression;~~

~~(d) Be delivered in a participant's home or in the participant's community as described in the participant's POC;~~

~~(e) Not be available to a participant under the age of twenty-one (21) years;~~

~~(f) Not supplant educational services available under the IDEA (20 U.S.C. 1401 et seq.); and~~

(g) Be documented by a note documenting each contact which shall include:

1. A full description of each service rendered;
 2. Evidence of progress toward the participant's outcome or outcomes;
 3. Identification of barriers to achievement of outcomes;
 4. The projected plan to achieve the next step in achievement of outcomes;
 5. The date of the service;
 6. The location of the service;
 7. The beginning and ending time of the service;
 8. The signature and title of the speech language pathologist providing the service; and
 9. The date the entry was made in the record; and
- (h) Be limited to fifty-two (52) fifteen (15) minute units per month.

(26)(a) Supported employment shall be funded by the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401 et seq.) for a participant if funding is available under either act for the participant.

(b) If the funding referenced in paragraph (a) of this subsection is not available for a participant, SCL waiver funding may be accessed for the participant for all defined supported employment services if there has been no change in the impact of the participant's disability on the participant's employment.

(c) Supported employment shall:

1. Be services that enable a participant to engage in paid work that/which occurs in an integrated community setting with competitive wages and benefits commensurate to the job responsibilities;

2. Be covered for a participant if no change in the impact of a participant's disability on the participant's employment has occurred and:

a. A Supported Employment Long-Term Support Plan has been completed, [and] incorporated into the participant's person-centered service plan, and uploaded into the MWMA [portal] [POC]; or

b. There is documentation of the payment of the supported employment individual outcome placement fee indicating closure of the case by the Office of Vocational Rehabilitation;

3. [2.] Be participant directed, if a participant chooses this option;

4. [3.] Be provided:

a. In a variety of settings; and

b. By a supported employment specialist who:

(i) Meets the personnel and training requirements established in Section 3 of this administrative regulation; and

(ii) Works for an SCL certified provider that is a vendor of supported employment services for the Office of Vocational Rehabilitation; [and

c. In accordance with the supported employment policies stated in the current Supports for Community Living Policy Manual];

5. [4.] Be delivered on a one (1) to one (1) basis with a participant or indirectly on behalf of a participant;

6. [5.] Exclude work performed directly for the supported employment provider or other service provider; and

7. [6.] Be coordinated with other applicable 1915(c) home and community based waiver services, if applicable, in support of the participant's employment outcome.

(d) Supported employment services delivered on a one-to-one basis and the hours spent by a participant performing paid employment and [adult] day training shall not exceed:

1. Forty (40) hours per week; or

2. 160 units per week.

(e) A supported employment service shall:

1. Be provided and documented as required by this subsection; and

2. Include the components established in this subsection [paragraph].

(f) 1. Supported employment shall include person-centered job selection discovery that shall:

a. Be a respectful way to get to know a participant who is seeking a job and break past conceived notions about what a participant can or cannot do; and

b. Include developing a Person [J] Centered Employment Plan based upon the participant's:

(i) Life experiences;

(ii) Interests;

(iii) Talents;

(iv) Contributions;

(v) Impact of disability;

(vi) Vulnerabilities; and

(vii) Support needs.

2. The Person-Centered Employment Plan shall be completed by the employment specialist, entered into the MWMA [portal], and updated as needed.

3. A participant may access up to 120 units of person-centered job selection funding.

4. Prior to receiving employment services and job development, a participant and the participant's person-centered team shall review the content of the Person-Centered Employment Plan and ensure that the plan:

a. Represents an accurate description of the participant's interests, goals, and objectives;

b. Is based upon the development of a career rather than short-term employment; and

c. Is incorporated into the participant's person-centered service plan.

5. a. Person-centered job selection shall conclude with a meeting at which parties supporting the participant provide:

(i) Suggestions of places in the participant's area where the participant might be able to perform the job tasks identified in the Person-Centered Employment Plan in return for at least minimum wage; and

(ii) Contacts, if available, for the places referenced in subclause (i) of this clause.

b. Information gathered at the job planning meeting shall be documented in the participant's individual plan for employment.

6. a. Job development and analysis shall:

(i) Be conducted to determine the skills that the participant will need to successfully contribute in a specific workplace;

(ii) Include deciding how to talk about the impact of the participant's disability in relation to the contributions that the participant can offer the employer;

(iii) Include facilitating the development of natural supports based on ordinary social relationships at work; and

(iv) Include matching job tasks that need to be completed for potential employers with the interests, skills, and abilities established in the participant's Person-Centered Employment Plan beginning with the leads provided during the job planning meeting.

b. A participant and the participant's employment specialist may access up to ninety (90) units of job development services.

7. a. Job acquisition with support shall be the actual acceptance of a position by the participant.

b. Stabilization services shall include becoming as independent as is possible in the workplace through assistance from natural supports [and other means].

c. [(i) Ongoing support shall include services needed to maintain the supported employee in an integrated, competitive employment site with primary assistance being provided by natural supports.]

[(ii)] The expectation shall be for systemic fading of the supported employment specialist to begin as soon as possible without jeopardizing the job and continuing until the participant receives only monitoring, career planning, and crisis assistance.

d. A participant and the participant's supported employment specialist may access up to 800 units of job acquisition and stabilization services.

8. Prior to initiating long-term support and follow-up services, the participant and the participant's person-centered team shall review the supported employment long-term support plan and ensure that the:

a. Participant is functioning well in the job in terms of general satisfaction, number of hours worked, and performance of job

duties:

b. Participant is comfortable in interacting with coworkers and supervisors, and performs job duties through the use of natural supports; and

c. Long-term support plan has been completed and integrated into the participant's person-centered service plan.

9.a. Long-term support and follow-up shall be provided to help a participant maintain the job and experience continued success after the:

(i) Participant is fully integrated into the workplace; and

(ii) Supported employment specialist is no longer needed on a regular basis.

b. The supported employment specialist shall continue to be available for the participant if and when needed for support or assistance with any job change or job advancement.

c.(i) The participant and the participant's supported employment specialist may access twenty-four (24) units of supported employment each month.

(ii) Any increase in supported employment units shall be justified in the long-term employment support plan and approved by the participant and the participant's person-centered team.

~~10.[4. A Person-Centered Employment Plan shall be completed by a participant's supported employment specialist and updated as needed as required in the Supports for Community Living Policy Manual.~~

~~2. A Supported Employment Long Term Support Plan shall be completed by a participant's supported employment specialist and updated as needed as required in the Supports for Community Living Policy Manual.~~

~~3.] A person-centered employment plan activity note, notes regarding a participant's job development activity, notes regarding a participant's job acquisition or stabilization activity, and notes regarding a participant's long-term employment support activity shall:~~

~~a. Be completed, and uploaded into the MWMA[portal], by a participant's supported employment specialist to document each contact with the participant or action provided on behalf of the participant; and~~

~~b. Contain:~~

~~(i) The date of the service;~~

~~(ii) The beginning time of the service;~~

~~(iii) The ending time of the service;~~

~~(iv) A description of the activity that was conducted;~~

~~(v) The justification of the activity;~~

~~(vi) The results of the activity;~~

~~(vii) The anticipated content of the next activity; and~~

~~(viii) The signature of the supported employment specialist who provided the service.~~

~~(23)[(27)](a) A transportation service shall:~~

~~1. Enable a participant who chooses to use participant-directed services to gain access to integrated waiver and other community services, activities, resources, and organizations typically utilized by the general population; [and]~~

~~2. Only be provided when transportation is not:~~

~~a. Otherwise and customarily available through natural supports including family, friends, neighbors, or community agencies; or~~

~~b. Included as an element of another SCL waiver service;~~

~~3. Include nonemergency travel;~~

~~4. Be clearly described in a participant's person-centered service plan, [POC] which shall include information regarding the unavailability of other transportation services or resources;~~

~~5. Be reimbursable based upon the assessed needs of a participant as specified in the participant's person-centered service plan [POC];~~

~~6. Be provided by a driver who:~~

~~a. Is at least eighteen (18) years of age and legally licensed to operate the transporting vehicle to which the individual is assigned or owns;~~

~~b. Has proof of current liability insurance for the vehicle in which the participant will be transported; and~~

~~c. Is an individual or other public transit resource including a local cab or bus service; and~~

7. Not:

a. Include transporting a participant to school (through the twelfth grade);

b. Be available to a participant who:

(i) Receives transportation as an element of another covered service;

(ii) Is receiving a residential service via the SCL waiver program;

(iii) Has access to transportation under the Individuals with Disabilities Education Act; or

(iv) Customarily receives transportation from a relative.

(b) A participant shall not contract with an individual to provide transportation if the individual has a driving under the influence conviction within the past twelve (12) months.

(c) A transportation service may be provided by an immediate family member, guardian, or legally responsible individual of the participant in accordance with Section 10[5] of this administrative regulation.

(d) A case manager shall:

1. Coordinate transportation services; and

2. Ensure that the following documentation is completed and submitted to the financial management agency for direct payment to the approved vendor:

a. The specific type and purpose of transportation provided;

b. The date and the beginning and ending time when the service was provided;

c. The location of origin of the transportation service, destination of the transportation service, and the mileage incurred from point to point;

d. Verification of service delivery, including the first and last name and title (if applicable) of the individual providing the service; and

e. A receipt from the driver if a bus, taxicab, or similar type of transportation service in which the participant directly purchases the service is utilized.

(24)[(28)](a) A vehicle adaptation shall:

1. Be a device, control, or service that enables a participant to:

a. Increase the participant's independence and physical safety; and

b. Interact more independently with the participant's environment and reduce the participant's dependence on physical support from others;

2. Be made to a participant's or a participant's family's privately owned vehicle;

3. Include:

a. A hydraulic lift;

b. A ramp;

c. A special seat; or

d. An interior modification to allow for access into and out of the vehicle as well as safety while the vehicle is moving;

4. Be limited to \$6,000 per five (5) years per participant;

5. Be prior authorized by the department in order to be reimbursable by the department; and

6. Be coordinated and documented in the MWMA[portal] by a case manager by:

a. Documenting an estimate from a vendor determined to be qualified to complete vehicle modifications by the Office of Vocational Rehabilitation;

b. Documentation from the Office of Vocational Rehabilitation that the participant is not qualified to receive a vehicle modification from the Office of Vocational Rehabilitation;

c. A description or itemized line item of purchase and cost;

d. A receipt for procurements that[which] shall include the date of purchase;

e. Verification by the case manager that the work is complete, adequate, and satisfactory within ten (10) business days of completion before payment is requested and issued;

f. The signature and title of the case manager; and

g. The date the entry was made in the record.

(b) The department's SCL program shall be the payer of last resort for a vehicle adaptation.

(c) The need for a vehicle adaptation shall:

1. Be documented in a participant's person-centered service

plan[POC]; and

2. Include an assessment from an occupational therapist or physical therapist specializing in vehicle modifications that result in specific recommendations for the type of modification to meet the needs of the participant.

(d) The department shall not reimburse for the repair or replacement costs of a vehicle adaptation of a vehicle owned by an SCL provider.

(e) A vehicle adaptation vendor shall be in good standing with the Office of the Secretary of State of the Commonwealth of Kentucky pursuant to 30 KAR 1:010 and 30 KAR 1:020.

(f) An immediate family member, guardian, or legally responsible individual of the participant shall not be eligible to be a vendor or provider of a vehicle adaptation service for the participant.

(g) A case manager shall submit reimbursement documentation to the financial management agency.

Section 5. Person-centered Service Plan Requirements. (1) A person-centered service plan shall:

(a) Be established for each participant;

(b) Be developed by:

1. The participant, the participant's guardian, or the participant's representative;

2. The participant's case manager;

3. The participant's person-centered team; and

4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(c) Use a process that:

1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:

a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

a. Learns;

b. Makes decisions; and

c. Chooses to live and work in the participant's community;

8. Discovers the participant's needs, likes, and dislikes; **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[which]** the individual elects to self direct; and

o. Prevents the provision of unnecessary or inappropriate services and supports; and

(d) Include in all settings the ability for the participant to:

1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience; and

2.a. Choose when and what to eat;

b. Have access to food at any time;

c. Choose with whom to eat or whether to eat alone; and

d. Choose appropriating clothing according to the:

(i) Participant's preference;

(ii) Weather; and

(iii) Activities to be performed.

(2) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.

(3)(a) A participant's person-centered service plan shall be:

1. Entered into the MWMA[portal] by the participant's case manager; and

2. Updated in the MWMA[portal] by the participant's case manager.

(b) A participant or participant's authorized representative shall complete and upload into the MWMA[portal] a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA[portal].

Section 6. Case Management Requirements. (1) A case manager shall:

(a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:

1. An SCL intellectual disability professional;

2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

3. An individual with a bachelor's degree in a human **services[service]** field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

4. A licensed clinical social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

7. A certified psychologist or licensed psychological associate who has at least two (2) years of experience working with

individuals with an intellectual or a developmental disability; or

8. A licensed psychological practitioner or certified psychologist with autonomous functioning who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

- (b) Be a registered nurse;
- (c) Be a licensed clinical social worker;
- (d) Be a licensed marriage and family therapist;
- (e) Be a licensed professional clinical counselor;
- (f) Be a licensed psychologist; or
- (g) Be a licensed psychological practitioner.

(2) A case manager shall:

(a) Communicate in a way that ensures the best interest of the participant;

(b) Be able to identify and meet the needs of the participant;

(c) 1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and

2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;

(d) Ensure that:

1. The participant is educated in a way that addresses the participant's:

- a. Need for knowledge of the case management process;
- b. Personal rights; and
- c. Risks and responsibilities as well as awareness of available services; and

2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;

~~(e) Have a code of ethics to guide the case manager in providing case management, which shall address:~~

~~1. Advocating for standards that promote outcomes of quality;~~

~~2. Ensuring that no harm is done;~~

~~3. Respecting the rights of others to make their own decisions;~~

~~4. Treating others fairly; and~~

~~5. Being faithful and following through on promises and commitments;~~

~~(f) 1. Lead the person-centered service planning team; and~~

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

~~(g)(g) 1. Include the participant's participation or representative's participation in the case management process; and~~

~~2. Make the participant's preferences and participation in decision making a priority;~~

~~(g)(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;~~

~~(h)(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;~~

~~(i)(i) 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;~~

~~(l)(m) Document services provided to a participant by entering [the following] into the MWMA[portal];~~

~~1. A monthly DBHDID approved person-centered monitoring tool; and~~

~~2. a monthly contact note[entry], which shall include:~~

~~1.(a.) The month and year for the time period the note covers;~~

~~2.(b.) An analysis of progress toward the participant's outcome or outcomes;~~

~~3.(c.) Identification of barriers to achievement of outcomes;~~

~~4.(d.) A projected plan to achieve the next step in achievement of outcomes;~~

~~5.(e.) The signature and title of the case manager completing the note; and~~

~~6.(f.) The date the note was generated;~~

~~(k)(n) Accurately reflect in the MWMA[portal] if a participant is:~~

~~1. Terminated from the SCL waiver program;~~

~~2. Admitted to an intermediate care facility for individuals with intellectual disabilities;~~

~~3. Admitted to a hospital;~~

~~4. Admitted to a skilled nursing facility;~~

~~5. Transferred to another Medicaid 1915(c) home and community based waiver service program; or~~

~~6. Relocated to a different address; [and]~~

~~(l)(o) Provide information about participant-directed services to the participant or the participant's guardian;~~

~~1. At the time the initial person-centered service plan is developed;~~

~~2. At least annually thereafter; and~~

~~3. Upon inquiry from the participant or participant's guardian;~~

~~and~~

~~(m)(p) Be supervised by a case management supervisor.~~

~~(3)(a) Case management for any individual who begins receiving SCL services after the effective date of this administrative regulation shall be conflict free except as allowed in paragraph (b) of this subsection.~~

~~(b) 1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified SCL provider within thirty (30) miles of the participant's residence.~~

~~2. An exemption to the conflict free case management requirement shall be granted if:~~

~~a. A participant requests the exemption;~~

~~b. The participant's case manager provides documentation of evidence to DBHDID, that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;~~

~~c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and~~

~~d. The participant, participant's representative, or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA[portal].~~

~~3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall document conflict of interest protections, separate case management and service provision functions within the provider entity, and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.~~

~~4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.~~

~~(c) A participant who receives SCL services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.~~

~~(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in~~

order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or
 2. Provider of non-case management SCL services.
- (4) Case management shall include:

(a) Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;

(b) Assisting a participant in the identification, coordination, and arrangement of the person centered team and person centered team meetings;

(c) Facilitating person-centered team meetings that assist a participant to develop, update, and monitor the person-centered service plan, which shall be distributed or made available to all members of the person-centered team within five (5) business days of development;

(d) Assisting a participant to gain access to and maintain employment, membership in community clubs and groups, activities, and opportunities at the times, frequencies, and with the people the participant chooses;

(e) Coordinating and monitoring all 1915(c) home and community based waiver services and non-waiver services including having monthly face-to-face contacts with the participant to determine if the participant's needs are being met.

1. Contact shall be at a location where the participant is engaged in services.

2. A case manager shall utilize the MWMA[a DBHDID-approved monitoring tool] to:

a.[Identify that person-centered practices are demonstrated by the service provider];

b.] Ensure that the participant's health, safety, and welfare are not at risk;

b.c.] Gather data regarding the participant's satisfaction with the services for use in guiding the person centered planning process;[and]

c.d.] Address how the person-centered team will address the following:

(i) Expanding and deepening the participant's relationships;

(ii) Increasing the participant's presence in local community life; and

(iii) Helping the participant have more choice and control;

[(iv) Enhancing the participant's reputation and increasing the number of valued ways the participant contributes to community life; and

(v) Improving the person's competency;] and

d.f.] Generate monthly summary notes.

3. Coordinating and monitoring shall include:

a. Initiating person-centered team meetings and receiving prior authorization within fourteen (14) days of a contact visit if the results of a monthly contact visit indicate that different or additional services or other changes in the participant's person-centered service plan are required to meet the participant's needs;

b. Assisting with participant-directed services including:

(i) Assisting the participant in identifying, if necessary, a community guide and a representative who shall work with the participant on the development of a person-centered service plan, budget, and emergency back-up plan;

(ii) Assisting the participant in identifying strategies for recruiting and managing employees; and

(iii) Assigning modules within the Kentucky College of Direct Supports for training

purposes and assisting the participant, the community guide, or the representative in monitoring the completion of training within timeframes specified in Section 10[5] of this administrative regulation;

c. Monitoring the provision of services and submission of required documentation to the financial management agency; and

d. Monitoring and reporting identified deficiencies to appropriate agencies[Authority to require immediate remediation of identified deficiencies that impact the health, safety, and welfare of a participant];

(f) Assisting a participant in planning resource use and assuring protection of resources to include:

1. Clearly outlining the participant's insurance options and availability; and

2. Exploring the potential availability of other resources and social service programs for which the participant may qualify;

(g) Monitoring to ensure that services continue if a participant has been terminated from any service until an alternate provider, if needed, has been chosen by the participant and services have been approved;

(k) Providing a participant and the participant's team members twenty-four (24) hour telephone access to a case management staff person;

(l) Documentation, uploaded into the MWMA[portal], of services by/:

1. A monthly DBHDID approved person centered monitoring tool; and

2.] a detailed monthly summary note, which shall include:

1.a.] The month and year for the time period the note covers;

2.b.] An analysis of progress toward the participant's outcome or outcomes;

3.f.] Identification of barriers to achievement of outcomes;

4.d.] A projected plan to achieve the next step in achievement of outcomes;

5.e.] The signature and title of the case manager completing the note; and

6.f.] The date the note was generated;[and

g. The signature and title of the case management supervisor reviewing and approving the monthly person-centered monitoring tool;]

(m) Person-centered team meetings, which shall not constitute the required monthly face-to-face visit with a participant; and

(n) Supervision duties performed by the case manager supervisor who provides supervision in accordance with a DBHDID approved case manager supervisor training.

(5)[(6)](a) One (1) unit of case management shall equal one (1) month.

(b) A provider shall bill for a case management service in accordance with 907 KAR 12:020.

(6)[(7)] Case management shall involve:

(a) A constant recognition of what is and is not working regarding a participant; and

(b) Changing what is not working.

Section 7. Human Rights Committee. (1) A human rights committee shall meet on a routine, scheduled basis, no less than quarterly to ensure that the rights of participants utilizing SCL services are respected and protected through due process.

(2) A human rights committee shall include at least:

(a) At least one (1) self-advocate[Two (2) self-advocates];

(b) At least one (1) member[Three (3) members] from the community at large with experience in human rights issues or in the field of intellectual or developmental disabilities;

(c) At least one (1)[Two (2)] appointed guardian[guardians] or family member[members] of a waiver participant;

(d) One (1) professional in the medical field; and

(e) At least one (1) professional[Two (2) professionals] with:

1. A bachelor's degree from an accredited college or university; and

2. Three (3) years of experience in the field of intellectual or developmental disabilities.

(3) Each SCL provider shall:

(a) Actively participate in the human rights committee process of the local human rights committee; and

(b) Provide the necessary documentation to the local human rights committee for review and approval prior to implementation of any rights restrictions or positive behavior support plans involving rights restrictions.

(4) A human rights committee meeting shall have a quorum of at least three (3)[six (6)][eight (8)] members, including at least one (1)[of which shall be a] self-advocate and one (1)[of which shall be a] community at large member.

(5) A human rights committee shall:

(a) Maintain a record of each meeting; and

(b) Send a summary of each person-centered service plan reviewed to the:

1. Relevant participant; or

2. Participant's guardian and case manager.

(6) Each member of a human rights committee shall:

(a) Complete an orientation approved by DBHDID;

(b) Sign a confidentiality agreement; and

(c) Function in accordance with the Health Insurance Portability and Accountability

Act codified as 45 C.F.R. Parts 160, 162, and 164.

(7)(a) A human rights committee shall ensure that any restriction imposed on a participant is:

1. Temporary in nature;

2. Defined with specific criteria outlining how the restriction is to be imposed;

3. Paired with learning or training components to assist the participant in eventual reduction or elimination of the restriction;

4. Removed upon reaching clearly-defined objectives; and

5. Reviewed by the human rights committee at least once annually if the restriction remains in place for at least twelve (12) months.

(b) In an emergency where there is imminent danger or potential harm to a participant or other individuals, the participant's SCL service provider in consultation with the case manager and participant's guardian, as appropriate, may limit or restrict the participant's rights for a maximum of one (1) week.

(c) If a participant is under the care of a psychologist, counselor, psychiatrist, or behavior support specialist, a restriction plan:

1. Shall be developed with the input of the psychologist, counselor, psychiatrist, or behavior support specialist; and

2. May be implemented for up to two (2) weeks.

(d) A proposed continuation of a restriction shall be immediately reviewed and approved by three (3) members of the local human rights committee while alternative strategies are being developed.

(e) If it is decided that a rights restriction needs to be continued and addressed in the participant's person-centered service plan, the restriction shall be submitted to the local:

1. Behavior intervention committee; and

2. Human rights committee at the next regularly scheduled meeting.

Section 8. Behavior Intervention Committee. (1) A behavior intervention committee shall include at least:

(a) One (1) self-advocate, representative, or family member;

(b) **At least one (1) member**~~Two (2) members~~ from the community at large with experience in human rights issues or in the field of intellectual or developmental disabilities;

(c) One (1) professional in the medical field; and

(d) **At least one (1) of the following**~~Three (3) professionals comprised of any combination of~~:

1. A positive behavior support specialist;

2. A licensed psychologist;

3. A certified psychologist; or

4. A licensed clinical social worker.

(2)(a) A behavior intervention committee shall meet at least quarterly to review, approve, and as necessary, make written technical recommendations for each new or revised positive behavior support plan as submitted.

(b) A behavior intervention committee meeting shall have a quorum of at least **three (3)**~~five (5)~~ members including at least one (1):

1. Self-advocate, representative, or family member; and

2. Member from the community at large with experience in:
a. Human rights issues; or

b. The field of intellectual or developmental disabilities;

3. Professional in the medical field;

4. Positive behavior support specialist; and

5. Professional comprised of any combination of a:

a. Positive behavior support specialist;

b. Licensed psychologist;

c. Certified psychologist; or

d. Licensed clinical social worker].

(3) A behavior intervention committee shall ensure that:

(a) Positive behavior supports are clinically sound and based on person-centered values considering what is important for the participant~~in the context of what is important to the participant~~;

(b) Assessments and interventions utilize evidenced based and best practices for treatment of a behavioral health condition as the primary support services when supplemental behavioral interventions are needed;

(c) The use of both behavioral health treatment and positive behavioral supports shall be utilized in a collaborative manner; and

(d) A new or revised positive behavior support plan is not implemented until it is approved by:

1. The behavior intervention committee; and

2. If rights restrictions are recommended, the human rights committee.

(4) A behavior intervention committee shall:

(a) Maintain a record of each meeting; and

(b) Send a summary of each person-centered service plan reviewed to the:

1. Relevant participant; or

2. Participant's guardian and case manager.

(5) Each behavior intervention committee member shall:

(a) Complete an orientation approved by DBHDID;

(b) Sign a confidentiality agreement; and

(c) Function in accordance with the Health Insurance Portability and Accountability Act codified as 45 C.F.R. Parts 160, 162, and 164.

Section 9. Other Assurances. (1) For each participant to whom it provides services, an SCL provider shall ensure:

(a) The participant's:

1. Right to privacy, dignity, and respect; and

2. Freedom from coercion or restraint;

(b) The participant's freedom of choice as defined by the experience of independence, individual initiative, or autonomy in making life choices in all matters (small as well as large);

(c) That the participant or participant's representative chooses services, providers, and service settings including non-disability specific settings if so desired;

(d) That the participant is provided with a choice of where to live with as much independence as possible and in the most community-integrated environment; and

(e) That the service setting options are:

a. Identified and documented in the participant's person-centered service plan; and

b. Based on the participant's needs and preferences.

(2) An SCL provider shall not use an aversive technique with a participant.

(3) Any right restriction imposed by an SCL provider shall:

(a) Be annually reviewed by a human rights committee;

(b) Be subject to approval by a human rights committee; and

(c) Include a plan to restore the participant's rights.

Section 10. Participant-Directed Services (PDS). (1)(a)1. The~~following~~ services **listed in subparagraph 2. of this paragraph** may be participant directed and shall be provided in accordance with the:

a.~~1.1~~ Specifications and requirements established in Section 4 of this administrative regulation **except for the monthly summary note requirements established in Section 4 of this administrative regulation**~~;~~ the Supports for Community-Living Policy Manual; and

b.~~2.1~~ Training requirements specified in paragraph (b) of this subsection.

2. Participant-directed services may include:

a.~~1.1~~ Community access services;

b.~~2.1~~ Community guide services;

c.~~3.1~~ Day training;

d.~~4.1~~ Personal assistance services;

e.~~5.1~~ Respite;

- ~~f.[6.]~~ Shared living; or
~~g.[7.]~~ Supported employment.

(b) An individual who provides a participant-directed service shall complete the:

1. Background and related requirements established in Section 3(3)(p), (q), (r), (u), (w), (x), (y), and (z) of this administrative regulation; and

2. Following training requirements in the timeframe established by paragraph (c) of this subsection:

a.[4.] First aid and cardiopulmonary resuscitation certification by a nationally accredited entity~~[the American Red Cross or the American Heart Association];~~

b.[2.] ~~If providing supported employment services, the Kentucky Supported Employment Training Project curriculum from the Human Development Institute at the University of Kentucky within eight (8) months of the date of employment as an employment specialist~~~~[If administering or monitoring the administration of a medication, an approved DBHDD medication administration curriculum];~~

c.[3.] Individualized instruction regarding the participant receiving a support;

d.[4.] The following areas of the Kentucky College of Direct Support modules:

(i)[a.] Maltreatment of vulnerable adults and children;

(ii)[b.] Individual rights and choices;

(iii)[c.] Safety at home and in the community;

(iv)[d.] Supporting healthy lives; and

(v)[e.] Person-centered planning; and

e.[5.] Other training if required by the participant.

(c) The training required by paragraph (b) of this subsection shall be completed:

4-] within six (6) months of the date of hire for a new provider of a participant-directed service~~]; or~~

2-] Within one (1) year of the effective date of this administrative regulation for an employee providing a participant directed service on the effective date of this administrative regulation].

(2) An individual providing a participant-directed service to more than three (3) participants in the same household or different households shall complete all provider training requirements as specified in Section 3 of this administrative regulation.

(3)(a) The following services may be participant directed and shall be provided in accordance with the specifications and requirements established in~~the Supports for Community Living Manual and in~~ Section 4 of this administrative regulation and this section:

1. Environmental accessibility adaptation services;
2. Goods and services;
3. Natural supports training;
4. Transportation services; or
5. Vehicle adaptation~~services~~.

(b) A participant-directed service shall not be available to a participant who resides in a living arrangement, regardless of funding source, that is furnished to four (4) or more individuals who are unrelated to the proprietor.

(4) An immediate family member or guardian of a participant may provide a support to a participant-directed service if:

(a) Allowed to do so pursuant to Section 4 of this administrative regulation;

(b) The family member or guardian has the unique abilities necessary to meet the needs of the participant;

(c) The service is not something normally provided by the family member or guardian to the participant;

(d) Delivery of the service by the family member or guardian is cost effective;

(e) The use of the family member or guardian is age and developmentally appropriate;

(f) The use of the family member or guardian enables the participant to:

1. Learn and adapt to different people; and
2. Form new relationships;
- (g) The participant learns skills to increase independence;
- (h) Having the family member or guardian provide the service:
1. Truly reflects the participant's wishes and desires;

2. Increases the participant's quality of life in measurable ways;
3. Increases the participant's level of independence;
4. Increases the participant's choices; and
5. Increases the participant's access to the amount of service hours for needed support;~~and]~~

(i)[4-] There is no qualified provider;

1. Within thirty (30) miles from the participant's residence; or

2.~~[There is no qualified provider]~~ Who can furnish the service at the necessary times and places; and

(i) The participant, participant's immediate family member, or guardian of the participant:

1. Completes a MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider; and

2. Uploads the completed MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider into the MWMA[portal].

(5) A legally responsible individual may provide a service to a participant if:

(a) Allowed to do so pursuant to Section 4 of this administrative regulation;

(b) The legally responsible individual meets the requirements established for a family member or guardian in subsection (4) of this section;

(c) The service exceeds the range of activities that a legally responsible individual

would ordinarily provide in a household on behalf of a person:

1. Without a disability; and

2. Of the same age;~~and]~~

(d) The service is necessary to:

1. Assure the health and welfare of the participant; and

2. Avoid institutionalization; and

(e) The participant or legally responsible individual:

1. Completes a MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider; and

2. Uploads the completed MAP - 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider into the MWMA[portal].

(6) An individual serving as a representative for a participant shall not be eligible to provide a 1915(c) home and community based waiver service to the participant.

(7) A participant-directed reimbursement service shall be provided by a financial management agency with whom the department contracts that shall:

(a) Only pay for a service identified and prior authorized in a participant's person-centered service plan[POC];

(b) Ensure compliance with all Internal Revenue Service regulations, United States Department of Labor regulations, and Kentucky Department of Workers' Claims administrative regulations regarding workers' compensation;

(c) Process employer-related payroll and deposit and withhold necessary mandatory employer withholdings;

(d) Receive, disburse, and track public funds based on a participant's approved person-centered service plan[POC]; and

(e) Provide:

1. A participant and the participant's case manager with payroll reports monthly~~[semi-monthly]~~; and

2. Additional payroll information to a participant's case manager on a per request basis~~]; and~~

3- Reports to DBHDD].

(8)(A) A participant may voluntarily disenroll from a participant-directed service at any time.

(b) If a participant elects to disenroll from a participant-directed service, the participant's case manager shall assist the participant and the participant's guardian to locate a traditional 1915(c) home and community based waiver service provider of the participant's choice to provide the service.

(c) 1. Except as provided in subparagraph 2 of this paragraph, a participant-directed service shall not be terminated until a traditional service provider is ready to provide the service.

2. If a participant does not wish to continue receiving the service, the service shall be terminated.

(9)(a) ~~A~~If case management monitoring reveals that a participant's health, safety, or welfare is being jeopardized, the participant's case manager shall:

4-] develop a corrective action plan in conjunction with the participant, the participant's guardian, and any other person-centered team member if:

1. The participant does not comply with the participant's person-centered service plan;

2. The participant, a family member of the participant, an employee of the participant, the participant's guardian, or a legal representative of the participant threatens, intimidates, or consistently refuses services from an SCL provider;

3. Imminent threat of harm to the participant's health, safety, or welfare exists; or

4. The participant, a family member of the participant, an employee of the participant, the participant's guardian, or a legal representative of the participant interferes with or denies the provision of case management.

(b) The participant's case manager shall; and

2-] monitor the progress of the corrective action plan and resulting outcomes to resolve the ~~health, safety, or welfare~~ issue described in paragraph (a) of this subsection that necessitated a corrective action plan.

(c)(b) If the ~~health, safety, or welfare~~ issue referenced in paragraph (a) of this subsection is not resolved, the participant's case manager, in conjunction with the participant's person-centered team members, shall assist the participant to locate a traditional 1915(c) home and community based waiver service provider of the participant's choice to provide the service.

(d)(c) A participant-directed service shall not be terminated until a traditional service provider is ready to provide the service.

(10) Documentation of a participant-directed service shall include:

(a) A timesheet; ~~and~~

(b) A note documenting each contact, which shall include:

1. A full description of each service provided to support an outcome or outcomes in the participant's person-centered service plan [POC];

2. The date of the service;

3. The location of the service;

4. The beginning and ending time of the service;

5. The signature and title of the person providing the service; and

6. The date the entry was made in the record; and

(c) Any applicable form for each service in accordance with Section 4 of this administrative regulation.

Section 11.6-] Incident Reporting Process. (1) The following shall be the two (2) classes of incidents:

(a) An incident; or

(b) A critical incident.

(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:

(a) A minor injury;

(b) A medication error without a serious outcome; or

(c) A behavior or situation that/which is not a critical incident.

(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:

(a) Can reasonably be expected to result in harm to a participant; and

(b) Shall include:

1. Abuse, neglect, or exploitation;

2. A serious medication error;

3. Death;

4. A homicidal or suicidal ideation;

5. A missing person; or

6. Other action or event that the provider determines may result in harm to the participant.

(4)(a) If an incident occurs, the:

1. Individual who discovered or witnessed the incident shall document the details of the incident and:

4-] report it to designated agency staff for ~~the incident by making an~~ entry into the MWMA ~~portal that includes details~~

~~regarding the incident]~~ ~~Be documented on an Incident Report form]; and~~

2. Incident shall be immediately assessed for potential abuse, neglect, or exploitation.

(b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:

1. The individual who discovered or witnessed the incident shall immediately act to ensure the health, safety, or welfare of the at-risk participant;

2. The incident shall immediately be considered a critical incident;

3. The critical incident procedures established in subsection (5) of this section shall be followed; and

4. The SCL provider shall report the incident to the participant's case manager and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident;

5. The witness of the incident or the discovering agency's employee or volunteer shall record details of the incident on an Incident Report form;

6. A completed Incident Report form shall be retained on file by the SCL provider; and

7. A copy of the completed Incident Report form shall be provided to the case management agency providing case management to the participant].

(5)(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall:

4-] Immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident:

1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA ~~portal by the individual who witnessed or discovered the critical incident]; or~~

2. Does not require ~~Immediately report the critical incident to:~~

a. ~~The Department for Community Based Services, Adult Protective Services Branch or Child Protective Services Branch, as applicable;~~

b. ~~The participant's case manager;~~

c. ~~The participant's guardian; and~~

d. ~~DBHDID, via fax, if abuse, neglect, or exploitation is suspected; and~~

3. ~~Document the incident on a Critical Incident Report form.~~

(b) ~~If the critical incident is not one which requires] reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA~~ portal ~~by a designated agency staff person~~ the individual who witnessed or discovered the critical incident within eight (8) hours of discovery [to:

1. ~~The participant's case manager;~~

2. ~~The participant's guardian; and~~

3. ~~To DBHDID by fax, unless it occurs after 4:30 p.m. Eastern Standard Time or on a weekend, in which case notification shall be sent to DBHDID on the following business day].~~

(c) ~~The witness of the critical incident or the discovering agency's employee or volunteer shall record details of the critical incident on a Critical Incident Report form.~~

(d) The SCL provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and

2. Prepare a report of the investigation, which shall be recorded in the MWMA ~~portal~~ and shall include:

a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;

b. Details of the critical incident; and

c. Relevant participant information including:

(i) Diagnostic impressions and medical diagnoses based on the current version of American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™ ~~Axis I diagnosis or diagnoses];~~

(ii) ~~Axis II diagnosis or diagnoses;~~ (iii) ~~Axis III diagnosis or diagnoses;~~ (iv) A listing of recent medical concerns;

(iii) ~~(v) An analysis of causal factors; and~~

(iv) ~~(vi) Recommendations for preventing future occurrences.](e) The SCL provider shall:~~

1. Maintain the documentation of the critical incident required in this subsection at the SCL provider's site; and

2. Provide a copy of the documentation to the case management agency of the participant's case manager.]

(6)(a) Following a death of a participant receiving services from an SCL provider, the SCL provider shall enter[submit, by fax,] mortality data documentation into the MWMA[portal] [following a death of a participant receiving services from the SCL provider to DBHDID] within fourteen (14) days of the death.

(b) Mortality data documentation shall[and] include:

1. [(a)] The participant's person-centered service plan[of care] at the time of death;

2. [(b)] Any current assessment forms regarding the participant;

3. [(e)] The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription, if applicable;

4. [(d)] Progress notes regarding the participant from all service elements for the past thirty (30) days, including case management notes;

5. [(e)] The results of the participant's most recent physical exam;

6. [(f)] All incident reports, if any exist[exists], regarding the participant for the past six (6) months;

7. [(g)] Any medication error log[report, if any exists,] related to the participant for the past six (6) months;

8. [(h)] The most recent psychological evaluation of the participant;

9. [(i)] A full life history of the participant including any update from the last version of the life history;

10. [(j)] Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;

11. [(k)] Emergency medical services notes regarding the participant if available;

12. [(l)] The police report if available;

13. [(m)] A copy of:

a. [(1)] The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable;

b. [(2)] Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and

c. [(3)] The cardiopulmonary resuscitation and first aid card for any SCL provider's staff member who was present at the time of the incident that[which] resulted in the participant's death;

14. [(n)] A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and

15. [(e)] A record of any crisis training for any staff member present at the time of the incident that[which] resulted in the participant's death.

(7)(a) An SCL provider shall report a medication error by making an entry of it in the MWMA[portal][to DBHDID by the fifteenth of the month following the error by completing the Medication Error Report Form].

(b) An SCL provider shall document all medication error details on a medication error log retained on file at the SCL provider site.

Section 12.7. SCL Waiting List. (1)(a) In order to be placed on the SCL waiting list, an individual or individual's representative shall:

1. Apply for 1915(c) home and community based waiver services via the MWMA[portal]; and

2. Complete a MAP - 115 Application Intake - Participant Authorization and upload it into the MWMA[portal].

(b) If no SCL funding is available at the time that the individual applies, the department shall:

1. Place the individual on the SCL waiting list; and

2. Document and date stamp the individual's place on the SCL waiting list.

(c) The following information shall be included in the information entered by the individual into the MWMA[portal] [shall submit to DBHDID a completed MAP-620, Application for I/DD

Services, which shall include]:

1. A signature from a physician or an SCL developmental disability professional verifying diagnostic impressions and medical diagnoses[indicating medical necessity];

2. A current and valid intellectual or development disability diagnosis, including supporting documentation to validate the diagnosis and age of onset; and

3. List of[Completion of the Axis I, II, and III] diagnoses[list].

(c) [(d)] [(b)] Supporting documentation to validate a diagnosis and age of onset shall include:

1. A psychological or psycho-educational report of the assessment results of at least an individual test of intelligence resulting in an intelligence quotient (IQ) score; and

2. The results of an assessment of adaptive behavior abilities that[which] has been signed by the licensed psychologist, licensed psychological associate, certified psychologist with autonomous functioning, or certified school psychologist who prepared the report.

(d) [(e)] [(e)] The IQ test referenced in paragraph (c) [(d)] [(b)] 1. of this subsection shall:

1. Have been conducted before the age of eighteen (18) years for a diagnosis of

intellectual disability or before the age of twenty-two (22) years for a diagnosis of a developmental disability; or

2. If a record of an IQ score prior to the age of eighteen (18) years for an applicant with an intellectual disability or prior to the age of twenty-two (22) years for an applicant with a developmental disability cannot be obtained, the following shall qualify as supporting documentation to validate a diagnosis and age of onset:

a. Individual education program documentation that[which] contains an IQ score and a report or description of adaptive behavior skills;

b. The results of a psychological assessment submitted during the course of guardianship proceedings; or

c. The results of a current psychological assessment that[which] shall:

(i) Include evidence of onset prior to the age of eighteen (18) years for an intellectual disability or the age of twenty-two (22) years for a developmental disability obtained through a comprehensive developmental history; and

(ii) Provide documentation ruling out factors or conditions that[which] may contribute to diminished cognitive and adaptive functioning, including severe mental illness, chronic substance abuse, or medical conditions.

(2) DBHDID shall review an individual's[validate a MAP-620] application information to determine if the information is complete and valid.

(3)(a) An individual's order of placement on the SCL waiting list shall be determined by:

1. The chronological date of receipt of complete application information regarding the individual being entered into the MWMA[portal][a completed MAP-620] and

2. [(b)] Category of need of the individual as established in paragraphs (b) [(a)] through (d) [(e)] of this subsection.

(b) [(a)] An individual's category of need shall be the emergency category if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:

1. Abuse, neglect, or exploitation of the individual as substantiated by DCBS;

2. The death of the individual's primary caregiver and lack of an[a] alternative primary caregiver;

3. The lack of appropriate placement for the individual due to:

a. Loss of housing;

b. Loss of funding; or

c. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status; or

5. Imminent or current institutionalization.

(c) [(b)] An individual's category of need shall be the urgent category if an SCL service is needed within one (1) year; and [(i)]

1. There is a threatened loss of the individual's existing funding source for supports within the year due to the individual's age or

eligibility;

2. The individual is residing in a temporary or inappropriate placement but the individual's health and safety is assured;

3. The individual's primary caregiver has a diminished capacity due to physical or mental status and no alternative primary caregiver exists; or

4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention.

~~(d)[(e)]~~ An individual's category of need shall be classified as future planning if an SCL service is needed in more than one (1) year; and

1. The individual is currently receiving a service through another funding source that meets the individual's needs;

2. The individual is not currently receiving a service and does not currently need the service; or

3. The individual is in the custody of DCBS.

(4) A written notification of original placement on the SCL waiting list and any change due to a reconsideration shall be mailed to an individual or the individual's guardian and case management provider if identified.

(5) In determining chronological status, the original date of an individual's complete application information being entered into the MWMA[portal] [receipt of a MAP-620] shall:

(a) Be maintained; and

~~(b)[shall]~~ Not change if an individual is moved from one (1) category of need to another.

~~(6)[If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.~~

(7) Maintenance of the SCL waiting list shall occur as established in this subsection.

(a) The department shall, at a minimum, annually update the waiting list information about an individual during the birth month of that individual.

(b) The individual or individual's guardian and case management provider, if identified, shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and the individual's or individual's guardian's continued desire to pursue placement in the SCL program.

(c) If a discrepancy in diagnostic information is noted at the time of the annual update, the department may request a current diagnosis of intellectual or developmental disability signed by a physician or SCL IDP, including documentation supporting the diagnosis.

(d) The information referenced in paragraph (c) of this subsection shall be received by the department within thirty (30) days from the date of the written request in order to be considered timely.

~~(7)[(8)]~~ A reassignment of an individual's category of need shall be completed based on updated information and the validation process.

~~(8)[(9)]~~ An individual or individual's guardian may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.

~~(9)[(40)](a)~~ The criteria for removal from the SCL waiting list shall be:

1. After a documented attempt, the department is unable to locate the individual or the individual's guardian;

2. The individual is deceased;

3. A review of documentation reveals that the individual does not have an intellectual or a developmental disability diagnosis;

4. A notification of potential SCL funding is made and the individual or the individual's guardian:

a. Declines the potential funding; and

b. Does not request to be maintained on the SCL waiting list; or

5. Notification of potential SCL funding is made and the individual or the individual's guardian does not complete the enrollment process with DBHDID nor notify DBHDID of the need for an extension within sixty (60) days of the potential funding notice date.

(b)1. A notification of need for an extension for good cause

shall consist of a statement signed by the individual or the individual's guardian explaining the reason for the delay in accessing services, steps being taken to access services, and expected date to begin utilizing services.

2. Upon receipt of documentation, the department shall grant, in writing, one (1) sixty (60) day extension.

~~(10)[(44)]~~ If a notification of potential SCL funding is made and an individual or the individual's guardian declines the potential funding but requests to be maintained on the SCL waiting list, the:

(a)~~[The]~~ Individual shall be placed in the appropriate category on the SCL waiting list; and

(b)~~[The]~~ Chronological date shall remain the same.

~~(11)[(42)]~~ If an individual is removed from the SCL waiting list, DBHDID shall mail written notification to the:

(a) Individual or the individual's guardian; and

(b) Individual's case management provider.

~~(12)[(43)]~~ The removal of an individual from the SCL waiting list shall not prevent the submission of a new application at a later date.

~~(13)[(44)]~~ An individual shall be allocated potential funding based upon:

(a) Category of need;

(b) Chronological date of placement on the SCL waiting list; and

(c) Region of origin in accordance with KRS 205.6317(3) and

(4).

~~(14)[(45)]~~ To be allocated potential funding, an individual residing in an institution shall meet the following criteria in addition to the criteria established in this section:~~[f.]~~

(a) The individual's treatment professionals shall determine that an SCL placement is appropriate for the individual; and

(b) The SCL placement is not opposed by the individual or the individual's guardian.

Section 13.~~[8.]~~ Use of Electronic Signatures.~~[(4)]~~ The creation, transmission, storage, or other use of electronic signatures and documents shall comply with:

~~(1)[(a)]~~ The requirements established in KRS 369.101 to 369.120; and

~~(2)[(b)]~~ All applicable state and federal statutes and regulations.

~~[(2) An SCL service provider choosing to utilize electronic signatures shall:~~

~~(a) Develop and implement a written security policy which shall:~~

~~1. Be adhered to by all of the provider's employees, officers, agents, or contractors;~~

~~2. Stipulate which individuals have access to each electronic signature and password authorization; and~~

~~3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;~~

~~(b) Develop a consent form which shall:~~

~~1. Be completed and executed by each individual utilizing an electronic signature;~~

~~2. Attest to the signature's authenticity; and~~

~~3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and~~

~~(c) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.~~

~~(3) A participant or participant's guardian may choose to use an electronic signature and, if choosing to use an electronic signature, shall execute a consent form which shall:~~

~~(a) Be completed and executed by each individual utilizing an electronic signature;~~

~~(b) Attest to the signature's authenticity; and~~

~~(c) Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature.]~~

Section 14. Corrective Action Plans. (1)(a) If a provider receives a findings report from the department indicating that

an issue of non-compliance has been cited, the provider shall have ten (10) business days from the date on the letter that accompanied the findings report to submit a corrective action plan to the department in accordance with the instructions in the letter.

(b) If a provider is notified by the department that the corrective action plan was not approved, the provider shall submit a revised corrective action plan to the department within ten (10) business days of the date on the letter informing that the initial corrective action plan was not approved and in accordance with the instructions in the letter.

(c)1. If a provider is notified by the department that the second corrective action plan was not approved, the provider shall submit a revised corrective action plan to the department within five (5) business days from the date on the letter notifying that the second corrective action plan was not approved.

2. If the third corrective action plan submitted to the department is not approved, the department shall:

a. Not certify the provider if the provider is new;

b. Not recertify the provider if the provider is an existing provider; or

c. Terminate the provider's certification.

3. A provider shall have the right to appeal a termination in accordance with 907 KAR 1:671.

4. A citation of an issue of non-compliance shall not be appealable.

(2) The department shall have up to thirty (30) business days to review a corrective action plan.

Section 15. Provider Certification. The following shall apply regarding SCL provider certification periods:

<u>Provider Status at Recertification Date</u>	<u>New Certification Period Based on Status at Recertification Date</u>
<u>Zero citations during the prior twenty-four (24) month period</u>	<u>Two (2) Years</u>
<u>Zero citations during the most recent recertification review and have successfully implemented any approved corrective action plan for any citation issued during the recertification period if any citation was issued</u>	<u>One (1) year</u>
<u>Received citations during the most recent recertification review or has existing (open) citations without either an accepted corrective action plan or a successfully implemented corrective action plan</u>	<u>Six (6) Months</u> <u>(1) Upon approval of corrective action plan, the department shall monitor for successful implementation within thirty (30) days.</u> <u>(2) Upon successful implementation of corrective action plan, the department shall extend recertification to balance of one (1) year.</u> <u>(3) If provider fails to implement an approved corrective action plan, the department shall extend the timeframe for implementation or consider non-renewal or termination.</u> <u>(4) If provider has not submitted an approved corrective action plan after the three (3) allowed attempts (see above), the department shall consider non-renewal or termination.</u>

Section 16. Voluntary Moratorium. (1)(a) Upon the department becoming aware of a potential health, safety, or welfare violation, the department shall contact the provider's executive director to:

1. Officially notify the provider of the option for a voluntary moratorium; and

2. Discuss the health, safety, or welfare concern.

(b) The department's notice to the provider shall initially be made via phone followed up by notice via electronic means.

(c) Upon receipt of the electronic notice, the provider shall formally accept or not accept the voluntary moratorium option by:

1. Signing the document provided; and

2. Returning it to the department within two (2) business days of receipt by electronic means as directed in the electronic notice.

(2) If the provider:

(a) Agrees to a voluntary moratorium, the department shall proceed as established in 907 KAR 7:005 regarding a voluntary moratorium pending an investigation; or

(b) Does not agree to a voluntary moratorium, the department shall:

1. Terminate the provider in accordance with 907 KAR 7:005; and

2. Notify in writing the provider's executive director at the agency's primary business address of the:

a. Reason for termination; and

b. Provider's right to appeal the termination within:

(i) Two (2) business days of receipt of the written non-acceptance of the voluntary moratorium; or

(ii) Five (5) business days of the initial notice sent to the provider if the provider did not respond to the notice of the voluntary moratorium option.

(3) A notice of termination to the provider shall be sent via a delivery method that records the sending and receipt of the notice.

(4)(a) If a provider is terminated, the department shall:

1. Monitor the provider's efforts to ensure the health, safety, and welfare of participants in need of being transitioned to a new provider; and

2. Provide technical assistance to the provider during the transition.

(b) A provider shall:

1. Fully cooperate with the department's transition assistance team and any other state government agency involved;

2. Provide full access to its records and information pertaining to the participants being transitioned; and

3. Be responsible for facilitating the effective transition of participants to another provider or providers of the participant's choice prior to the termination date.

(c) A provider's termination date shall be stated in the termination notice.

(d) A participant's case manager shall help ensure that the participant's transition to a new provider or providers is completed prior to the termination date.

Section 17. [9-] Employee Policies and Requirements Apply to Subcontractors. Any policy or requirement established in this administrative regulation regarding an employee shall apply to a subcontractor.

Section 15. [18.][15.][10-] Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be

in accordance with 907 KAR 1:671.

(4) The department shall not grant an appeal regarding a category of need determination made pursuant to Section 12[7] of this administrative regulation.

Section 16.[19.]16. Participant Rather than Provider Driven. 11. Transition from 907 KAR 1:145. (1) There shall be a one (1) year transition period, based on each recipient's birth month, to enable an individual who is receiving SCL services in accordance with 907 KAR 1:145 on the effective date of this administrative regulation to transition to receiving services in accordance with this administrative regulation.

(2) During the one (1) year transition period, in the month of an SCL waiver recipient's birthday, an SCL waiver recipient who remains approved to receive SCL waiver services shall transition to receiving services in accordance with this administrative regulation rather than in accordance with 907 KAR 1:145.

(3) Funding for the SCL waiver program shall be associated with and generated through SCL waiver program participants rather than SCL waiver service providers.

Section 17. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 18.[20.]17. [12:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP – 115 Application Intake – Participant Authorization", May 2015 [The "Supports for Community Living Policy Manual", December 2012 edition];

(b) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(c) "MAP – 350 Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015 [The "Person Centered Plan of Care", November 2012 edition];

(d)[(e)] The "Supported Employment Long-Term Support Plan", December 2011 [edition]; [(d) The "Critical Incident Report", November 2012 edition];

(e) [The "Incident Report", November 2012 edition];

(f) The "Person Centered Employment Plan", March 2012 [edition];

(f) "MAP – 531 Conflict-Free Case Management Exemption", October[May] 2015; and

(g) "MAP – 532 PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as Paid Service Provider", December 2013 [The "Person Centered Employment Plan Activity Note", July 2012 edition; and

(h) The "Medication Error Report Form", August 2012 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at.

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: November 12, 2015

FILED WITH LRC: November 13, 2015 at noon

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(As Amended at ARRS, April 11, 2016)

907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver Services.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010 [rather than the program established pursuant to 907 KAR 1:145].

Section 1. Definitions. (1) ["Allocation" means the dollar amount designated to meet a participant's identified needs.

(2) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(2)[(3)] "Department" means the Department for Medicaid Services or its designee.

(3)[(4)] "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability or a condition related to an intellectual disability that:

1. Results in an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Is a direct result of, or is influenced by, the person's cognitive deficits.

(4)[(5)] "Exceptional support" means a service:

(a) Requested by a participant and the participant's team; and

(b) That due to an extraordinary circumstance related to a participant's physical health, psychiatric issue, or behavioral health issue is necessary to:

1. Be provided in excess of the upper payment limit for the service for a specified amount of time; and

2. Meet the assessed needs of the participant.

(5)[(6)] "Immediate family member" is defined by KRS 205.8451(3).

(6)[(7)] "Intellectual disability" or "ID" means:

(a) A demonstration:

1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of [approximately] seventy (70) plus or minus five (5) [or below]; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

(b) An intellectual disability that had an onset before eighteen (18) years of age.

(7)[(8)] "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

(a) A parent (biological, adoptive, or foster) ~~[of a minor child]~~ who provides care to the parent's minor child;

(b) ~~A[The]~~ guardian ~~[of a minor child]~~ who provides care to the guardian's minor child; or

(c) A spouse of a participant.

(8) [(9)] "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for individuals ~~[an individual]~~ with [an] intellectual disabilities ~~[disability]~~ as established in 907 KAR 1:022;

(b) Is authorized by the department to receive SCL waiver services; and

(c) Utilizes SCL waiver services and supports in accordance with a person-centered service plan ~~[of care]~~.

(9) [(10)] "Participant-directed service" means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs that allows recipients to receive non-medical services in ~~[a service]~~ which the individual:

(a) Assists with the design of the program;

(b) Chooses the providers of services; and

(c) Directs the delivery of services to meet his or her needs ~~[is based on the principles of self-determination and person-centered thinking]~~.

(10) [(11)] "POC" means Plan of Care.

(12) "State plan" is defined by 42 C.F.R. 430.10.

(11) [(13)] "Supports for community living services" or "SCL services" means community-based waiver services for a participant who has an intellectual or developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service provided to a participant.

(2) In order to be reimbursable by the department, a service shall be:

(a) Provided in accordance with the terms and conditions specified in 907 KAR 12:010; and

(b) Prior authorized by the department.

(3) ~~[(a)] The reimbursement provisions established in this administrative regulation shall apply after a recipient transitions to the new SCL waiver program established in 907 KAR 12:010.~~

~~(b) Prior to that transition, the services provided pursuant to 907 KAR 1:145 shall be reimbursed pursuant to 907 KAR 1:155.~~

~~(c) Funding for the SCL waiver program shall be associated with and generated through SCL waiver program participants rather than SCL waiver service providers.~~

Section 3. SCL Reimbursement and Limits. (1) Except as established in Section 4 of this administrative regulation, the department shall reimburse for an SCL service provided in accordance with 907 KAR 12:010 to a participant an amount:

(a) Equal to ~~The amount of~~ the charge billed by the provider; and

(b) Not to exceed the fixed upper payment limit for the service.

(2) The unit amounts and fixed upper payment limits listed in the following table shall apply ~~be the upper payment limits for the corresponding services listed in the following table~~:

Service	Unit of Service	Upper Payment Limit
Case Management	1 month	\$320.00
Community Access-Individual	15 minutes	\$8.00
Community Access-Group	15 minutes	\$4.00
Community Guide	15 minutes	\$8.00
Consultative, Clinical and Therapeutic	15 minutes	\$22.50
[Day Training through December 31, 2013]	15 minutes	\$2.50]
Day Training [effective January 1, 2014]	15 minutes	\$2.20
Day Training (Licensed Adult Day Health Center)	15 minutes	\$3.00

[Occupational therapy by occupational therapist]	15 minutes	\$22.17
Occupational therapy by certified occupational therapy assistant	15 minutes	\$16.63
Physical therapy by physical therapist	15 minutes	\$22.17
Physical therapy by physical therapy assistant	15 minutes	\$16.63]
Person Centered Coach	15 minutes	\$5.75
Personal Assistance	15 minutes	\$5.54
Positive Behavior Support	1 positive behavior support plan	\$665.00
Residential Level I (4 to 8 residents)	24 hours	\$130.35
Residential Level I (3 or less residents)	24 hours	\$172.46
Residential -Technology Assisted	24 hours	\$79.00
Residential Level II -12 or more hours of supervision	24 hours	\$141.69
Residential Level II-fewer than 12 hours of supervision	24 hours	\$79.00
Respite	15 minutes	\$2.77
[Speech therapy]	15 minutes	\$22.17]
Supported Employment	15 minutes	\$10.25

(3) Any combination of a] day training ~~[service]~~, a] community access ~~[service]~~, personal assistance, or any hours of paid community employment or on-site supported employment service, and a participant's hours of employment] shall not exceed sixteen (16) hours per day.

(4) Community access services shall not exceed 160 units per week.

(5) Community guide services shall not exceed 576 units per one (1) year authorized person-centered service plan ~~[POC]~~ period.

(6) Community transition shall be based on prior authorized cost not to exceed \$2,000 per approved transition.

(7) Consultative clinical and therapeutic services shall not exceed 160 units per one (1) year authorized person-centered service plan ~~[POC]~~ period.

(8) Day training ~~[and supported employment]~~ alone or in combination with any hours of paid community employment or on-site supported employment service shall not exceed 160 units per week.

(9) An environmental accessibility adaptation service shall be:

(a) Based on a prior authorized, estimated cost; and

(b) Limited to an \$8,000 lifetime maximum.

(10) Goods and services shall not exceed \$1,800 per one (1) year authorized person-centered service plan ~~[POC]~~ period.

(11) Natural support training shall be based on a prior authorized, estimated cost not to exceed \$1,000 per one (1) year authorized person-centered service plan ~~[POC]~~ period.

(12) Person centered coaching shall not exceed 1,320 units per year.

(13) ~~[Physical therapy and physical therapy by a physical therapy assistant shall in combination not exceed fifty-two (52) units per month.~~

(14) ~~Occupational therapy and occupational therapy by an occupational therapy assistant shall in combination not exceed fifty-two (52) units per month.~~

(15) Respite shall be limited to 3,320 units (830 hours) per one (1) year authorized person-centered service plan ~~[POC]~~ period.

(14) [(16)] Shared living shall be based on a prior authorized amount not to exceed \$600 per month.

(15) [(17)] Speech therapy shall not exceed fifty-two (52) units

per month:

(18)] A vehicle adaptation shall be limited to \$6,000 per five (5) years per participant.

(16)](19)] Transportation shall be reimbursed:

(a) 1. If provided as a participant directed service:

a. Based on the mileage; and

b. At two thirds of the rate established in 200 KAR 2:006, Section 8(2)(d), if provided by an individual. The rate shall be adjusted quarterly in accordance with 200 KAR 2:006, Section 8(2)(d); or

2. If provided by a public transportation service provider, at the cost per trip as documented by the receipt for the specific trip; and

(b) A maximum of \$265 per calendar month.

(17)](20)] An estimate for a supply item requested under specialized medical equipment or goods and services shall be based on the actual price to be charged to the provider, participant, or individual by a retailer or manufacturer.

(18)](21)] Specialized medical equipment or goods and services shall not include equipment and supplies covered under the Kentucky Medicaid program's state plan including:

(a) Durable medical equipment;

(b) Early and Periodic Screening, Diagnosis, and Treatment Services;

(c) Orthotics and prosthetics; or

(d) Hearing services.

(19)](22)] A participant shall not receive multiple SCL services during the same segment of time except in the case of the following collateral services that shall be allowed to overlap other SCL services:

(a) Community guide services;

(b) Consultative clinical and therapeutic services; or

(c) Person centered coaching.

Section 4. Exceptional Supports. (1) A service listed in subsection (2) or (3) of this section, regardless of delivery method, shall qualify as an exceptional support:

(a) Based on the needs of the participant for whom the exceptional support is requested;

(b) For a limited period of time not to exceed a full person-centered service plan[POC] year;

(c) If the service meets the requirements for an exceptional support in accordance with the Kentucky Exceptional Supports Protocol; and

(d) If approved by DBHDID to be an exceptional support.

(2)(a) The following shall qualify as an exceptional support and be reimbursed at a rate higher than the upper payment limit established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Community access services;

2. Day training that is not provided in an adult day health care center;

3. Personal assistance;

4. Respite;

5. Residential Level I – three (3) or fewer residents;

6. Residential Level I - four (4) to eight (8) residents; or

7. Residential Level II – twelve (12) or more hours.

(b) A rate increase for a service authorized as an exceptional support shall:

1. Be based on the actual cost of providing the service; and

2. Not exceed twice the upper payment limit established for the service in Section 3 of this administrative regulation.

(3) The following shall qualify as an exceptional support and be provided in excess of the unit limits established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

(a)]1.] Consultative clinical and therapeutic services;

(b)]2.] Person centered coaching;

(c)]3.] Personal assistance; or

(d)]4.] Respite.

(4) A service that qualifies as an exceptional support shall:

(a) Either:

1. Be authorized to be reimbursed at a rate higher than the upper payment limit established for the service in Section 3 of this

administrative regulation; or

2. Be authorized to be provided in excess of the unit limit established for the service in Section 3 of this administrative regulation; and

(b) Not be authorized to be reimbursed at both a higher rate than the upper payment limit and in excess of the service limit established for the service in Section 3 of this administrative regulation.

Section 5.~~Allocation. A participant shall be designated an allocated amount of funding to cover SCL waiver expenses for the participant's POC period based on assessment of the participant's needs performed by DBHDID.~~

Section 6.] Participant Directed Services. (1) A reimbursement rate for a participant directed service shall:

(a) Not exceed the upper payment limit established for the service in Section 3 of this administrative regulation unless the service qualifies as an exceptional support in accordance with Section 4(2)(a) of this administrative regulation; and

(b) Include:

1. All applicable local, state, and federal withholdings; and

2. Any applicable employment related administrative costs, which shall be the responsibility of the participant who is directing the service.

(2) An employee who provides a participant directed service shall not be approved to provide more than forty (40) hours of service per week unless authorized to do so by the department.

(3) A legally responsible individual or immediate family member shall not be authorized to be reimbursed for more than forty (40) hours of participant directed services per week.

Section 6.~~7.]~~ Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 12:010.

Section 7.~~8.]~~ Appeal Rights. A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 8. **Federal Approval and Federal Financial Participation. The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:**

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 9.~~9.]~~ Incorporation by Reference. (1) The "Kentucky Exceptional Supports Protocol", April 2016~~June 2015~~[November 2012 edition], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LISA LEE, Commissioner

Audrey Tayse Haynes, Secretary

APPROVED BY AGENCY: August 5, 2015

FILED WITH LRC: August 13, 2015 at 3 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental
and Intellectual Disabilities
Division for Behavioral Health
(As Amended at ARRS, April 11, 2016)

908 KAR 2:065. Community transition for individuals with serious mental illness.

RELATES TO: KRS 205.245, 216.765(2), 216B.303, 216B.305
 STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 210.450

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of Kentucky citizens and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 210.450 requires the secretary to promulgate administrative regulations governing qualifications of personnel and standards for personnel management for community programs for behavioral health or individuals with an intellectual disability. This administrative regulation establishes housing assistance guidelines and the range of community transition services to be made available to qualified individuals diagnosed with serious mental illness residing in, or at risk of residing in, personal care homes.

Section 1. Definitions. (1) "Assertive community treatment" or "ACT" means an evidence-based practice model designed to provide treatment, rehabilitation, and support services, using a multidisciplinary approach, to individuals who are diagnosed with a serious mental illness. These services shall be provided in accordance with 907 KAR 15:020, Section 3(2)(j).

(2) "Case management" means those services provided pursuant to 907 KAR Chapter 15 by a targeted case manager eligible and trained to provide those services pursuant to 908 KAR 2:260.

(3) "Community integration supplementation" or "CIS" means supplementation as set forth in 921 KAR 2:015, Section 6.

(4) "Crisis services" means services that are timely and accessible and provide supports to those individuals experiencing a behavioral health crisis as provided in 907 KAR Chapter 15. The services may include mobile crisis teams, residential crisis services, and twenty-four (24) hours per day/seven (7) days per week crisis telephone lines. The services shall be offered in the least restrictive setting possible.

(5) "Housing assistance" means assistance in gaining access to housing in the community in accordance with as further defined in Section 3(1) of this administrative regulation. Housing in the community does not include a personal care home, group home, nursing facility, boarding home, assisted living residence, supervised living setting, or any setting required to be licensed.

(6) "Peer support services" means the social and emotional support that is provided by persons having a mental health, substance use, or co-occurring disorder to others with a similar disorder, in order to bring about a desired social or personal change as provided in 907 KAR Chapter 15.

(7) "Person centered recovery plan" means a treatment and recovery plan created for adults with SMI, which is developed with the individual, the designated clinician, and any other parties designated by the individual. This plan shall build upon identified strengths, wants, and needs of each individual.

(8) "Personal care home" or "PCH" means a facility licensed as a personal care home and regulated by 902 KAR 20:031 and 902 KAR 20:036.

(9) "Provider" means a community mental health center (CMHC), its affiliate provider organizations, and any individual or organization qualified to provide behavioral health service, including behavioral health services organizations (BHSO). For the services provided under this administrative regulation, a CMHC is not limited to a geographic area.

(10) "Serious mental illness" or "SMI" means a mental illness or disorder (but not a primary diagnosis of Alzheimer's disease or

dementia), that is described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), 5th Edition, or the DSM currently in use, that impairs or impedes functioning in one (1) or more major areas of living and is unlikely to improve without treatment, services, or supports.

(11) "Supported employment services" means services that will assist individuals in preparing for, identifying, and maintaining integrated, paid, competitive employment. Services may include job coaching, transportation, assistive technology, specialized job training, person centered employment plans, job development, and individually-tailored supports.

(12) "Tenancy rights" means rights created by a landlord/tenant relationship whether through a direct lease or sublease in which the individual is identified as the tenant.

Section 2. Eligibility. An adult with a serious mental illness shall be considered eligible for housing assistance and supported employment services in addition to other services found to be medically necessary under this administrative regulation if the individual:

(1) Has expressed a desire to live in permanent housing with tenancy rights;

(2) Is eligible for Medicaid services;

(3) Is at least eighteen (18) years of age;

(4) Is living in or at risk of living in a personal care home ~~[(PCH)]~~; and

(5) Is categorically eligible for community integration supplementation ~~[(CIS)]~~ pursuant to 921 KAR 2:015, Section 6.

Section 3. Services. ~~[Services shall include:]~~ (1) Housing assistance under this administrative regulation shall:

(a) Allow choice in activities of daily living, social interaction, and access to the community; and

(b) Be offered to enable individuals to attain and maintain integrated, affordable housing that:

1. Is scattered site housing, where no more than twenty-five (25) percent of the units in any development are occupied by individuals with a disability, as defined by the Americans with Disabilities Act, actually known to the cabinet; and

2. Does not limit access to community activities ~~[,]~~;

(2) Supportive services in accordance with a person centered recovery plan developed pursuant to Section 4 of this administrative regulation may include:

(a) ACT;

(b) Case Management;

(c) Covered services as set forth in 907 KAR 3:130;

(d) Crisis services;

(e) Peer support services; or

(f) Supported employment services.

Section 4. Transition Process. An individual shall:

(1) Be evaluated by a qualified mental health provider to determine eligibility for and the clinical appropriateness of the transition;

(2) Receive information about available services under this administrative regulation including CIS eligibility pursuant to 921 KAR 2:015, Section 6;

(3) Work with a team to develop a person centered recovery plan that shall include all necessary services, objectives, plans, and interventions; and

(4) Be offered assistance in developing an advance directive for mental health treatment and wellness and crisis plans.

Section 5. Appeal Rights. An individual may appeal a department decision pursuant to this administrative regulation in accordance with 907 KAR 1:563.

WENDY MORRIS, Acting Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: March 11, 2016

FILED WITH LRC: March 14, 2016 at 3 p.m.

CONTACT PERSON: Tricia Orme, email tri-cia.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 11 – MAY 1, 2016

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

NONE

PROPOSED AMENDMENTS

GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(Amendment)

201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.

RELATES TO: KRS 311.550, 311.595(9), 311.597

STATUTORY AUTHORITY: KRS 311.565(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of licensees. KRS 311.595(9) and 311.597 authorize disciplinary action against licensees for specified offenses. This administrative regulation establishes the requirements governing the use of amphetamine and amphetamine-like anorectic controlled substances.

Section 1. Definitions. (1) "Board" is defined in KRS 311.550(1).

(2) "Body mass index" means the weight of the patient in kilograms divided by the height in meters, squared.

(3) "Schedule II amphetamine or amphetamine-like controlled substance" means:

(a) Amphetamine, its salts, optical isomers, and salts of optical isomers; or

(b) Methylphenidate.

(4) "Schedule III or IV amphetamine-like controlled substance" means a drug classified as a stimulant pursuant to:

(a) 902 KAR 55:025, Section 2; or

(b) 902 KAR 55:030 Section 1.

Section 2. Prior to prescribing, ordering, dispensing, administering, selling, supplying, or giving a Schedule II, III or IV amphetamine or amphetamine-like controlled substance, a physician shall take into account the:

(1) Drug's potential for abuse;

(2) Possibility that a drug may lead to dependence;

(3) Possibility a patient will obtain the drug for a nontherapeutic use;

(4) Possibility a patient will distribute it to others; and

(5) Potential illicit market for the drug.

Section 3. Schedule II Amphetamine or Amphetamine-like Controlled Substances. (1) The patient's record shall denote the diagnosis that justifies treatment with a Schedule II amphetamine or amphetamine-like controlled substance.

(2) A Schedule II amphetamine or amphetamine-like controlled substance shall be used to treat only:

(a) Narcolepsy;

(b) Attention deficit/hyperactive disorder;

(c) Resistant depressive disorder in combination with other antidepressant medications, or if alternative antidepressants and other therapeutic modalities are contraindicated;

(d) Drug-induced brain dysfunction; ~~or~~

(e) A diagnosis for which the clinical use of the Schedule II amphetamine or amphetamine-like controlled substance is investigational and the investigative protocol has been submitted, reviewed, and approved by the board prior to the clinical use of the drug; or

(f) An adult patient with a moderate to severe binge-eating disorder, if diagnosed according to criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders at the time of diagnosis.

(3) A Schedule II amphetamine or amphetamine-like controlled substance shall not be utilized to treat obesity.

Section 4. Treatment of Obesity with a Schedule III or IV Amphetamine-like Controlled Substance. (1) Prior to prescribing, administering, dispensing, ordering, selling, supplying, or giving a Schedule III or IV amphetamine-like controlled substance to treat obesity in a patient sixteen (16) years of age or older, the physician

shall:

(a) Establish a physician/patient relationship;

(b) Determine that the patient is obese or overweight with medical risk factors and is a proper candidate for weight reduction treatment;

(c) Determine and record the extent of prior anorectics or other controlled substances used by the patient. The prescribing physician shall obtain and review a KASPER report for the twelve (12) month period immediately preceding the patient encounter, before prescribing or dispensing controlled substances to the patient;

(d) Determine that the patient has either:

1. A body mass index of twenty-seven (27) or more, unless the body mass index is twenty-five (25) to twenty-seven (27) and the patient has a co-morbidity such as a cardiovascular disease, diabetes mellitus, dyslipidemia, hypertension, or sleep apnea;

2. Body fat greater than or equal to thirty (30) percent in females or greater than or equal to twenty-five (25) percent in males;

3. Current body weight greater than or equal to 120 percent of a well documented, long-standing, healthy weight that the patient maintained after age eighteen (18);

4. A waist-hip ratio or waist circumference at a level indicating that the individual is known to be at increased cardiovascular or co-morbidity risk because of abdominal visceral fat; or

5. Presence of a co-morbid condition or conditions aggravated by the patient's excessive adiposity; and

(e) Provide the patient with carefully prescribed diet, together with counseling on exercise, behavior modification, and other appropriate supportive and collateral therapies.

(2) During treatment for obesity, a physician shall:

(a) Maintain a physician/patient relationship throughout the treatment process;

(b) Maintain an adequate patient record in accordance with subsection (4) of this section; and

(c) Justify in the patient record the use of any Schedule III or IV amphetamine-like controlled substance beyond three (3) months. Before the physician continues the use of a substance beyond three (3) months, the physician shall obtain and review a current KASPER report.

(3) A physician shall terminate the use of Schedule III or IV amphetamine-like controlled substances if:

(a) The patient does not demonstrate weight loss and does not attempt to comply with exercise and dietary changes;

(b) The body mass index of the patient without a co-morbid condition is less than twenty-seven (27) and the percentage of body fat is normal at less than thirty (30) percent in females or less than twenty-five (25) percent in males;

(c) The body mass index of the patient with a co-morbid condition is less than twenty-five (25) and the percentage of body fat is normal at less than thirty (30) percent in females or less than twenty-five (25) percent in males;

(d) The patient has regained the weight lost, using sympathomimetics as part of a complete program and reuse of the medication does not produce loss of the weight gain to help maintain a minimum of five (5) percent weight loss; or

(e) The patient has obtained a Schedule III or IV amphetamine-like controlled substance from another physician without the prescriber's knowledge and consent.

(4) The board shall consider the following factors in reviewing the adequacy of a patient record:

(a) Medical history, including:

1. Illnesses, with particular emphasis on cardiovascular diseases;

2. Surgery;

3. Lifestyle;

4. Medications, including controlled substances;

5. Eating habits;

6. Exercise;

7. Weight gain or loss;

8. Prior efforts at weight control or reduction;

9. Prior treatment compliance;
10. Menstruation or pregnancy; and
11. Psychiatric history with particular reference to depression, paranoia, psychosis, or chemical dependency;
- (b) Social history;
- (c) Family history;
- (d) Complete physical examination;
- (e) Evaluation of laboratory tests including:
 1. CBC;
 2. Fasting blood sugar;
 3. Thyroid panel or TSH;
 4. Lipid profile;
 5. Serum potassium;
 6. Liver function test; and
 7. Renal function test;
- (f) An informed consent signed by the patient that cites the limitations and risk of anorectic treatment including potential dependency or psychiatric illness;
- (g) 1. A signed agreement that the patient has voluntarily agreed to:
 - a. Have one (1) prescribing physician for controlled substances;
 - b. Use one (1) pharmacy to fill prescriptions for controlled substances;
 - c. Not have early refills on the prescriptions for controlled substances; and
 - d. Provide full disclosure of other medications taken; or
2. Documentation that:
 - a. The physician requested the patient sign an agreement meeting the requirements of subparagraph 1 of this paragraph;
 - b. The patient declined to sign the agreement; and
 - c. Indicates the physician's clinical reasons for prescribing, or continuing to prescribe, a Schedule III or IV amphetamine-like controlled substance to the patient, in light of the patient's refusal to sign the agreement; and
- (h) A record of each office visit, including:
 1. The patient's weight;
 2. The patient's blood pressure;
 3. The patient's pulse;
 4. The presence or absence of medication side effects or complications;
 5. The doses of medications prescribed;
 6. The patient's body mass index; and
 7. Evaluation of the patient's compliance with the total treatment regimen.

Section 5. Waiver. For a legitimate medical purpose, a physician may apply in writing for a written waiver of any requirement in this administrative regulation. The board may issue a waiver with terms and conditions it deems appropriate.

Section 6. Failure to comply with the requirements of this administrative regulation shall constitute dishonorable, unethical, or unprofessional conduct by a physician which is apt to deceive, defraud, or harm the public under KRS 311.595(9) and 311.597.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: March 29, 2016

FILED WITH LRC: March 30, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2016 at 9:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed

administrative regulation. Written comments shall be accepted through May 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.

(b) The necessity of this administrative regulation: This regulation is necessary to establish restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311.565(1)(a) which authorizes the Board to promulgate regulations to prevent empiricism and regulate the practice of medicine/osteopathy in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.

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

(a) How the amendment will change this existing administrative regulation: The amendment expands the approved use of Schedule II amphetamine and amphetamine-like anorectic controlled substances to treat binge-eating disorders in accordance with new Federal Drug Administration standards so that Kentuckians can have access to this treatment.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to expand the approved use of Schedule II amphetamine and amphetamine-like anorectic controlled substances to treat binge-eating disorders in accordance with new Federal Drug Administration standards so that Kentuckians can have access to this treatment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311.565(1)(a) which authorizes the Board to promulgate regulations to prevent empiricism and regulate the practice of medicine/osteopathy in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment acts specifically to establish restrictions on use of Schedule II amphetamine and amphetamine-like anorectic controlled substances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in Kentucky who prescribe Schedule II amphetamine and amphetamine-like anorectic controlled substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians licensed in Kentucky who prescribe Schedule II amphetamine and amphetamine-like anorectic controlled substances will not have to take any action, but they will be able to use Schedule II amphetamine and amphetamine-like anorectic controlled substances to treat binge-eating disorders with some patients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): There is no cost associated with the requirements of this administrative regulation known to the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to use Schedule II amphetamine and amphetamine-like anorectic controlled substances to treat binge-eating disorders with some patients.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Medical Licensure (Amendment)

201 KAR 9:025. Interpretation and application of KRS 311.571(10)(8).

RELATES TO: KRS 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the administrative regulation of the practice of medicine and

osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this administrative regulation is to establish policy and guidelines regarding the application of KRS 311.571(10)(8).

Section 1. Definitions. (1)[As used in KRS 311.571(8);] "Extraordinary circumstances" means[shall be interpreted by the board as special circumstances of licensure beyond the general application of a basically qualified physician wishing to practice in Kentucky. In order to grant licensure under this statute the board must find] that either one (1) of the Commonwealth's medical schools or an area or group of patients will be specially benefited by the board's granting of licensure to an applicant who has completed qualified education and training comparable in nature to the requirements of KRS 311.571(1) or (2) and is qualified to competently and safely practice medicine or osteopathy within the Commonwealth of Kentucky.[Extraordinary circumstances will not be found on the basis of an area's physician shortage or the desire of any person or persons that the physician be licensed.]

(2)[As used in KRS 311.571(8);] "Exceptional education, training and practice credentials" means[shall be interpreted by the board as] credentials of a character demonstrably comparable to or far beyond those generally presented by applicants seeking licensure, including, at a minimum, verifiable proof that[. In order to grant licensure under this statute, the board must find that] the applicant is a graduate of a medical or osteopathic school of proven quality or[and/or] has received advanced degrees from reputable graduate study programs in medicine, has completed at least three (3) years of postgraduate training recognized by the board to be of high quality, and has proven his or her abilities through verifiable practice experience.

Section 2. Application. (1) In extraordinary circumstances, the board may, in its discretion, grant licensure to an applicant upon proof that the applicant possesses exceptional education, training, and practice credentials and that their practice would be beneficial to the public welfare.

(2) If an applicant requests that[may not apply directly pursuant to KRS 311.571(8)but may request] the executive director[to] present his or her application for the board's review under KRS 311.571(10)(8); the executive director shall have the discretion, based upon his or her evaluation of the applicant's credentials and the circumstances involved, to refuse to present the application to the board[pursuant to this statute]. The executive director shall[may] require the applicant to provide written[and oral] documentation and other verifiable evidence to aid his or her evaluation.

Section 3. Limitation Upon Licensure if Granted. The board may, in its discretion, grant regular or limited licensure or[pursuant to KRS 311.571(8) and] may place restrictions upon the licensure of anyone who is granted licensure pursuant to KRS 311.571(10). The board shall only grant licensure[this statute. It is the policy of the board to grant licensure under this statute only] to physicians of whose competency and fitness the board is assured, and, in any circumstance, to only grant licensure sufficient to satisfy the extraordinary circumstances that are present.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: March 29, 2016

FILED WITH LRC: March 30, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2016 at 9:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the circumstances in which the board may waive education and training requirements in order to grant licensure to an otherwise qualified applicant.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the circumstances in which the board may waive education and training requirements in order to grant licensure to an otherwise qualified applicant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311.565(1)(a) which authorizes the Board to promulgate regulations to prevent empiricism and regulate the practice of medicine/osteopathy in the Commonwealth of Kentucky and to KRS 311.571(10) which authorizes the Board to waive requirements for licensure in extraordinary circumstances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the circumstances in which the board may waive education and training requirements in order to grant licensure to an otherwise qualified applicant.

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

(a) How the amendment will change this existing administrative regulation: The amendment cites to the correct statutory subsection, KRS 311.571(10), and defines "extraordinary circumstances" consistent with today's available and variable medical education and training experiences.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to cite to the correct statutory subsection, KRS 311.571(10), and define "extraordinary circumstances" consistent with today's available and variable medical education and training experiences.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311.565(1)(a) which authorizes the Board to promulgate regulations to prevent empiricism and regulate the practice of medicine/osteopathy in the Commonwealth of Kentucky and to KRS 311.571(10) which authorizes the Board to waive requirements for licensure in extraordinary circumstances.

(d) How the amendment will assist in the effective administration of the statutes: This amendment acts specifically to establish the circumstances in which the board may waive education and training requirements in order to grant licensure to an otherwise qualified applicant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect applicants who seek a license to practice medicine or osteopathy in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants who seek a license to practice medicine or osteopathy in the Commonwealth of Kentucky but do not qualify for licensure under KRS 311.571(1) or (2), must

possess credentials of a character demonstrably comparable to or far beyond those generally presented by applicants seeking licensure, including that the applicant is a graduate of a medical or osteopathic school of proven quality or has received advanced degrees from reputable graduate study programs in medicine, has completed at least three (3) years of postgraduate training recognized by the board to be of high quality and has proven his or her abilities through verifiable practice experience.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Other than the existent application fee, there is no cost associated with the requirements of this administrative regulation known to the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants who seek a license to practice medicine or osteopathy in the Commonwealth of Kentucky but do not qualify for licensure under KRS 311.571(1) or (2), may be granted licensure in Kentucky.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a) and KRS 311.571(10)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(Amendment)**

201 KAR 9:081. Disciplinary proceedings.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 218A.205(3)(c), (d), (e), (5), 311.565(1)(a), (i), 311.595, 311.597, 311.601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) and (i) authorize the board to promulgate administrative regulations to regulate the conduct of licensees and to promote the efficient and fair conduct of disciplinary proceedings. KRS 311.595 and 311.597 authorize disciplinary action against licensees for specified offenses. KRS 218A.205(3)(c), (d), and (e) require the board to promulgate an administrative regulation establishing procedures for disciplinary action against a licensee, including the enforcement of licensure standards to restrict the practice of a licensee or an applicant engaged in improper conduct. KRS 218A.205(5) authorizes the board to allow by administrative regulation an anonymous complaint or grievance. KRS 311.601 authorizes the board to adopt administrative regulations to effectuate and implement the provisions of 311.550 to 311.620. This administrative regulation establishes the procedures to be followed in handling formal and informal disciplinary proceedings before the board, to conduct the proceedings with due regard for the rights and privileges of all affected parties.

Section 1. Definitions. (1) "Act" means the Kentucky Medical and Osteopathic Practice Act, KRS 311.550 to 311.620.

(2) "Board" is defined by KRS 311.550(1).

(3) "Charge" is defined by KRS 311.550(14).

(4) "Complaint" is defined by KRS 311.550(15).

(5) "Executive director" is defined by KRS 311.550(4).

(6) "General counsel" is defined by KRS 311.550(5).

(7) "Grievance" is defined by KRS 311.550(13).

(8) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(9) "Relating to a controlled substance" means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the improper, inappropriate, or illegal use, possession, transfer, prescribing, or dispensing of a controlled substance.

(10) "Relating to prescribing or dispensing a controlled substance" means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.

(11) "Show cause order" means an order issued pursuant to KRS 311.572.

Section 2. Reception of Grievances; Investigations. (1)(a) A grievance may be submitted by any individual, organization, or entity.

(b)1. The board shall provide a copy of the Information on Filing a Grievance, the Consumer's Guide to the KBML, the Grievance Form, and the Waiver of Privilege, Agreement to Release Records to a party who wants to register a grievance against a physician.

2. Each grievance shall be filed on the Grievance Form; and

a. Include the name and address of the party filing the grievance; or

b. Be filed anonymously, subject to paragraph (d) of this subsection.

(c) A board member or employee may initiate a grievance by providing a written memorandum to the executive director.

(d) If the board receives an anonymous grievance, an

investigation shall be conducted if the grievance is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the grievance is meritorious.

(2)(a) The board shall initiate each investigation pertaining to prescribing or dispensing of a controlled substance within seventy-two (72) hours of the date of receipt of the grievance.

(b) Except as provided by subsection (1)(d) of this section, each grievance shall be investigated as necessary and as promptly as possible, and presented to the inquiry panel for review.

(c) An investigation pertaining to prescribing or dispensing of a controlled substance shall be presented to the inquiry panel within 120 days of the date of receipt of the grievance unless the circumstances of a particular grievance make it impossible to timely present the grievance to the inquiry panel.

(d)1. The executive director may hold an investigation pertaining to prescribing or dispensing of a controlled substance in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.

2. If an investigation pertaining to prescribing or dispensing of a controlled substance is not presented to the inquiry panel within 120 days of the date of receipt of the grievance, the investigative report shall plainly state the circumstances of that particular grievance or investigation that made timely presentation to the inquiry panel impossible.

(e) The inquiry panel or executive director shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations as provided by KRS 311.591 and 311.605.

(f) The inquiry panel shall further be empowered to request the attendance of any person at any meeting of the inquiry panel in regard to the investigation of any grievance or consideration of any disciplinary matter.

(g) The failure, without good cause, of any physician licensed to practice medicine or osteopathy by the board to appear before the inquiry panel when requested shall be considered unprofessional conduct in violation of KRS 311.595(9).

(3) The inquiry panel shall be empowered to request compliance with the reporting requirements of KRS 311.605 or 311.606 and may pursue an investigation, on its own initiative, in regard to an act of noncompliance or any other perceived violation of the Act.

Section 3. Reports and Recommendations; Petitions. (1) If the inquiry panel determines that a grievance warrants the issuance of a complaint against a physician, the inquiry panel shall cause a complaint to be prepared.

(2) If the panel chair determines that a grievance warrants the issuance of a complaint against a physician and circumstances do not allow the timely presentation of the grievance to the inquiry panel, the panel chair shall cause a complaint to be prepared.

(3) If the inquiry panel determines that a disciplinary matter warrants the issuance of a show cause order against a physician, the inquiry panel shall cause a proposed order to be prepared.

(4) The board may issue a show cause order against a physician in regard to any application for licensure, obtaining, retaining, or reobtaining licensure.

Section 4. Complaints. The complaint issued by an inquiry panel shall:

(1) Be signed and dated;

(2) Be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named physician and designated with an appropriate case number; and

(3) Set forth:

(a) The board's jurisdiction in regard to the subject matter of the complaint; and

(b) In numerical paragraphs, sufficient information to apprise the named physician of the general nature of the charges.

Section 5. Show Cause Orders. The show cause order shall:

(1) Be signed and dated by an officer of the board;
 (2) Be styled in regard to the license, application for license, or application for renewal, registration, or reregistration of a license to practice in the Commonwealth of Kentucky held by or submitted by the named physician, appropriately, and designated with an appropriate order number;

(3) Set forth:

(a) The board's jurisdiction in regard to the subject matter of the order; and

(b) In numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named physician's license; and

(4) Direct the named physician to show cause why disciplinary action should not be taken in view of the matters expressed in the order.

Section 6. Orders to Respond. Upon issuance of a complaint, the inquiry panel shall notify the charged physician that:

(1) A response is due within thirty (30) days after receiving notice of the complaint; and

(2) Failure to respond within that time period may be taken by the board as an admission of the charges.

Section 7. Notice and Service of Process. Each notice shall be issued as required by KRS 13B.050.

Section 8. Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing officer in accordance with KRS 13B.030 and 13B.040.

(2) Appointment of the prosecuting attorney. The board's general counsel or assistant general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding, unless the board appoints a special prosecuting attorney. The prosecuting attorney shall not participate in any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.

(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.

(4) The provisions of KRS Chapter 13B shall govern the conduct of each proceeding.

Section 9. Mandatory Reporting; Mandatory Disciplinary Sanctions; Emergency Action; Expedited Proceedings. (1)(a) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon the applicant's initial application any criminal conviction sustained or any plea of guilt, plea of nolo contendere, or Alford plea the applicant has entered to criminal charges in any state, regardless of adjudication.

(b) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon the applicant's initial application any disciplinary action taken or sanction imposed upon the applicant's license to practice medicine or osteopathy in any state, to include surrendering or placing the applicant's license in an inactive or retirement status to resolve a pending investigation by the licensing authority.

(c) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon the applicant's initial application if the applicant is currently under investigation by the licensing authority of any other state for possible violations of the licensing or regulatory statutes of that state.

(d) Every person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board any criminal conviction or plea of guilt, nolo contendere, or Alford plea to any criminal charges, regardless of adjudication, within ten (10) days of the entry of judgment of conviction or the entry of the plea, entered into in any state. As part of this reporting, the licensee

shall provide a copy of the judgment of conviction or plea documents.

(e) Every person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board within ten (10) days of receipt, notice of any disciplinary action taken or sanction imposed upon the person's license in any state, including surrendering a license or placing a license into inactive or retired status to resolve a pending licensing investigation. As part of this reporting requirement, the licensee shall provide a copy of the order issued by or entered into with the other licensing board.

(f)1. Failure to report a criminal conviction or plea, or action taken by another licensing board, as required of an applicant by paragraphs (a) through (c) of this subsection, shall constitute a violation of KRS 311.595(9) and (12).

2. Upon a finding by the board that the applicant committed a violation, the appropriate panel:

a. Shall impose a fine of up to \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this section; and

b. May impose any other additional sanction authorized by KRS 311.595, including denial of the application or revocation of the license previously issued based upon the incomplete information.

(g)1. Failure to report a criminal conviction or plea, or action taken by another licensing board as required of a licensee by paragraphs (d) and (e) of this subsection, shall constitute a violation of KRS 311.595(9) and (12).

2. Upon a finding by the board that the licensee committed a violation, the appropriate panel:

a. Shall impose a fine of up to \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this section; and

b. May impose any other additional sanction authorized by KRS 311.595 based upon all of the information available to the panel when it takes action.

(2)(a) If an initial applicant reports being the subject of a pending criminal investigation or of a pending investigation by a state licensing authority, the board shall defer any action upon that initial application until it has received official notice that the criminal or state licensing investigation has been completed and official notice of what action was taken as a result of the investigation.

(b)1. If an initial applicant has been convicted of a felony offense or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to any felony charge relating to a controlled substance, regardless of adjudication, in any state, the board shall exercise its normal discretion to grant or deny the application based upon all available facts.

2. Except as provided in paragraph 3 of this paragraph, if the board decides to grant a license to the initial applicant, the board:

a. Shall, at a minimum, permanently ban the applicant from prescribing or dispensing controlled substances as an express condition of granting the license; and

b. May impose any other conditions in addition to that permanent ban as express conditions of granting the license.

3. If an initial applicant has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to any Class D felony offense relating to a controlled substance, and successfully participated in and completed a diversion program and had the case dismissed and the record of that offense expunged, then the board may, in its discretion, grant a license to the initial applicant contingent upon the applicant entering into an agreed order with terms and conditions deemed appropriate by the board as necessary for carrying out a minimum five (5) year period of probation.

(c) 1. Except as provided in subparagraph 2. of this paragraph, if a licensee has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to any felony offense relating to a controlled substance, regardless of adjudication in any state, the appropriate panel:

a.[4-] Shall, at a minimum, permanently ban the licensee from prescribing or dispensing controlled substances as a disciplinary sanction; and

b.[2-] In addition to the permanent ban, may take any other disciplinary action authorized by KRS 311.595, including revocation, against the licensee.

2. If a licensee has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to any Class D felony offense relating to a controlled substance, and successfully participated in and completed a diversion program and had the case dismissed and the record of that offense expunged, then the appropriate panel may, in its discretion, reinstate the licensee's prescribing or dispensing privileges contingent upon the licensee entering into an agreed order with terms and conditions deemed appropriate by the panel as necessary for carrying out a minimum five (5) year period of probation.

(3)(a)1. If an initial applicant has been convicted of a misdemeanor offense relating to prescribing or dispensing a controlled substance or entered a plea of guilt, an Alford plea, or plea of nolo contendere to a misdemeanor charge relating to prescribing or dispensing a controlled substance, regardless of adjudication, in any state, the board shall exercise its normal discretion to grant or deny the application based upon all available information.

2. If the board decides to grant the application, the board:

a. Shall, at a minimum, ban the applicant from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as an express condition of granting the license; and

b. May impose any other conditions in addition to that ban as express conditions of granting the license.

(b) If a licensee has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to a misdemeanor offense relating to prescribing or dispensing a controlled substance, regardless of adjudication in any state, the appropriate panel:

1. Shall, at a minimum, ban the licensee from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as a disciplinary sanction; and

2. In addition to the two (2) to five (5) year ban, may take any other disciplinary action authorized by KRS 311.595, including revocation, against the licensee.

(4)(a)1. If an initial applicant has surrendered the applicant's professional license or placed that license into an inactive or retired status to resolve a pending licensing investigation, the board shall not grant a license to that initial applicant, unless the licensing authority of that state has subsequently reissued or reinstated the license.

2. If the licensing authority of the state has subsequently reissued or reinstated the license, the board shall exercise its normal discretion in determining whether to grant or deny the application based upon the available facts.

(b) If an initial applicant has had a disciplinary action taken against or sanction imposed upon the applicant's license to practice medicine or osteopathy in any state, the board:

1.a. Shall, at a minimum, impose the same substantive sanctions imposed by the other state as an express condition of granting the license; and

b. May impose additional sanctions as an express condition of granting the license; or

2. Shall deny the application based upon the facts available at the time.

(c) If a licensee has had disciplinary action taken against or sanctions imposed upon the licensee's license to practice medicine or osteopathy in any state, the appropriate panel:

1. Shall, at a minimum, impose the same substantive sanctions, up to and including permanent revocation or surrender, as a disciplinary sanction against the licensee's Kentucky license; and

2. In addition to those minimum sanctions, may take any other disciplinary action authorized by KRS 311.595, including revocation, against the licensee.

(5)(a) Failure to report a criminal conviction, a plea, or a disciplinary sanction by another licensing board as required by this section shall constitute a violation of law which constitutes an immediate danger to the public health, safety, or welfare, for purposes of KRS 311.592 and 13B.125.

(b) If the board or one (1) of its panels learns that a licensee has suffered a qualifying criminal conviction or disciplinary sanction and has failed to report it as required by this section, the panel or

its chair may immediately issue an emergency order appropriately suspending or restricting the licensee in accordance with this section.

(c) If an emergency order is issued and an emergency hearing is conducted pursuant to KRS 13B.125(3), the hearing officer shall not modify or amend the scope of the emergency order if there is substantial evidence to support the finding that the licensee failed to report a qualifying criminal conviction or disciplinary sanction as required by this section.

(6)(a) If the only violation charged in a complaint against the licensee is a criminal conviction or disciplinary sanction described in this section, and the conviction or disciplinary action may be proved by accompanying official certification, the board shall take appropriate steps to expedite the resolution of that complaint.

(b) Following receipt of the licensee's response to the complaint, board counsel shall promptly file a motion for summary disposition on the ground that no genuine issues of material fact are in dispute, pursuant to KRS 13B.090(2).

(c) The licensee shall file a response to the motion for summary disposition within twenty (20) days of receipt of the motion.[:]

1. The licensee shall not re-litigate either the criminal conviction or disciplinary sanction.[:and]

2. The licensee may offer as defense that the certification of the document is fraudulent.

~~(d)1. [If the licensee has admitted the occurrence of the criminal conviction or disciplinary action in the response, an additional response shall not be given to the motion for summary disposition.~~

~~2. If the licensee has denied the occurrence of the criminal conviction or disciplinary sanction, and alleges that the certification is fraudulent, the licensee may file a response to the motion for summary disposition within twenty (20) days of receipt of the motion.~~

~~(e)1. Once the assigned hearing officer determines that a response was either not permitted or not filed within the allotted time or the hearing officer has received the written response within the time allotted,] The hearing officer shall issue a ruling upon the motion as soon as possible but no later than thirty (30) days after the motion is submitted for decision.~~

2. If the hearing officer issues a recommended order, the recommended order shall be presented to the board's hearing panel at its next meeting for resolution and imposition of the sanction required by this section.

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

(a) "Information on Filing a Grievance", January 2013;

(b) "Consumer's Guide to the KBML", January 2013;

(c) "Grievance Form", January 2013; and

(d) "Waiver of Privilege, Agreement to Release Records", January 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: March 29, 2016

FILED WITH LRC: March 30, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on May 24, 2016 at 9:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed

administrative regulation. Written comments shall be accepted through May 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.

(b) The necessity of this administrative regulation: It was necessary to promulgate this regulation to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements

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

(a) How the amendment will change this existing administrative regulation: The amendments allow the Board discretion to impose fines within a range of \$1-\$5,000 for failure to report; allow physicians who have successfully completed diversion programs for Class D felonies related to controlled substances and had their criminal records expunged a pathway back into unrestricted practice under a five-year period of probation; and allows physicians to effectively preserve issues for appellate review in the record.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the regulation in order to allow the Board discretion to impose fines within a range of up to \$5,000 for failure to report; allow physicians who have successfully completed diversion programs for Class D felonies related to controlled substances and had their criminal records expunged a pathway back into unrestricted practice under a five-year period of probation; and allow physicians to effectively preserve issues for appellate review in the record

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes in that it still imposes fines for failure to report, still imposes bans on prescribing for felony convictions/pleas related to controlled substances, and still allows physicians to file a timely response to a motion for summary judgment.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the effective administration of the statutes and the Board's functions by still imposing fines for failure to report, imposing bans on prescribing for felony convictions/pleas related to controlled substances, and allowing physicians to file a timely response to a motion for summary judgment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation,

if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians will be required to report disciplinary sanctions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Physicians are not expected to incur any additional costs by compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Board will be better able to assist in curbing the prescription drug epidemic and preserving medical resources in the Commonwealth of Kentucky.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a) and KRS 218A.205

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(Amendment)**

201 KAR 9:240. Emergency orders and hearings; appeals and other proceedings.

RELATES TO: KRS 218A.205, 311.565(1)(i), 311.592

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(i) authorizes the board to promulgate administrative regulations to promote the efficient and fair conduct of disciplinary proceedings. This administrative regulation establishes the procedure to be followed in handling emergency proceedings before the board.

Section 1. Authority to Issue Emergency Order; Timing. (1) An inquiry panel or the panel's chair, acting on behalf of the inquiry panel, may issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky in accordance with KRS 311.592 and 13B.125.

(2) An inquiry panel shall make this determination following a completed investigation pursuant to KRS 311.591(3) at a regularly scheduled meeting of the inquiry panel.

(3)(a) An inquiry panel's chair may act on behalf of the inquiry panel and issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky if the panel chair determines that a basis for an emergency order as established in subsection (1) of this section exists and the circumstances of the specific case warrant emergency action prior to the next regularly scheduled meeting of the inquiry panel.

(b) If an emergency hearing is scheduled prior to the next regularly scheduled meeting of the inquiry panel, the panel chair may act on behalf of the inquiry panel and issue the complaint required to support the continuation of the emergency order.

(c) If the panel chair acts on behalf of the inquiry panel pursuant to paragraph (a) or (b) of this subsection, the panel chair shall report any action to the inquiry panel at its next regularly scheduled meeting.

Section 2. Findings of Fact and Conclusions of Law. (1) The inquiry panel, or the panel chair acting on the panel's behalf, may consider any evidence or information in making a charging decision pursuant to KRS 311.591(3) or in making the determination to issue an emergency order pursuant to Section 1 of this administrative regulation. The evidence or information may include:

(a) An application for licensing or renewal filed by the physician with any licensing board;

(b) Any prior or current order issued by the board or one (1) of its panels affecting the physician's Kentucky license;

(c) Any prior or current order issued by another state's licensing authority affecting the physician's license in that state;

(d) The records of any criminal proceeding involving the physician;

(e) A report by or record of any governmental agency, including a law enforcement agency report, a Kentucky All Schedule Prescription Electronic Reporting (KASPER) report or summary, or a reference to a governmental agency or KASPER report;

(f) Patient records maintained by the physician, or summaries of or references to the contents of those records;

(g) Records or reports issued or maintained by a pharmacy;

(h) Records or reports issued or maintained by a hospital, including a peer review report relating to the physician or medical records of a patient treated by the physician in the hospital;

(i) Records or reports issued or maintained by any business;

(j) An investigative report prepared by a board investigator, including any summary of a verbal or written statement by a witness or an evidentiary document reviewed by an investigator;

(k) An investigative report prepared by a board investigator

involving another investigation conducted by the board relating to the physician;

(l) An oral or written statement by the physician, or the physician's agent, relating to the investigation;

(m) A report of a clinical assessment relating to the physician, including a report by the Center for Personalized Education for Physicians (CPEP), Denver, Colorado;

(n) A physical, mental, or substance abuse evaluation or assessment of the physician;

(o) A written report of a patient record review conducted by a consultant under contract with the board to perform reviews; or

(p) A written report of a patient record review conducted by a licensed physician performing a review on behalf of the physician.

(2) The evidence or information considered by the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall constitute the board's record of proceedings relating to the issuance of an emergency order of restriction or suspension.

(3) If the inquiry panel or the panel chair, acting on behalf of the inquiry panel, issues an emergency order of restriction or suspension against a physician's license, the emergency order shall be a written order and shall include findings of fact and conclusions of law, supported by the board's record of proceedings, upon which the agency bases the emergency order.

(4) Any emergency order shall be served upon the affected physician in the manner specified in KRS 13B.050(2). The emergency order shall become effective immediately upon receipt by the affected physician or the physician's representative.

Section 3. Authority to Issue Emergency Order of Suspension Upon Felony Indictment. (1) If a licensee is indicted in any state for a crime classified as a felony in that state and the conduct charged relates to a controlled substance, that licensee's practice shall be considered an immediate danger to the public health, safety, or welfare pursuant to KRS 311.592 and 13B.125.

(2) If the board receives verifiable information that a licensee has been indicted in any state for a crime classified as a felony in the state of indictment and the conduct charged relates to a controlled substance, the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall immediately issue an emergency order suspending or restricting that licensee's Kentucky license to prohibit the licensee from prescribing, dispensing, or otherwise utilizing a controlled substance in Kentucky, until further order following the final resolution of the criminal charges in the indictment.

(3) The emergency order of suspension shall remain in effect until:

(a) The criminal charges contained in the indictment are finally resolved; and

(b) The board's hearing panel has finally resolved the matter after receipt of the court documents finally resolving the criminal charges in the indictment.

~~[(4) If the affected physician requests an emergency hearing, the hearing officer shall affirm the emergency order of suspension if presented with a certified copy of the indictment.]~~

Section 4. Request for and Timing of Emergency Hearing; Waiver. (1) A physician required to comply with an emergency order may request an emergency hearing at any time between the effective date of the emergency order and the effective date of an order finally resolving the underlying complaint.

(2)(a) A request for an emergency hearing shall be presented to the board in writing, but may be submitted by facsimile or email.

(b) Upon receipt of a written request for an emergency hearing, the board shall schedule the emergency hearing on one (1) of the ten (10) working days following the date of receipt of the written request. The day on which the written request is received by the board shall not be considered one (1) of the ten (10) working days.

(c) A written request shall be considered received on a particular work day if it is received by the board during the board's scheduled operating hours for that day. If the board receives a request for an emergency hearing by facsimile or email received after scheduled operating hours, the request shall be considered to have been received the next scheduled work day of the board.

(3)(a) A written request for an emergency hearing shall be considered a certification by the affected physician and the physician's counsel, if any, that the physician is available to participate in an emergency hearing on any of the ten (10) working days following the date of the board's receipt of the written request for an emergency hearing.

(b) The refusal of the physician to accept a hearing date on a date specified by the board within the ten (10) working days shall constitute a waiver of the requirement of KRS 13B.125(3) to conduct the emergency hearing within ten (10) working days of receipt of a request.

(c) If there is a waiver of the ten (10) working day requirement, the hearing officer and parties shall schedule the emergency hearing to commence at the next date available to the hearing officer and both parties.

(4)(a) Unless there is a waiver of the requirement, the board shall commence the emergency hearing within ten (10) working days of receipt of the written request for an emergency hearing.

(b) If the parties are unable to conclude the emergency hearing on the initial date assigned, the emergency hearing shall resume on the next date available to the hearing officer and both parties and shall continue on dates available to the hearing officer and both parties until concluded.

Section 5. Scope and Conduct of Emergency Hearing; Hearing Officer's Role. (1) The emergency hearing shall be conducted by the inquiry panel, its panel chair, acting on behalf of the inquiry panel, or by a qualified hearing officer appointed by the board's executive director.

(2) The singular function of the party conducting the emergency hearing shall be to determine whether the findings of fact providing the bases for the emergency order are supported by substantial evidence and, if so, constitute one (1) or more violations of KRS 311.595.

(3) Given the ten (10) working day requirement of KRS 13B.125(3) and the unique nature of the hearing, it shall not be practicable pursuant to KRS 13B.125(3) to conduct the emergency hearing in conformity with the provisions of KRS 13B.050; 13B.060; 13B.070; 13B.080(2), 13B.080(3){as it relates to discovery orders} or (4){to the extent it conflicts with this administrative regulation}; or KRS 13B.090(1){to the extent it prohibits consideration of hearsay evidence}, (2) {other than the requirement that all testimony shall be made under oath or affirmation}, (3) or (7); KRS 13B.110 or 13B.120.

(4) There shall not be a motion practice, prior to or as part of the emergency hearing, relating to the legality or validity of the emergency order under consideration or relating to evidentiary issues.

(5)(a) The standards of acceptable and prevailing practice within the Commonwealth may be determined by an expert review of a physician's patient records by a qualified expert.

(b) An expert review may be conducted on the board's behalf by a licensed physician who has entered into a contractual relationship with the board to serve as a board consultant. The contractual relationship shall indicate that the board has determined that the physician is legally qualified to provide an expert opinion regarding the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky and whether the affected physician has violated those standards or committed other professional violations of the board's statutes.

(c) The party conducting the emergency hearing shall not conduct a separate hearing or inquiry into the qualifications of the contractual reviewer who performed the record review on behalf of the board or of a licensed physician who performed a record review on behalf of the affected physician.

(6) The emergency hearing shall be conducted as required by KRS Chapter 13B and this subsection.

(a) The board shall produce and the hearing officer shall accept the record of the proceedings relating to the issuance of an emergency order under consideration.

(b)1. The board shall not be required to produce any further evidence to support the emergency order.

2. The board may call the affected physician to testify, as if

under cross-examination, regarding the factual accuracy of evidence or information cited in the record of proceedings relating to the issuance of the emergency order.

(c) The affected physician may testify, produce factual evidence, produce hearsay evidence through documents, or call lay witnesses to the extent that the evidence specifically tends to demonstrate that a factual statement relied upon by the board's contractual reviewer or by the inquiry panel or panel chair, acting on behalf of the inquiry panel, is factually incorrect or false.

(d) The affected physician may only call the board's contractual reviewer for the purpose of cross-examination if the hearing officer determines on the record that the physician's evidence has established that one (1) or more factual statements relied upon by the contractual reviewer in the expert report is demonstrably false or incorrect. If the hearing officer makes that determination, the affected party may call the board's contractual reviewer for the purpose of cross-examination under the following conditions:

1. The cross-examination of the board's contractual reviewer is scheduled at the earliest date available to the reviewer and the parties that does not disrupt the normal operation of the reviewer's professional practice and does not disrupt the care of the reviewer's normal patients;

2. The cross-examination of the board's contractual reviewer is limited to factual statements and opinions rendered in the reviewer's report, and the effect upon an opinion of a determination that one (1) or more underlying factual statements relied upon by the reviewer is false or factually incorrect; and

3. Upon completion of the cross-examination, the board and the hearing officer may ask questions of the contractual reviewer relevant to the cross-examination.

(7)(a) Within five (5) working days of completion of the emergency hearing, the hearing officer shall issue a written decision in which the hearing officer shall:

1. Affirm the emergency order if there is substantial evidence of a violation of law and the inquiry panel has determined that a violation constitutes an immediate danger to the public health, safety, or welfare. If there is substantial evidence of a violation of law, the hearing officer shall not substitute his or her judgment as to the level of public protection necessary for the emergency order;

2. Revoke the emergency order if there is no substantial evidence of a violation of law. The findings of fact shall be found to be supported by substantial evidence if there is a factual basis for the findings, even if there is a conflict in the evidence or information considered by the inquiry panel or panel chair, acting on behalf of the inquiry panel. A finding that there is no substantial evidence to support the findings of fact shall require a finding that there is a complete absence of factual basis for the findings; or

3. Modify the emergency order if the emergency order relied upon multiple violations of law and the hearing officer has determined that there is no substantial evidence to support one (1) or more of those violations. Upon making that finding, the hearing officer may consider each remaining violation for which there is substantial evidence and may modify the level of protection if the modified protection fully protects the public health, safety, or welfare based upon the dangers presented by the licensee's commission of each remaining violation.

(b) The hearing officer shall not include additional findings of fact or conclusions of law in any written decision affirming the emergency order under consideration. The written decision shall be sufficient if it determines that there was substantial evidence of a violation of law and the panel had determined that the violation constituted an immediate danger to the public health, safety, or welfare.

(c) If the hearing officer issues a written decision revoking or modifying the emergency order under consideration, the hearing officer shall include findings of fact and conclusions of law to support the action.

Section 6. Judicial Review. Judicial review of a final order resulting from an emergency hearing shall comply with KRS 13B.140, 13B.150, 13B.160, and 311.593.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: March 29, 2016

FILED WITH LRC: March 30, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2016 at 9:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for emergency hearings before the Board.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the procedure for emergency hearings before the Board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the procedure for emergency hearings before the Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the procedure for emergency hearings before the Board.

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

(a) How the amendment will change this existing administrative regulation: The amendment deletes a provision which mandates that a hearing officer must affirm an emergency order against a physician if presented with a certified copy of an indictment on charges related to controlled substances against that physician.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because reviewing courts have deemed the provision to be unconstitutional.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment neither conforms nor deviates from the content of the authorizing statutes because the provision to be deleted is unnecessary to carrying out the Board's emergency proceedings.

(d) How the amendment will assist in the effective administration of the statutes: The amendment neither assists nor affects the administration of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect any licensee that has an emergency order issued against their license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be required to follow these procedures if an emergency order is issued against their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Physicians will only incur costs if they challenge an emergency order issued against their license. Typically it is limited to the cost of their legal counsel of choice and reimbursement of the Board's costs to hold an emergency hearing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians have procedures to follow and will have a meaningful post-deprivation review if an emergency order is issued against their license.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a) and KRS 218A.205

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(Amendment)**

201 KAR 9:250. Registration and oversight of pain management facilities.

RELATES TO: KRS 218A.175, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the requirements for registration and oversight for pain management facilities.

Section 1. Definitions. (1) "Board" is defined by KRS 311.550(1).

(2) "In good standing" means an active license to practice medicine or osteopathy that is not currently subject to any final order imposing any disciplinary sanction authorized by KRS 311.595, agreed order, or letter of agreement issued by or entered into with the board.

(3) "Pain management facility" is defined by KRS 218A.175(1), and each separate operating location of a physician's practice that meets the criteria established by this definition shall be considered a separate pain management facility.

(4) "Practitioner" means a licensed or certified health care practitioner who is legally authorized to prescribe or dispense controlled substances.

Section 2. Ownership or Investment Interest. (1)(a) A physician who has an ownership or investment interest in a pain management facility during any period when the physician is not licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall be deemed to be:

1. In violation of KRS 311.595(12); and

2. Practicing medicine without a license and subject to criminal sanctions.

(b) If the board determines that a physician has maintained an ownership or investment interest in a pain management facility during a period when that physician was not licensed to practice medicine or osteopathy within the Commonwealth of Kentucky, it may deny an application for licensing filed by that physician or may take appropriate disciplinary action against a license previously issued to the physician.

(2) A physician who maintains an ownership or investment interest in a pain management facility during any period when the physician's Kentucky license is not in good standing shall be in violation of KRS 311.595(12) and subject to disciplinary action by the Board.

~~Section 3. [Divestiture of Ownership or Investment Interest. (1) A physician who has an ownership or investment interest in a pain management facility shall immediately divest that ownership or investment interest if:~~

~~(a) The physician's Kentucky license is no longer active for any reason; or~~

~~(b) The physician's Kentucky license becomes subject to any final order imposing any disciplinary sanction authorized by KRS 311.595, agreed order, or letter of agreement issued by or entered into with the board.~~

~~(2)(a) If a physician fails to immediately divest the ownership or investment interest in the pain management facility as required by subsection (1) of this section, the board may institute an action for injunctive relief pursuant to KRS 311.605(3) and (4) to require the physician to immediately divest the ownership or investment interest in the pain management facility.~~

~~(b) An unlawful ownership or investment interest in a pain management facility shall be considered the unlawful practice of medicine and shall be considered to cause irreparable injury to the Commonwealth, acting through this board.~~

~~Section 4.] Registration; Amended Registration; Fee; New~~

Facility Registration. (1) On or before September 1, 2012 and September 1 of each succeeding year, every pain management facility operating as the private office or clinic of a physician within the Commonwealth of Kentucky shall register with the board, providing the following specific information in writing:

(a) The name, business address, profession, current professional licensing status and nature and extent of ownership or investment interest of each person who has or maintains an ownership or investment interest in the pain management facility;

(b) The names and addresses of every pain management facility in which the person has an ownership or investment interest;

(c) The hours of operation of every pain management facility in which the person has an ownership or investment interest;

(d) The names and professional status of each employee at each practice location owned and operated by that pain management facility;

(e) The name, professional license number, and practice address of the qualified physician owner or owner's physician designee who will be physically present practicing medicine in the pain management facility for at least fifty (50) percent of the time patients are present at the facility. The facility shall also state its plan for ensuring that the designated physician owner or owner's physician designee will be physically present practicing medicine in the facility and, if the facility owns and operates multiple practice locations, the plan to ensure that a physician owner or owner's physician designee is physically present practicing medicine in each practice location for at least fifty (50) percent of the time that patients are seen at each pain management facility;

(f) For each owner's physician designee who will fulfill the oversight responsibility, an attestation that the physician designee is employed by the owner and the plan for owner supervision of the physician designee; and

(g) An attestation by the physician owner that the owner or owner's physician designee:

1. Meets one (1) of the requirements established in KRS 218A.175(3) and specifying each qualification met by the physician owner or owner's physician designee; or

2. Was an owner of that specific pain management facility prior to and continuing through July 20, 2012 and meets one (1) of the following qualifications:

a. Successfully completed a residency program in physical medicine and rehabilitation, anesthesiology, addiction medicine, neurology, neurosurgery, family practice, preventive medicine, internal medicine, surgery, orthopedics or psychiatry approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS); or

b.(i) Registered the ownership or investment interest in that pain management facility with this board on or before September 1, 2012;

(ii) Is eligible for and has provided the board with written verification that the licensee has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and

(iii) Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013.

(2) If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician shall meet one (1) of the requirements established in KRS 218A.175(3), to continue to be qualified to provide the on-site supervision required by Section 5[6] of this administrative regulation.

(3) At the time of filing of the registration required by subsection (1) of this section, each pain management facility operating as the private office or clinic of a physician shall pay an annual fee of \$500 for each pain management facility to the board to defray the costs of registration and enforcement of this administrative regulation.

(4) If, during the effective period of the annual registration, a

new or different physician obtains an ownership or investment interest in the pain management facility, or there is a change in the physician owner or physician designee who will practice on-site at least fifty (50) percent of the time the facility is open to patients, the facility shall file an amended registration with the board identifying these physicians and providing the information required by subsection (1) of this section about the new or different physicians, within fourteen (14) calendar days of that change.

(5) Failure to file the required registration or to pay the annual fee on or before September 1 of each year shall constitute a violation of KRS 311.595(12) and shall serve as a basis for discipline by the board against the license of any physician who has an ownership or investment interest in the facility that failed to file the required registration.

(6) If a new pain management facility operating as the private office or clinic of a physician comes into existence after September 1 of a calendar year but before September 1 of the following calendar year, that new pain management facility shall register with the board within fourteen (14) calendar days of its legal formation, and shall meet each of the registration requirements of this section.

Section 4.[5-] Identification and Qualifications of Prescribers Employed by the Facility; Notification of Changes. (1) As part of its initial or annual registration, the facility shall identify each practitioner, who is employed by the facility in any capacity, who will be prescribing or dispensing controlled substances to patients of the facility.

(2) Each licensed physician who will prescribe or dispense controlled substances to patients of the facility as part of the employment arrangement with the facility shall successfully complete a minimum of ten (10) hours of Category I continuing medical education in pain management during each registration period throughout the employment agreement with the facility. This continuing medical education requirement shall satisfy the requirement of 201 KAR 9:310.

(3) A licensed physician shall not prescribe or dispense controlled substances to patients of the facility if the physician has:

(a) Had an application for a license or certificate to prescribe, dispense, or administer controlled substances denied in any jurisdiction or by any governmental agency;

(b) Had a Drug Enforcement Administration permit to prescribe, dispense, or administer controlled substances revoked;

(c) Had the professional ability or authority to prescribe or dispense controlled substances revoked, restricted, or limited in any manner by a licensing authority of any state, except as provided by subsection (4) of this section; or

(d) Been convicted of or entered a plea of guilt, nolo contendere, or Alford plea, regardless of adjudication, to any felony or misdemeanor relating to controlled substances, in any state or federal court.

(4) The prohibition established in subsection (3)(c) of this section shall not apply if:

(a) The conduct requiring the revocation, restriction, or limitation was directly related to the physician's impairment as a result of controlled substance abuse or dependence;

(b) The order imposing the revocation, restriction, or limitation is no longer in effect;

(c) The physician has achieved a level of recovery which provides the licensing authority sufficient assurance that the physician will not likely engage in similar conduct while practicing at the pain management facility; and

(d) The board or its panel has specifically approved the physician to practice in that specific pain management facility; and

(e) The physician has entered into an agreed order with terms and conditions requiring only remedial education and monitoring.

(5) The facility shall notify the board in writing within fourteen (14) days of each change in physician staffing of the facility.

Section 5.[6-] On-site Supervision. (1) If the physician owner or qualified designee is not present in each practice location of a pain management facility for at least fifty (50) percent of the time that patients are present at the practice location for any given calendar week as required by KRS 218A.175(3), the facility shall

immediately notify the board of that fact in writing and include the reasons.

(2) Any violation of KRS 218A.175(3) or this section shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.595(3) and (4) by the physician owner and, if applicable, the qualified designee who was responsible for being present at the practice location during that period.

Section 6.[7-] Record-Keeping; Inspection. (1) Each pain management facility shall document on a weekly basis that a physician owner or an owner's physician designee who is employed by and under the direct supervision of the owner was physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients were present in the facility during that week. This documentation shall include:

(a) The name, practice address, and phone number of the physician owner or physician designee who fulfilled this oversight function for that specific week;

(b) The practice address of each practice location owned and operated by that pain management facility;

(c) The days and hours each practice location of the pain management facility was open to patients during that specific week; and

(d) The days and hours the physician owner or physician designee was present in each practice location for the pain management facility for that specific week.

(2) Each pain management facility shall maintain appropriate records of the patients receiving treatment at that facility so that the board may determine the identity and number of patients treated during any given time period.

(3) The pain management facility shall maintain the weekly reports required by subsection (1) of this section and any daily sign-in sheets maintained by the practice on site in a readily accessible location for a minimum period of six (6) years.

(4) Upon request by an employee or agent of the board, the pain management facility shall permit the board employee or agent to inspect and copy the weekly reports and daily sign-in sheets maintained on site.

(5) For the purpose of enforcing the provisions of this administrative regulation, an agent of the board shall have the power and authority to:

(a) Enter upon professional premises during periods when those premises are otherwise open to patients or the public;

(b) Obtain evidence, including psychiatric or nonpsychiatric patient records, by consent or pursuant to a subpoena or search warrant;

(c) Interview all persons including owners, employees, or patients; and

(d) Require the production of books, papers, documents, or other documentary evidence either by consent or pursuant to a subpoena or search warrant.

Section 7.[8-] Proof of Operation of a Pain Management Facility. (1) The board may establish sufficient proof that a clinic, practice, or facility is a pain management facility subject to the provisions of this administrative regulation by establishing that:

(a) The facility has filed a registration with the board as a pain management facility; or

(b) 1. For any selected thirty (30) day period, the majority of patients receiving medical treatment from the clinic, practice, or facility received controlled substances or a prescription for controlled substances during that period; and

2. One (1) of the following additional conditions was present during that thirty (30) day period as required by KRS 218A.175(1)(a):

a. A primary component of the practice was the treatment of pain; or

b. The facility advertised in any medium for any type of pain management services.

(2) The board may establish sufficient proof that the majority of patients treated in the facility for any specified thirty (30) day period received controlled substances or a prescription for controlled substances on their visit by comparing the names on the sign-in

sheet to the KASPER report for that thirty (30) day period.

Section 8.[9-] Violations; Enforcement; Emergency Action. (1) Any violation of the requirements of this administrative regulation shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3) given the circumstances.

(2) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky while practicing at a pain management facility, a licensee shall practice in a lawful pain management facility.

(3) A pain management facility shall be considered an unlawful pain management facility if it:

(a) Permits an unqualified person to gain or maintain an ownership or investment interest in the pain management facility; or

(b) Fails to ensure that a qualified physician owner or physician designee is physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients are present in the facility.

(4) Prescribing or dispensing controlled substances within the Commonwealth of Kentucky while employed by or practicing in an unlawful pain management facility within the Commonwealth of Kentucky shall constitute a violation of KRS 311.595(9) and (12) which constitutes an immediate danger to the public health, safety, or welfare of the public, for the purposes of KRS 311.592 and 13B.125.

(5) If the board receives proof that a licensed physician is prescribing or dispensing a controlled substance while employed by or practicing in an unlawful pain management facility within the Commonwealth of Kentucky, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing a controlled substance within the Commonwealth of Kentucky until the licensee has provided sufficient proof that the licensee is no longer employed by or practicing in an unlawful pain management facility.

(6) An emergency order restricting a licensee from prescribing or dispensing a controlled substance within the Commonwealth of Kentucky issued pursuant to subsection (5) of this section shall remain valid and in effect until the board has received sufficient proof that the licensee is no longer employed by or practicing in an unlawful pain management facility. Upon receipt of that proof, the panel or its chair shall immediately issue an order terminating the emergency order issued pursuant to subsection (5) of this section.

(7) If a licensee who is affected by an emergency order issued pursuant to subsection (5) of this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with substantial evidence that the licensee was prescribing or dispensing controlled substances within an unlawful pain management facility.

(8) If a licensee prescribes or dispenses a controlled substance within the Commonwealth of Kentucky during any period when the licensee is employed by or practicing in an unlawful facility, each instance of prescribing or dispensing shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b) and shall serve as the basis for disciplinary sanctions pursuant to KRS 311.595.

Section 9.[40-] Periodic KASPER Reviews. (1) The board shall have the authority pursuant to KRS 218A.202 and 218A.240 to obtain KASPER reports and analyses for each practitioner practicing in a pain management facility.

(2) At least once each year, the board shall obtain a KASPER review and analysis for each physician who has or maintains an ownership or investment interest in, or is employed by, or practices in, a pain management facility to determine whether improper, inappropriate, or illegal prescribing is occurring. If the board determines that there is evidence to indicate that improper, inappropriate, or illegal prescribing is occurring, it shall initiate an investigation of that physician and notify the appropriate agencies of its investigation.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: March 29, 2016

FILED WITH LRC: March 30, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2016 at 9:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for registration and oversight of pain management facilities.

(b) The necessity of this administrative regulation: It was necessary to promulgate this regulation to establish the requirements for registration and oversight of pain management facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for registration and oversight of pain management facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for registration and oversight of pain management facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments delete provisions which are repetitive and/or not within the Board's statutory authority to enforce and also allow physicians with low level prescribing issues to participate in remedial education and be subject to board monitoring.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the regulation in order to delete provisions which are repetitive and/or not within the Board's statutory authority to enforce and also allow physicians with low level prescribing issues to participate in remedial education and be subject to board monitoring.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes in that it maintains requirements for registration and oversight of pain management facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the effective administration of the statutes and the Board's functions by maintaining requirements for registration and oversight of pain management facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulation affects physicians who own or practice in pain management facilities.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians do not have to take any actions to comply with the amendments.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pain management facilities will continue to be regulated and controlled in a manner that will curb prescription drug abuse/diversion but will also preserve limited medical resources in the Commonwealth of Kentucky.

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

(a) Initially: There are no costs associated with the amendments.

(b) On a continuing basis: There are no costs associated with the amendments.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with the amendments.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.565(1)(a) and 218A.175

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET State Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

201 KAR 18:020. Application forms.

RELATES TO: KRS 322.040, 322.045, 322.050, 322.070, 322.080, 322.090, 322.120, 322.300

STATUTORY AUTHORITY: KRS 322.070, 322.090, 322.290

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.070 authorizes the board to require the use of forms in the application process and for the applicant to furnish proof of meeting educational requirements. KRS 322.090 requires an applicant who has failed the examination three (3) or more times to furnish proof of further study. KRS 322.290(4) authorizes the board to promulgate administrative regulations for the proper performance of its duties. This administrative regulation establishes requirements for forms, transcripts, and additional study.

Section 1. Application Forms. (1)(a)1. An application by any of the four (4) classes of applicants, including a professional engineer, a professional land surveyor, an engineer-in-training, or a land surveyor-in-training, shall be made on the following forms issued by the board:

a. Combined Application to take the Principles & Practice of Engineering Examination And For Licensure as a Professional Engineer;

b. Application for Licensure to Practice Professional Land Surveying;

c. Application For Licensure as a Professional Engineer (PE) or Land Surveyor (PLS) By Endorsement;

d. Application for Business Entity Permit – PE or LS;

e. Application For Land Surveyor-In-Training (LSIT) Certification;[or]

f. Application For Engineer-In-Training (EIT) Certification; or

g. Application for Initial Licensure as a Professional Engineer (PE) or Land Surveyor (PLS).

2. Upon the applicant's completion of an application required by subparagraph 1. of this paragraph, the following forms shall be submitted if applicable:

a. Request for Confidential Information – PE;

b. Personal Reference – PE;

c. Report of Professional Experience – PLS;

d. Personal Reference – PLS;

e. Personal Reference – LSIT;

f. Professional Reference for Reinstatement – PE Applicant;

g. Professional Reference for Reinstatement – PLS Applicant;

h. Engineering Affidavit;

i. Surveying Affidavit; or

j. Employment Verification – PE Reinstatement.

(b) An applicant may attach additional sheets to the form if necessary for the other evidence, but any attached sheets shall conform to the same size as the printed forms listed under this subsection and shall be securely attached.

(c) The board may require clarification or expansion of any of the information on the application required under this subsection in order to evaluate fully an applicant's qualifications.

(2) If the board requires a transcript in order to evaluate the qualifying education for licensure or certification, the applicant shall cause the required transcript to be sent directly from the educational institution to the board.

(3) If an applicant fails the same examination three (3) or more times, the applicant shall submit a new application required under subsection (1)(a)1. of this section and shall include evidence satisfactory to the board that the applicant has completed additional coursework. The requirement for this additional coursework shall be satisfied by completion of any of the following:

(a) Examination review courses;

(b) College courses; or

(c) Continuing education courses.

Section 2. Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "Combined Application to take the Principles & Practice of Engineering Examination And For Licensure as a Professional Engineer", ed. 11/2013;
- (b) "Request for Confidential Information - PE", ed. 10/03;
- (c) "Personal Reference - PE", ed. 1/07;
- (d) "Application for Licensure to Practice Professional Land Surveying", ed. 7/1/05;
- (e) "Report of Professional Experience - PLS", ed. 8/1/02;
- (f) "Personal Reference - PLS", ed. 1/04;
- (g) "Personal Reference - LSIT", ed. 1/04;
- (h) "Professional Reference for Reinstatement - PE Applicant", ed. 1/07;
- (i) "Professional Reference for Reinstatement - PLS Applicant", ed. 1/07;
- (j) "Engineering Affidavit", ed. 1/07;
- (k) "Surveying Affidavit", ed. 1/07;
- (l) "Employment Verification - PE Reinstatement", ed. 1/07;
- (m) "Application For Licensure as a Professional Engineer (PE) or Land Surveyor (PLS) By Endorsement", ed. 11/2013;
- (n) "Application for Business Entity Permit - PE or LS", ed. 1/07;
- (o) "Application For Land Surveyor-In-Training (LSIT) Certification", ed. 11/2013;[and]
- (p) "Application For Engineer-In-Training (EIT) Certification", ed. 11/2013; and
- (q) "Application for Initial Licensure as a Professional Engineer (PE) or Land Surveyor (PLS)", ed. 6/2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: April 12, 2016

FILED WITH LRC: April 12, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2016 at 2:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five workdays prior to the date of the hearing. If no written notification of an individual's intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. If the public hearing is held, any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the application forms and related materials for licensure.

(b) The necessity of this administrative regulation: KRS 322.070 provides that applications for professional engineer or

professional land surveyor licenses shall be on forms prescribed and furnished by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation prescribes the forms necessary for applications for licensure as a professional engineer or land surveyor and certification as a LSIT or EIT.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation prescribes the forms the board will use in evaluating candidates for examination, licensure, and certification.

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

(a) How the amendment will change this existing administrative regulation: Application requirements for licensure as a professional engineer or surveyor, while varying to some degree from state to state, often request much of the same information. To facilitate the licensing of professional engineers and surveyors in multiple states, the National Council of Examiners for Engineers and Surveyors (NCEES), the national nonprofit organization created to advance professional licensure for engineers and surveyors, has created a records repository where an individual applicant can maintain a document file that contains the documents commonly requested by the various states on their respective applications for licensure as a professional engineer or land surveyor. If someone applies for initial licensure in Kentucky he or she need not duplicate information on the application, to the extent that information already exists in the NCEES record. The proposed amendment adds an application form for initial licensure that reduces the information requested on the form, for those individuals who are applying for initial licensure and who have requested that the NCEES forward a copy of their NCEES file to our agency. The form refines and simplifies what information the board requires from the applicants who are applying for initial licensure as a professional engineer or land surveyor, and who have requested the NCEES forward a copy of their NCEES record to the Board, to enable the board to evaluate the applicants' compliance with the minimum requirements for licensure as either a PE, or PLS, as appropriate.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is necessary to clarify what reduced information the applicants for licensure as either a PE, or PLS, who have supplied the Board with a copy of their current NCEES record, need to furnish to the board to enable the board to evaluate the applicants' compliance with the minimum requirements for initial licensure.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation prescribes the forms necessary for licensure or certification in compliance with the requirements of KRS 322.070.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will provide the information necessary for the board to evaluate the qualifications of those applicants for initial licensure as a PE, or PLS, who have provided a copy to the board of their NCEES record.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed regulation will not affect businesses, organizations, or state and local governments. It will affect only those individuals seeking initial licensure as a professional engineer or surveyor, if those same individuals have had the NCEES transmit to the board, a copy of their NCEES record.

(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) A detailed explanation of the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for initial licensure as a professional engineer or surveyor, who have had the NCEES transmit to the board, a copy of their NCEES record, will not be required to duplicate the

information otherwise found in the NCEES record, thereby simplifying the process while at the same time, reducing the time and expense of applying for initial licensure. The board will continue to evaluate the applications for initial licensure submitted by applicants for licensure as a PE or PLS. No additional actions will be required of either the applicants or the board.

(b) An estimate of the costs imposed on entities identified in question (3) in complying with this administrative regulation or amendment: There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for initial licensure as a professional engineer or land surveyor, who have had the NCEES transmit to the board, a copy of their NCEES record, will not be required to duplicate the information otherwise found in the NCEES record, thereby simplifying the process while at the same time, reducing the time and expense of applying for initial licensure. The board will continue to evaluate the applications for initial licensure submitted by applicants for licensure as a PE or PLS, but the process should be expedited. The board's evaluation of applications for initial licensure as a PE or PLS will be facilitated by this amendment by providing appropriate information to the board, and the applicants will benefit by supplying appropriate information to the board in a timely manner.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Agency Funds. The board receives no general or federal funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.070, 322.120

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no revenue or expenditure effects for any government agency.

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

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

(c) How much will it cost to administer this program for the first year? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no additional cost or revenue generated by this amendment.

GENERAL GOVERNMENT CABINET Board of Social Work (Amendment)

201 KAR 23:075. Continuing education for renewal.

RELATES TO: KRS 335.130(4)

STATUTORY AUTHORITY: KRS 335.070(3), (6), 335.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation describes[~~delineates~~] the requirements for continuing education for renewal and prescribes methods and standards for the board to approve[~~accreditation of~~] continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means a social work course, at the graduate level:

(a) Designated by a social work title or content; or

(b) An academic course, at the graduate level, relevant to social work.

(2) "Approved" means recognized by the Kentucky Board of Social Work.

(3) "Continuing education hour" means fifty (50) clock minutes of participation in continuing education[~~educational~~] programs.

(4) "Program" means an organized educational experience, which is:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or series.

(5) "Provider" means a person or an organization approved by the Kentucky Board of Social Work to provide a single continuing education program over the course of one (1) year.

(6) "Relevant" means having content applicable to the practice of social work.

(7) "Sponsor" means a person or an organization approved by the Kentucky Board of Social Work to provide more than one (1) continuing education program over the course of one (1)[a] year.

(8) "Training program in suicide assessment, treatment, and management" means an approved empirically supported training program at least six (6) hours in length that contains suicide assessment including screening and referral, suicide treatment, and suicide management as required by KRS 210.366.

Section 2. Accrual and Computation of Continuing Education Hours for Renewal. (1) Each certified social worker and licensed clinical social worker shall complete a minimum of thirty (30) continuing education hours during the three (3) year period for renewal, which shall be completed in person before a live presenter or through home study, distance learning, online, or teleconference courses[~~A minimum of thirty (30) continuing education hours shall be accrued by each licensed clinical social worker and certified social worker holding licensure during the three (3) year period for renewal~~].

(2) Each licensed social worker shall complete a minimum of fifteen (15) continuing education hours during the three (3) year period for renewal, which may be completed in person before a live presenter or through home study, distance learning, online, or teleconference courses[~~A minimum of fifteen (15) continuing education hours shall be accrued by each licensed social worker holding licensure during the three (3) year period for renewal~~].

(3) All continuing education hours shall be in or relevant to the licensee's level of licensure.

(4) Kentucky Code of Ethical Conduct. Each renewal period, all licensees shall complete a three (3) hour course on the Kentucky Code of Ethical Conduct established in 201 KAR 23:080, which shall be completed in person before a live presenter or through home study, distance learning, online, or teleconference

~~courses~~Three (3) of the continuing education hours during each renewal period shall be acquired in the area of the social work code of ethics as established in 201 KAR 23:080].

(5) Clinical Social Work Supervision. Each renewal period, licensed clinical social workers who are board approved supervisors pursuant to 201 KAR 23:070, Section 3(1)(c)2, shall complete a three (3) hour, board approved supervision course~~every licensure renewal period~~ as part of their thirty (30) continuing education hours, which shall be taken in person before a live presenter.

(6) Suicide Assessment, Treatment, and Management. Every six (6) years, all licensees shall complete a minimum of six (6) hours of continuing education in a board approved course on suicide assessment, treatment, and management as required by KRS 210.366(2).

(a) The course shall be approved by the board, by an organization identified in Section 3(1) of this administrative regulation, or by one (1) of the following boards, and which meets the requirements of KRS 210.366:

1. Kentucky Board of Licensure of Marriage and Family Therapists;

2. Kentucky Board of Licensed Professional Counselors;

3. Kentucky Board of Licensure for Pastoral Counselors;

4. Kentucky Board of Alcohol and Drug Counselors;

5. Kentucky Board of Examiners of Psychology; or

6. Kentucky Board of Licensure for Occupational Therapy.

(b) Exemptions. A licensee shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management if he or she:

1. Teaches a graduate-level counseling course in suicide and crisis assessment, prevention, and management at least once per year during the six (6) year period; or

2. Teaches a six (6) hour continuing education course in suicide and crisis assessment, prevention, and management at least once per year during the six (6) year period~~Every third renewal period, two (2) of the continuing education hours shall be on HIV/AIDS courses approved by the Cabinet for Health and Family Services pursuant to KRS 214.610].~~

(7) Domestic Violence. During the three (3) year renewal period following initial licensure, all licensees shall complete three (3) hours of continuing education in domestic violence related training courses established in KRS 194A.540~~Three (3) of the continuing education hours shall be completed in the area of domestic violence related training courses pursuant to KRS 194A.540 during the three (3) year cycle following initial licensure].~~

(8) Pediatric Abusive Head Trauma. At least one (1) time every six (6) years, all licensees shall complete one and one-half (1.5) hours of continuing education covering the recognition and prevention of pediatric abusive head trauma as defined in KRS 620.020~~One and one-half (1.5) hours of continuing education shall be completed one (1) time every six (6) years in the area of the recognition and prevention of pediatric abusive head trauma pursuant to KRS 335.130(5)].~~

(9) Academic Credit Equivalency. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours for renewal~~applicable to the renewal of the license~~ shall be directly related to the professional growth and development of the licensee. The hours may be earned by completing any of the following continuing education programs:

(1) Programs not requiring board review and approval. ~~Except for courses on the Kentucky Code of Ethical Conduct under Section 2(4) of this administrative regulation, and courses on clinical social work supervision under 201 KAR 23:070, Section 3(1)(c)2, which require approval by the board~~~~Except for courses on ethics which are provided to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2], an educational program from any of the following providers shall be deemed to be relevant to the practice of social work and shall be approved without further review by the board if it is:~~

(a) Sponsored or approved by:

1. The Association of Social Work Boards (ASWB);

2. The National Association of Social Workers (NASW) or any of its affiliated state chapters;

3. The National Association of Black Social Workers (NABSW) or any of its affiliated state chapters;

4. The North American Association of Christians in Social Work or any of its affiliated state chapters; or

5. Clinical Social Work Association or any of its affiliated state chapters~~or~~

2. The Association of Social Work Boards];

(b) Sponsored by:

1. Clinical Social Work Association or any of its affiliated state chapters;

2. The American Psychological Association or any of its affiliated state chapters;

3. The American Counseling Association or any of its affiliated state chapters;

4. The National Board for Certified Counselors or any of its affiliated state chapters;

5. The American Psychiatric Association or any of its affiliated state chapters; or

6. A college, school, department, or program of social work in Kentucky, which is accredited by the Council on Social Work Education (CSWE); or

(c) An academic course offered by an accredited postsecondary institution directly related to social work, counseling, or psychology.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and approved for continuing education credit if the board determines that it is relevant to the practice of social work~~and determined if it is relevant and therefore subsequently approved by the board].~~

(a) Relevant programs, including home study, distance learning, online, or teleconference courses, and in-service training provided by other organizations, educational institutions, or other service providers approved by the board. ~~[4-] Board approval for home study, distance learning, online, and teleconference courses shall be obtained each year unless the continuing education program does not require board approval under subsection (1) of this section.~~

2. The combined total number of hours for home study, distance learning or teleconference courses shall not exceed one-half (1/2) of the individual's continuing education hours.

3. Courses on the board's code of ethics which are taken to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2, shall be attended in person before a live presenter, and shall not be taken through home study, distance learning or teleconference courses.]

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

(c) Relevant articles. A licensee who is an author of a relevant article, which is published in a professionally recognized or juried publication, shall earn full continuing education credit not to exceed one-half (1/2) of the continuing education requirements for renewal, if the article was published within one (1) year immediately preceding his or her renewal date~~Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted unless an article was published within the one (1) year period immediately preceding the renewal date. A licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal under the provisions of this subsection]. More than one (1) publication shall not be counted during each renewal period.~~

(d) The following continuing education courses shall be submitted to the board for approval and shall not be automatically preapproved under subsection (1) of this section:

1. Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; and

2. Clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 3(1)(c)2[Courses on ethics required by Section 2(4) of this administrative regulation shall be submitted to the board for approval and shall not be automatically approved under Section 3(1) of this administrative regulation].

Section 4. Procedures for Approval and Renewal of Continuing Education Providers and Programs. (1) Provider approval. A provider seeking to obtain approval of a continuing education program shall apply to the board no less than thirty (30) days in advance of the commencement of the program, and provide the information required in subsection (2) of this section.

(2) The board shall approve a continuing education program if it determines that the program being presented:

- (a) Is relevant to the practice of social work;
- (b) Contributes to the professional competency of the licensee; and
- (c) Has competent instructors with appropriate academic training, professional license or certification, or professionally recognized experience.

(3) The board may approve a provider of a continuing education program for one (1) year if the provider:

(a) Files a completed Provider Application for Continuing Education Approval, which is received by the board thirty (30) days in advance of the commencement of the program, and includes:

1. A published program outline that includes an explanation of the program objectives;

2. The names and qualifications of the instructors presented in the form of resumes or curriculum vitas;

3. A copy of the evaluation sheet by which the licensee can assess and comment on the program;

4. A copy of the program agenda stating the number of continuing education credit hours, including all breaks;

5. The number of continuing education credit hours requested;

6. A copy of the official certificate of completion or attendance from the provider; and

7. A statement whether the provider is requesting approval to meet the requirements of the following courses: Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; or clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 3(1)(c)2; and

(b) Pays an application fee of \$100 for each one (1) day program of eight (8) hours or less.

(4) Providers of continuing education shall be responsible for providing documentation in the form of a certificate of attendance directly to the licensee, as established in Section 7(5) of this administrative regulation.

(5) Providers of continuing education programs requiring board approval shall not advertise that courses have been approved before written board approval has been received.

(6) Provider Renewal. An approved provider may submit a renewal request for a subsequent one (1) year period by notifying the board that the original information required in this section for each program remains current and by paying a fifty (50) dollar renewal fee[A program, which is offered by a provider, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

(a) A published course outline or similar description which includes an explanation of the course objectives;

(b) Names and qualifications of the instructors presented in the form of curriculum vitas or resumes;

(c) Copies of the evaluation sheet or instrument by which the attendees can comment on the program, and the program agenda indicating hours of education, including all breaks;

(d) Number of continuing education hours requested and a statement whether the provider is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation;

(e) Official certificate of completion or college transcript from

the sponsoring agency or college; and

(f) A completed Provider Application for Continuing Education Credit Approval form.

(2) The board may approve a specific continuing education program if the provider of the program:

(a) Files a written request for approval;

(b) Pays an application fee of \$100 for each one-day program of eight (8) hours or less; and

(c) Provides information about each continuing education program that it proposes to present which meets the requirements established in subsection (1) of this section.

(3) The approval of a program pursuant to this section shall permit the provider to offer the program for one (1) year.

(4) The provider shall submit a request for renewal and a fifty (50) dollar renewal fee for each subsequent request to offer the same approved program].

Section 5. Approval and Renewal of Continuing Education for Sponsor Programs. (1) Sponsor approval. A sponsor seeking to obtain board approval of continuing education programs shall apply to the board no less than thirty (30) days in advance of the commencement of the program, and provide the information required in Section 4(1) of this administrative regulation.

(2) The board shall approve a continuing education program if it [Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any sponsor seeking to obtain approval of a continuing education program prior to its offering shall:

(a) Apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4(1) of this administrative regulation; and

(b) Provide proof to the board that the sponsor seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and

2. Does not exclude any licensee from its programs.

(2) A continuing education program shall be qualified for approval if the board] determines that the program being presented:

(a) Is relevant to the practice of social work;

(b) Contributes to the professional competency of the licensee; and

(c) Has competent instructors with appropriate academic training, professional license or certification, or professionally recognized experience.

(3) The board may approve a sponsor of continuing education programs for one (1) year if the sponsor:

(a) Files a completed Sponsor Application for Continuing Education Approval form, which is received by the board thirty (30) days in advance of the commencement of the program, and includes:

1. A published program outline that includes an explanation of the program objectives;

2. The names and qualifications of the instructors presented in the form of resumes or curriculum vitas;

3. A copy of the evaluation sheet by which the licensee can assess and comment on the program;

4. A copy of the program agenda stating the number of continuing education credit hours, including all breaks;

5. The number of continuing education credit hours requested;

6. A copy of the official certificate of completion from the sponsor; and

7. A statement whether the sponsor is requesting approval to meet the requirements of the following courses: Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; or clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 3(1)(c)2; and

(b) Pays an initial application fee of \$250.

(4)[The sponsor shall specify whether it is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation.

(4)(a) The board may approve an organization that is not listed in Section 3(1) of this administrative regulation as a sponsor of

continuing education for a twelve (12) month period if the organization:

1. Files a written request for approval by submitting the Sponsorship Application for Continuing Education Credit Approval form;

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

3. Proposes to sponsor continuing education programs that meet the requirements established in Section 3 of this administrative regulation.

(b)] The board shall periodically review the programs that a sponsor has provided to determine if the sponsor continues to meet the requirements of this administrative regulation.

(5)](e)] An approved sponsor shall submit an annual report of the continuing education programs offered during that year and shall include copies of attendance sheets and evaluations (or evaluation summaries) for each program.

(6) Sponsors of continuing education shall be responsible for providing documentation in the form of a certificate of attendance directly to the licensee, as established in Section 7(5) of this administrative regulation.

(7) Sponsors of continuing education programs requiring board approval shall not advertise that courses have been approved before written board approval has been received.

(8) Sponsor Renewal. An approved sponsor may submit a renewal request for a subsequent one (1) year period by notifying the board that the original information required in this section for each program remains current and by paying \$150 renewal fee.(d) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a 150 renewal fee annually and notifying the board that the original information required in this section remains current].

Section 6. Individual Request for Board Review and Approval of Continuing Education Courses. (1) A licensee[or a certificate holder] may request an individual review of a continuing education program that was otherwise not approved if it was completed during the three (3) year renewal[appropriate time] period if the individual licensee[has]:

(a) Applies[Made a timely request by applying] for individual review by submitting the Individual Application for Continuing Education[Credit] Approval form; and

(b) Pays[Paid] a fee of ten (10) dollars.

(2) The board's review shall be based on the standards for continuing education established by this administrative regulation.

(3) The board's approval[by the board] of a continuing education program under this section shall:

(a) Qualify as if it has been obtained from an approved provider or sponsor; and

(b) Be limited to the particular program[offering] upon which the request for individual review is based.

Section 7. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining the required continuing education hours for her or his renewal. The licensee shall identify his or her own continuing education needs, seek[take the initiative in seeking] continuing professional education activities to meet those[these] needs, and develop[seek] ways to integrate new knowledge, skills, and attitudes. Each licensee[person holding licensure] shall:

(1) Select approved programs by which to earn continuing education hours for renewal;

(2) Submit to the board, if applicable, a request for continuing education programs requiring approval by the board as established in Section 4 of this administrative regulation;

(3) Maintain her or his[the licensee's own] records of continuing education hours;

(4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(5) Furnish documentation of attendance[and participation in the appropriate number] of continuing education hours at the time of his or her renewal, as follows:

(a) For a period of one (1) year from the date of renewal, each

licensee shall maintain[Each person holding licensure shall maintain, for a period of one (1) year from the date of renewal, all] documentation verifying successful completion of continuing education hours;

(b) In each calendar year, the board shall require up to fifteen (15) percent of all licensees[shall be required by the board] to furnish documentation of the completion of[the appropriate number of] continuing education hours for the current renewal period;

(c) Verification of continuing education hours shall not otherwise be reported to the board;

(d) Documentation shall take the form of official documents including:

1. Transcripts;

2. Certificates of completion or attendance;

3. Affidavits signed by instructors; or

4. Receipts for fees paid to the provider or sponsor; and

(e) Each licensee shall retain copies of his or her documentation for a period of one (1) year following the date of his or her last renewal.

Section 8.[Responsibilities and Reporting Requirements of Providers and Sponsors.

(1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 7(5) of this administrative regulation, directly to the licensee.

(2) Sponsors of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 9.] Board to Approve Continuing Education Hours; Appeal if Approval Denied. If an application for approval of continuing education hours is denied, in whole or part, a licensee,[or a] provider, or sponsor may request[reconsideration by] the board to reconsider[of] its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9.[10.] Waiver or Extensions of Continuing Education. (1)[The board may.] In individual cases involving medical disability, illness, or undue hardship as determined by the board, the board may grant waivers of the minimum continuing education requirements or extensions of time[within which] to fulfill the requirements for renewal or make the required reports of continuing education credits.

(2) A licensee may submit a written request to the board for a waiver or extension of time involving medical disability, illness, or undue hardship. If the request is based on medical disability or illness, the licensee shall include a written statement[A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding licensure and shall be accompanied by a verifying document] signed by a licensed physician.

(3) The board may grant waivers of the minimum continuing education requirements or extensions of time[within which] to fulfill the continuing education requirements for renewal[may be granted by the board] for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee may[person holding licensure shall] reapply for the waiver or extension.

Section 10.[11.] Continuing Education Requirements for Reinstatement[or Reactivation of Licensure]. (1) A certified social worker or a licensed clinical social worker who requests reinstatement of an expired license[person requesting reinstatement or reactivation of licensure] shall submit evidence of completing thirty (30) hours of continuing education within the three (3) year[thirty-six (36) month] period immediately preceding the date he or she submits[on which] the request for reinstatement[or

reactivation is submitted] to the board.

(2) A licensed social worker who requests reinstatement of an expired license shall submit evidence of completing fifteen (15) hours of continuing education within the three (3) year period immediately preceding the date he or she submits the request for reinstatement to the board.~~[The person may request, and the board, at its discretion, may reinstate the licensure, with the provision that the person shall receive thirty (30) hours of continuing education within six (6) months of the date on which the licensure is reinstated].~~

(3) If the licensee requesting reinstatement cannot provide evidence of completion of the required hours of continuing education, the board may reinstate the license for six (6) months on the condition that the licensee obtain the required hours of continuing education for his or her level of licensure within six (6) months of the date the license is reinstated.

(4) The continuing education hours completed for reinstatement~~[received in compliance with this section]~~ shall be in addition to the continuing education requirements for renewal established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

(5) Failure to obtain the required continuing education hours within the approved six (6) month period shall result in termination of the reinstated license.

Section 11.~~[12.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Provider Application for Continuing Education~~[Credit]~~ Approval", 04/2016~~[40/2040]~~;

(b) "Sponsor~~[Sponsorship]~~ Application for Continuing Education~~[Credit]~~ Approval", 03/2016~~[40/2040]~~; and

(c) "Individual Application for Continuing Education~~[Credit]~~ Approval", 04/2016~~[40/2040]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of~~[Licensure for]~~ Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM M. ADCOCK, Chair

APPROVED BY AGENCY: April 12, 2016

FILED WITH LRC: April 14, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2016 at 9:00 a.m., local time, at the Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day (11:59 p.m. EST) on May 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: Florence S. Huffman, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030, email florence.huffman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Florence S. Huffman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for continuing education for renewal as a method for ensuring the continued professional competence of licensed social workers and compliance with Kentucky law. This administrative regulation

specifies the number of hours to be obtained for each renewal period and defines courses in certain content areas required by the board and Kentucky law for initial licensure, renewal and reinstatement. It also prescribes methods and defined standards the board will use to assess and approve continuing education program content, including qualifications of instructors, submitted by course providers and sponsors.

(b) The necessity of this administrative regulation: This administrative is necessary to establish the continuing education requirements for continuing professional competence and as a condition of renewal and reinstatement, and to define standards for approval of courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(6) authorizes the board to renew licenses and require continued education as a condition for license renewal, and to authorize organizations to provide or sponsor continuing education programs. KRS 210.366 authorizes the board to implement administrative regulation to require a minimum six (6) hour course on suicide prevention assessment, treatment, and management; and KRS 214.615 was repealed effective June 24, 2015 and the board has voted to remove the HIV/AIDS course requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs applicants and licensed social workers of the continuing education requirements for renewal and reinstatement established by the board. In addition, KRS 210.366 mandates a six (6) hour training program in suicide assessment, treatment and management for social workers among others. It also removes the HIV/AIDS course requirement on initial licensure (KRS 214.615 was repealed effective June 24, 2015).

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes that the required social work ethics course for renewal may be taken online (and removes the mandate of in-person training); and permits licensees to take 100 percent of continuing education courses for renewal online, through home study, distance learning or other electronic media. The amendment also revises the requirements for sponsors and providers of continuing education programs.

(b) The necessity of the amendment to this administrative regulation: This administrative is necessary to allow licensees to take the social work ethics course online and remove the face-to-face, in-person requirement; to permit licensees to acquire 100 percent of continuing education courses online or through distance learning; to implement suicide prevention training as a requirement for renewal; to remove the requirement that licensees must complete an HIV/AIDS course; and to make other corrections.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070(6) authorizes the board to renew licenses and require continued education as a condition for license renewal, and to authorize organizations to provide or sponsor continuing education programs; KRS 210.366 authorizes the board to implement administrative regulation to require a minimum six (6) hour course on suicide prevention assessment, treatment, and management; and KRS 214.615 was repealed effective June 24, 2015 and the board has voted to remove the HIV/AIDS course requirement for licensure.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation removes a potential barrier and permits licensees to comply with the board's requirements for continuing education for renewal through the growing advantages of technology and adult education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,000 licensed social workers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment to permit the social work ethics course to be taken online or through distance learning will relieve licensees of attending the course in person – this will be particularly helpful for licensees who find it difficult to attend the in-person courses, and those who live outside Kentucky to comply with the renewal requirement without the necessity of physically traveling to Kentucky to take the: it alleviates the current requirement that only fifty percent of continuing education courses may be taken online or through home study.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board anticipates that the only cost will be the expense of the suicide prevention training course incurred by the licensee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By allowing 100 percent of continuing education courses to be taken online or through home study, licensees may elect online or distance learning courses to meet renewal requirements if they are ill, cancellations are caused by inclement weather or challenges due to the distances between rural settings. The amendment will also let licensees take advantage of growing technological opportunities for training. Also, by permitting the social work ethics course to be taken online, out-of-state licensees can comply with this requirement without having to go to the expense of traveling to Kentucky to take an in-person course.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is wholly self-funded by fees paid by the licensees and applicants as well as continuing education providers and sponsors.

(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 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 amendment does not directly establish or increase fees; individual licensees or their employers who pay for the cost of continuing education as an employment benefit may incur the cost of the suicide prevention training.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees. 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? The Board of Social Work will be impacted by this administrative regulation.

2. Identify each state or federal statute or state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990; KRS 210.366 adds continuing education requirement for suicide prevention training; and KRS 214.615, which required HIV/AIDs training before initial licensure, was repealed effective June 24, 2015.

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

None.

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

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

(c) How much will it cost to administer this program for the first year? The board estimates that no additional costs will be incurred by this amendment.

(d) How much will it cost to administer this program for subsequent years? The board estimates that no additional costs for subsequent years will be incurred by this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure For Marriage and Family Therapists (Amendment)

201 KAR 32:030. Fees.

RELATES TO: KRS 335.330, 335.340(1), (3)

STATUTORY AUTHORITY: KRS 335.320(4), 335.330, 335.340(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 requires the board to promulgate an administrative regulation establishing the initial fee for licensure required to be paid by an applicant for licensure and requires an applicant to pass a written examination prescribed by the board. KRS 335.340(1) requires that all licenses issued under KRS 335.330 shall be renewed annually, and that the board promulgate an administrative regulation establishing the fee for licensure renewal. KRS 335.340(3) requires the board to promulgate an administrative regulation establishing the late renewal fee. This administrative regulation establishes fees for licensure as a marriage and family therapist or marriage and family therapist associate.

Section 1. Initial Application Fee. The initial application fee for licensure as a marriage and family therapist shall be:

- (1) Fifty (50) dollars;
- (2) Nonrefundable; and
- (3) Payable to the Kentucky State Treasurer.

Section 2. Initial Licensure Fee. The initial fee for licensure as a marriage and family therapist shall be:

- (1) \$175;
- (2) Nonrefundable; and
- (3) Payable to the Kentucky State Treasurer.

Section 3. Examination Fee. (1) An applicant shall pass the National Marital and Family Therapy Examination administered and verified by the Association of Marital and Family Therapy Regulatory Boards[Professional Examination Service].

(2) The applicant shall pay the required examination fee[directly to Professional Examination Service].

Section 4. Renewal Fee. (1) A licensed marriage and family therapist shall submit a completed Marriage and Family Therapist License Renewal Application to the board in accordance with KRS 335.340.

(2) The fee for renewal of licensure as a marriage and family therapist shall be:

- (a) \$150 annually;
- (b) Nonrefundable; and

(c) Payable to the Kentucky State Treasurer.

Section 5. Late Renewal Fees. (1) A licensee who renews a license during the ninety (90) day grace period provided by KRS 335.340(3) shall pay a late renewal fee of seventy-five (75) dollars in addition to the payment of the renewal fee as established in Section 4 of this administrative regulation.

(2) The fee shall be:

(a) Nonrefundable; and

(b) Payable to the Kentucky State Treasurer.

Section 6. Reinstatement of Expired License. (1) An expired license shall be reinstated by:

(a) Submitting a completed License Reinstatement Application;

(b) Paying of the renewal fee as established in Section 4 of this administrative regulation for each year since the date of last active licensure;

(c) Paying of a reinstatement fee of \$100, which shall be:

1. Nonrefundable; and

2. Payable to the Kentucky State Treasurer; and

(d) Meeting all other requirements of this section of this administrative regulation.

(2) The applicant for reinstatement of an expired license shall submit proof of:

(a) Completion of fifteen (15) hours of continuing education for each year since the date of last active licensure;

(b) Completion of six (6) hours of training in the field of suicide assessment, treatment and management every six (6) years; and

(c) Completion of three (3) hours of training in the field of domestic violence.

Section 7. Fees for Sponsors of Continuing Education. (1) There shall be a fee of \$100 per day~~twenty-five (25) dollars~~ for each continuing education application of one (1) to four (4) hours submitted by a sponsor.

(2) There shall be a fee of \$200 per day for each continuing education application of five (5) to nine (9) hours submitted by a sponsor.

(3) There shall be a fee of \$250 per day for each continuing education application of ten (10) plus hours.

(4) There shall be a fee of \$300 for each single day online continuing education application with unlimited offerings between January 1 and December 31~~For a sponsor submitting multiple applications in one (1) month, the fee shall not exceed \$250~~.

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

(a) "Licensure as a Marriage and Family Therapist Application", 2016;

(b) "Licensure as a Marriage and Family Therapist Renewal Application", 2016;

(c) "Application for License Reinstatement", 2016;

(d) "Continuing Education Program Sponsor Approval Application", 2016; and

(e) "Continuing Education Program Approval Individual Application", 2016~~"Marriage and Family Therapist License Renewal Application", 2009;~~

(b) "License Reinstatement Application", 2009; and

(c) "Application for Continuing Education Program Approval", 2009.

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

MARY BADAMI, Chairperson

APPROVED BY AGENCY: March 24, 2016

FILED WITH LRC: April 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2016, at 1:30 p.m., at the office of the Kentucky Board for Marriage and Family Therapists, 911 Leawood Drive, Frankfort,

Kentucky 40601, (502) 564-3296. 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 May 31, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Nicole Sergent Biddle, Counsel for Kentucky Board of Licensure for Marriage and Family Therapists, C/O Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5463, email Nicole.Biddle@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Biddle

(1) Provide a brief summary of: This administrative regulation sets forth the

(a) What this administrative regulation does: This administrative regulation sets forth the fees for licensure, renewal, reinstatement, and sponsors of continuing education.

(b) The necessity of this administrative regulation: These changes are allowed under KRS 335.340(7) and 201 KAR 32:060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth the fees for Sponsors of Continuing Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the fees for licensure, renewal, reinstatement and continuing education program sponsorship.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation sets forth the fees for sponsors of continuing education programs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it clarifies the fees by length of program and number of days.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide clarity regarding the fees for continuing education sponsored program applications (number of programs, length of programs and days).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Board approved sponsors of continuing education total approximately fifty (50).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment clarifies the fees per program application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes in costs will depend on the programs and the applications.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The sponsors will have their programs approved per the statutory and regulatory requirements.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the registration fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fees are not increased, but changed by reclassifying the programs to provide clarity and simplicity for the Board.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does reclassify fees charged for sponsored continuing education programs.

(9) TIERING: Is tiering applied? Tiering is applied, because the sponsors will pay different fees pursuant to length of program. (1-4 hours/day, 5-9 hours/day, 10+ hours per day, online unlimited)

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists is housed for administrative purposes within the Public Protection Cabinet Office of Occupations and Professions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.340(7) and 201 KAR 32:060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures will not be affected by this amendment.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

301 KAR 2:095. Importation of cervid carcasses and parts.

RELATES TO: KRS 150.180, 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.720(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations governing the buying, selling, or transporting of wildlife[reasonably necessary to carry out the purposes of KRS Chapter 150]. KRS 150.720(2) authorizes the department and the Department of Agriculture to hold a person responsible for all costs incurred in the investigation, response, and eradication of a disease if the person imports a diseased animal into the Commonwealth. This administrative regulation establishes procedures for the importation and possession of

whole cervid carcasses or carcass parts from states or Canadian provinces that have known cases of chronic wasting disease.

Section 1. Definitions. (1) "Cervid" means a member of the family Cervidae.

(2) "Chronic wasting disease" or "CWD" means a fatal disease affecting the brain of cervids which belongs to a group of diseases called transmissible spongiform encephalopathies.

(3) "Clean" means having no meat matter or tissue attached to the carcass part.

(4) "Importation" means the transportation of a cervid carcass or carcass part into the Commonwealth.

(5) "Infected area[state]" means a state or Canadian province that has a known case of chronic wasting disease.

(6) "Whole" means the entire carcass whether eviscerated or not, prior to the carcass being processed.

Section 2. Importation and Possession. (1) A person shall not import or possess a whole cervid carcass or carcass part from an infected area[state] without first converting the carcass or part, pursuant to subsection (2) and (3) of this section.

(2) A person may import a cervid carcass or a carcass part from an infected area[state] if the carcass or carcass part does not have any part of the spinal column or head attached;

(3) A person may possess the following inedible parts of a legally taken cervid carcass[~~lawfully taken~~] from an infected area[state]:

(a) Antlers;

(b) Antlers that are attached to a clean skull plate;

(c) A clean skull;

(d) Clean upper canine teeth;

(e) A finished taxidermy product; or

(f) The hide.

(4) A licensed taxidermist or deer processor may accept a cervid head with an intact skull, spinal column, or spinal column part originating from an infected area[state] if the taxidermist or deer processor:

(a) Contacts the department within forty-eight (48) hours after receiving the cervid head, spinal column, or spinal column part;

(b) Provides to the department the hunter's:

1. Name; and

2. Address; and

(c) Transfers all spinal column parts and the skull with the intact brain to the department once the skull plate has been removed.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: April 7, 2016

FILED WITH LRC: April 13, 2016 a 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 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 May 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, ext. 4484, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures for the importation and possession of whole cervid carcasses or carcass parts from states or Canadian provinces that have documented cases of Chronic Wasting Disease (CWD).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent the importation of cervid parts most likely to be contaminated with the agent that causes CWD.

(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 the requirements for the transportation of wildlife. KRS 150.720(2) authorizes the department to hold individuals responsible for violating administrative regulations regarding the importation of diseased animals into the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by helping to protect the state's deer and elk herds from CWD.

(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 changes the definition of an infected state to an infected area, that will now include Canadian provinces. The amendment also allows a deer processor to accept a carcass part from a hunter who has taken an animal in a CWD-positive area. The processor must notify the department, provide the name and address of the hunter, and transfer the carcass skeleton, skull and brain to the department to be in compliance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to prohibit carcass parts from CWD-positive Canadian provinces and to allow deer processors to accept certain cervid parts from CWD-positive areas, to report cases of illegal importation of these parts, and to transfer possession of these parts to the department.

(c) How the amendment conforms to the content of the authorizing statutes: See 1 (c) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All deer and elk hunters from Kentucky who transport legally taken deer and elk from CWD-positive areas will be affected. The number of affected hunters is unknown. Currently deer processors are unlicensed by the department and the number of processors in Kentucky is also 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: Hunters who hunt in Canadian provinces that are CWD-positive will not be allowed to import a carcass or carcass parts from these areas. A processor who accepts a whole carcass or carcass parts from a CWD-positive area must report this to the department within 48 hours, provide the department with the name and address of the hunter, and transfer possession of high-risk cervid parts to the department.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A processor will be allowed to accept and process the animal that has been imported illegally by a hunter without penalty if the processor contacts the department and provides the required information.

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

(a) Initially: There will be no initial cost to the agency to implement this regulation.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals, taxidermists, and deer processors are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.720(2).

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:122. Seasons, methods, and limits for small game.

RELATES TO: KRS 150.340, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. This administrative regulation establishes seasons, bag limits, and methods of take for small game.

VOLUME 42, NUMBER 11 – MAY 1, 2016

Section 1. Definitions. (1) "Eastern Zone" means the third through the ninth wildlife districts as established in 301 KAR 4:010.

(2) "Grouse Zone" means the area consisting of Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(3) "Modern gun deer season" means the season as established in 301 KAR 2:172.

(4) "Rabbit" means an eastern cottontail rabbit, swamp rabbit, or Appalachian cottontail rabbit.

(5) "Small game" means squirrels, rabbits, northern bobwhite or ruffed grouse.

(6) "Squirrel" means a gray squirrel or fox squirrel.

(7) "Western Zone" means the first and second wildlife districts as established in 301 KAR 4:010.

Section 2. Methods of Harvest for Small Game. (1) A person shall use any of the following to take small game:

- (a) Rimfire gun or rimfire handgun;
- (b) Shotguns no larger than 10-gauge;
- (c) Muzzle-loading gun;
- (d) .410-gauge handgun;
- (e) Bow and arrow;
- (f) Crossbow;
- (g) The following caliber air-guns with pellets:

- 1. .177;
- 2. .20;
- 3. .22; or
- 4. .25;

(h) Slingshot with manufactured hunting ammunition;

(i) Dogs;

(j) Falconry, pursuant to 301 KAR 2:195; or

(k) Trapping, pursuant to Section 5 of this administrative regulation, for:

- 1. Rabbits; or
- 2. Squirrel.

(2) A person shall not use the following to take small game:

- (a) A shotgun shell containing a shot size larger than number two (2); or
- (b) Single projectile shotgun ammunition.

Section 3. Small Game Hunting Seasons. (1) Except as established in 301 KAR 2:049, a person shall not take small game except during the dates specified in this section.

(2) Small game taken by falconry: September 1 through March 30.

(3) Squirrel:

(a) The third Saturday in May through the third Friday in June; and

(b) The third Saturday in August through the last day of February, except the season shall be closed during the first two (2) days of modern gun deer season.

(4) Rabbit and northern bobwhite:

(a) Western Zone: the third day of modern gun deer season through February 10.

(b) Eastern Zone: November 1 until January 31, except the season shall be closed during the first two (2) days of modern gun deer season.

(5) Ruffed Grouse: November 1 through the last day of February in the Grouse Zone, except the season shall be closed during the first two (2) days of modern gun deer season.

(6) There shall not be a closed season for chasing rabbits during daylight hours for sport and not to kill.

(7) Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting or trapping license, but shall be in compliance with all other statewide requirements.

Section 4. Limits and Other Requirements. (1) The small game possession limits shall be twice the daily bag limits.

(2) Daily bag limits:

(a) Squirrel: six (6);

(b) Rabbit: four (4);

(c) Northern bobwhite: eight (8); and

(d) Ruffed grouse: four (4).

(3) A falconer hunting outside any of the dates specified in Section 3(2) through (4) of this administrative regulation shall not take more than two (2) small game animals per day.

(4) A person shall hunt small game during daylight hours only.

Section 5. Trapping for Squirrel and Rabbit. A person trapping for squirrel or rabbit shall:

(1) Comply with the requirements established in 301 KAR 2:251;

(2) Only trap when the small game hunting season and trapping season overlap;

(3) Possess a trapping license;

(4) Comply with daily bag and possession limits pursuant to Section 4 of this administrative regulation; and

(5) Harvest squirrel and rabbits upon capture, except for a person possessing a valid captive wildlife permit, pursuant to 301 KAR 2:081.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: April 7, 2016

FILED WITH LRC: April 13, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2016 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by May 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, ext. 4484, fax (502) 564-9136, email fwpubcomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes statewide seasons, bag limits, and methods of take for small game.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly conserve and manage small game species in Kentucky and provide ample recreational hunting opportunity to small game hunters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the administration of the statute by establishing small game hunting seasons, limiting take and possession of small game, and restricting the methods of take in order to conserve

small game species, while providing reasonable hunting opportunity.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands the methods of take for small game by authorizing the use of slingshots.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to authorize the use slingshots.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those people wishing to use slingshots to hunt small game species in the Commonwealth may be affected. There are approximately 200,000 small game hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Small game hunters will be authorized to use slingshots to harvest small game.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Small game hunters who wish to use slingshots will benefit.

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

(a) Initially: There will be no cost for the Kentucky Department of Fish and Wildlife Resources to administer initially.

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees were established, and no fees were increased.

(9) TIERING: Is tiering applied? Tiering was not used because all hunters in Kentucky will need to comply equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be additional costs to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be not be additional costs to implement this administrative regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:226. Youth waterfowl, moorhen, and gallinule hunting seasons.

RELATES TO: KRS[150.040(40),—150.025(1),] 150.305(1), 150.330, 150.340[(1), (3), 150.600(1)], 150.990[, 50 C.F.R. Parts 20, 21]

STATUTORY AUTHORITY: KRS 150.025(1)[(a)(b), 150.340(1), (2), (3)], 150.600(1), 50 C.F.R.[Parts] 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS[and] 150.600(1) authorizes the department to regulate the taking of[establish statewide] waterfowl on public and private land[hunting requirements]. This administrative regulation establishes two (2) sets of two (2) special waterfowl hunting days for youth hunters, establishes the requirements for an adult accompanying a youth, and conforms with the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Adult" means a person who has reached his 18th birthday.

(2) "Eastern Zone" means the area including both the Northeast Goose Zone and the Eastern Goose Zone, as defined in 301 KAR 2:224.

(3) "Waterfowl" means the species of duck, coot, merganser and goose for which an open season in Kentucky has been established by 301 KAR 2:221.

(4) "Western Zone" means the area including the Pennyroyal-Coalfield Goose Zone, the Western Goose Zone and the West-Central Goose Zone, as defined in 301 KAR 2:224.

(5) "Youth" means a person who has not reached his 16th birthday.

Section 2. A youth:

(1) In the Eastern Zone, may hunt waterfowl, moorhen and gallinule on the first Saturday and Sunday of November if he or she is accompanied by an adult.

(2) In the Western Zone, may hunt waterfowl, moorhen, and gallinule on the first Saturday and Sunday of February if he or she is accompanied by an adult.

(3) Shall obey the provisions of 301 KAR 2:221 and 301 KAR 2:222, except that he or she may hunt on the dates provided in this administrative regulation.

Section 3. An adult accompanying a youth who is waterfowl hunting:

(1) Shall:

(a) Remain in a position to take immediate control of the

youth's firearm;

(b) Not hunt waterfowl in the Eastern Zone;

(c) Not hunt ducks, coots, and mergansers in the Western Zone;

(d) Not be required to possess a hunting license or waterfowl permit if he or she is not hunting.

(2) May hunt other species[except waterfowl] for which there is an open season.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: April 7, 2016

FILED WITH LRC: April 13, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2016, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing 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 May 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, ext. 4484, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes hunting season dates and bag limits according to the United States Fish and Wildlife Service federal waterfowl hunting frameworks established in 350 C.F.R. Part 20 for youth waterfowl hunting seasons.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2016-2017 youth waterfowl, moorhen and gallinule season in accordance with the United States Fish and Wildlife Service frameworks and to allow adults accompanying youth hunters to shoot geese in the Western Zone.

(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 these requirements apply to a limited area. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation is maintaining and managing migratory game bird conservation efforts consistent with national management goals. This administrative regulation establishes youth migratory bird hunting seasons.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow adults accompanying youth hunters to hunt geese in the Western Zone.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to provide an opportunity for adults accompanying youth waterfowl hunters to hunt geese in the Western Zone.

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Adults accompanying youth hunters in the Western Zone will be allowed to hunt geese.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will provide additional opportunity adults accompanying youth hunters to hunt geese in the Western Zone

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all youth migratory game bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

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

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 51:010. Attainment status designations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 50.51, 52, 53, 58, 75, 81, 318, 42 U.S.C. 7401-7671q[7626, 7407, 7501-7515, 7601]

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7407[7401-7626]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Environmental and Public Protection] cabinet to promulgate [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.

Section 1. Definitions. (1) "Rest of state" [as used in Sections 4 through 7 of this administrative regulation] means the remainder of the state has been designated and identified on a county by county basis.

(2) "Road" means a Kentucky route, a county road, a lane, or a U.S. route, highway, or interstate.

(3) "Statewide" [as used in Section 8 of this administrative regulation] means the entire state has been designated on a county by county basis.

[(3) "Road" as used in Section 2(3) of this administrative regulation means a Kentucky route, a county road, a lane, or a U.S. route, highway, or interstate.]

Section 2. Attainment Status Designations. (1) The attainment status of areas of the Commonwealth of Kentucky with respect to the ambient air quality standards for carbon monoxide, lead, nitrogen oxides, ozone, particulate matter, and sulfur dioxide, [carbon monoxide, ozone and nitrogen oxides] is listed in Sections 4 through 10 [5 through 8] of this administrative regulation. [The attainment status of areas of the Commonwealth of Kentucky with respect to total suspended particulates is listed in Section 4 of this administrative regulation.]

(2) Within sixty (60) days of revision by the U.S. Environmental Protection Agency (U.S. EPA) of a national ambient air quality standard, the cabinet shall review applicable data and submit to the U.S. EPA a revision to the attainment - nonattainment list pursuant to 42 U.S.C. 7407(d)(1).

(3) A road, junction, or intersection of two (2) or more roads as used in Section 7 of this administrative regulation that defines a nonattainment boundary for an area which is a portion of a county designated as nonattainment for ozone for any classification except marginal shall include as nonattainment an area extending 750 feet from the center of the road, junction, or intersection.

Section 3. Attainment Timetable. Primary and secondary ambient air quality standards shall be attained as expeditiously as practicable.

Section 4. Attainment Status Designations for Carbon Monoxide (CO). The 1971 Standard is as follows:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 5. Attainment Status Designations for Lead (Pb). The 2008 Standard is as follows:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 6. Attainment Status Designations for Nitrogen Oxides (NO₂).

(1) 1971 Annual Standard:

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Statewide		X

(2) 2010 One (1) Hour Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 7. Attainment Status Designations for Ozone (O₃). (1) The 1971 One (1) Hour Standard was revoked effective June 15, 2005, for all areas in the Commonwealth of Kentucky. The Cincinnati-Hamilton, Edmonson County, Huntington-Ashland, Lexington-Fayette, Louisville, Owensboro, and Paducah areas shall be considered maintenance areas for the one (1) hour national ambient air quality standards for the purposes of 40 C.F.R. Part 51, Subpart X.

(2) 1997 Eight (8) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Boone County	Attainment
Boyd County	Attainment
Bullitt County	Attainment
Campbell County	Attainment
Christian County	Attainment
Jefferson County	Attainment
Kenton County	Attainment
Oldham County	Attainment
Rest of state	Unclassifiable/Attainment

(3) 2008 Eight (8) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Boone County (part) 2000 Census tracts: 701, 702,	Attainment

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703.01, 703.04, 703.05, 703.06, 703.07, 703.08, 703.09, 704.01, 704.02, 705.01, 705.02, 706.03	
Campbell County (part) 2000 Census tracts: 501, 502, 503, 504, 505, 506, 511.01, 511.02, 512, 513, 519.01, 519.03, 519.04, 521, 522, 523.01, 523.02, 524, 525, 526, 528, 529, 530, 531	Attainment
Kenton County (part) 2000 Census tracts: 603, 607, 609, 610, 611, 612, 613, 614, 616, 636.03, 636.04, 636.05, 636.06, 638, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655.01, 655.02, 656, 657, 658, 659, 668, 669, 670, 671	Attainment
Rest of state	Unclassifiable/Attainment

Section 8. Attainment Status Designations for PM_{2.5}. (1) 1997 Annual Primary and Secondary Standard:

Designated Area	Designation Type	Classification
Boone County	Attainment	
Boyd County	Attainment	
Bullitt County	Nonattainment	Moderate
Campbell County	Attainment	
Jefferson County	Nonattainment	Moderate
Kenton County	Attainment	
Lawrence County (part) The area described by U.S. Census 2000 block group identifier 21-127-9901-6	Attainment	
Rest of state	Unclassifiable/ Attainment	

(2) 2012 Annual PM_{2.5} Primary Standard:

Designated Area	Designation Type
Bullitt County (part) 2010 Census tracts: 201.01, 201.02, 201.03, 202.01, 202.02, 203, 204, 205, 206.01, 206.02, 207.01, 207.02, 208, 211.01, and 211.02	Unclassifiable
Jefferson County	Unclassifiable
Rest of state	Unclassifiable/Attainment

(3) 1997 Twenty-four (24) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

(4) 2006 Twenty-four (24) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 9. Attainment Status Designations for Sulfur Dioxide (SO₂). (1) 1971 Primary and Secondary Standard:

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Statewide				X

(2) 2010 Primary Standard:

Designated Area	Designation Type
Campbell County (part)	Attainment

That portion of Campbell County which lies south and west of the Ohio River described as follows: Beginning at 38.9735 North Latitude, 84.3017 West Longitude on the edge of the Ohio River running southwesterly to KY Hwy 1566 to KY Hwy 9 (AA Highway); running northwesterly along KY Hwy 9 (AA Highway) from Hwy 1566 to Interstate 275; running northeasterly along Interstate 275 to Hwy 2345 (John's Hill Rd.), Hwy 2345 to US-27, US-27 to I-275, I-275 to the Ohio River; running southeasterly along the Ohio River from Interstate 275 to geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude	
Jefferson County (part) That portion of Jefferson County compassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83: Ethan Allen Way extended to the Ohio River at UTM Easting (m) 59738, UTM Northing 4214086 and Dixie Hwy (US60 and US31W) at UTM Easting (m) 59751, UTM Northing 4212946; along Dixie Hwy from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Hwy at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086	Nonattainment
Rest of state	Unclassifiable/Attainment

Section 10. Attainment Status Designations for Total Suspended Particulates (TSP). The 1971 Standard is as follows:

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Bell County			X	
Boyd County			X	
That portion of Bullitt County in Shepherdsville			X	
That portion of Campbell County in			X	

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Newport				
That portion of Daviess County in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60 on the south, and by the Beltline (KY 212) projected to the river on the east			X	
That portion of Henderson County in Henderson			X	
Jefferson County			X	
That portion of Lawrence County in Louisa			X	
McCracken County			X	
That portion of Madison County in Richmond			X	
Muhlenberg County			X	
That portion of Perry County in Hazard			X	
That portion of Pike County in Pikeville			X	
That portion of Whitley County in Corbin			X	
Rest of state				X

[Attainment Status Designations for Total Suspended Particulates:-

Designated Areas	Does Not Meet Primary Standard	Does Not Meet Secondary Standards	Better Than Standard	Cannot Be Classified
Bell Co.			X	
Boyd Co.				X
That portion of Bullitt County in Shepherdsville			X	
That portion of Campbell County in Newport			X	
That portion of Daviess County in Owensboro bordered by the Ohio River on the north,				X

Designated Areas	Does Not Meet Primary Standard	Does Not Meet Secondary Standards	Better Than Standard	Cannot Be Classified
by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60 on the south and by the Beltline (KY 212) projected to the river on the east				
That portion of Henderson County in Henderson				X
Jefferson County				X
That portion of Lawrence County in Louisa				X
McCracken County			X	
Marshall County			X	
That portion of Madison County in Richmond				X
Muhlenberg County			X	
That portion of Perry County in Hazard				X
That portion of Pike County in Pikeville				X
That portion of Whitley County in Corbin			X	
Rest of State			X	

Section 5. Attainment Status Designations for Sulfur Dioxide.

Designated Areas	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Better Than Standards
That portion of Boyd County south of the Northern UTM line 4251 Km	X	X	
Muhlenberg County		X	
Rest of State			X

Section 6. Attainment Status Designations for Carbon Monoxide.

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified Or Better Than Standards
Jefferson Co.		X
Rest of State		X

Section 7. Attainment Status Designations for Ozone.

Designated Areas	Moderate	Marginal	Cannot be
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			Classified or Better Than Standards
Boone County	X		
Boyd County			X
That portion of Bullitt County within the boundaries described as follows: Beginning at the intersection of KY 1020 and the Jefferson-Bullitt County line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County line; proceeding south on county road 567 to the junction with KY 1116 (also known as Zoneton Road); proceeding to the south on KY 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets KY 44 at Stallings Cemetery; proceeding west along KY 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of KY 480; proceeding west on KY 480 to the junction with KY 2237; proceeding south on KY 2237 to the junction with KY 61 and proceeding north on KY 61 to the junction with KY 1494; proceeding south on KY 1494 to the junction with the perimeter of the Fort Knox military reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to KY 44; proceeding a very short distance west on KY 44 to a junction with KY 2723; proceeding north on KY 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of	X		
KY 2678; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning;			
Caldwell County		-	X
Calloway County		-	X
Campbell County	X	-	-
Christian County		-	X
Fayette County		-	X
That portion of Greenup County within the boundaries described as follows: Beginning at a point where the Ohio River meets the Greenup-Boyd County Line; proceeding southwest along the Greenup-Boyd County Line to the junction of the East Fork of the Little Sandy River and the Greenup-Boyd County Line; proceeding north and west along the East Fork of the Little Sandy River to the confluence of the Little Sandy River; proceeding north along the Little Sandy River to the confluence of the Ohio River; proceeding east along the Ohio River to the beginning;		-	X
Jefferson County	X	-	-
Kenton County	X	-	-
That portion of Oldham County within the boundaries described as follows: Beginning at the intersection of the Oldham-Jefferson County line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of KY 329 and the southbound lane of Interstate 71; proceeding to the northwest on KY 329 to the intersection of Zaring Road and KY 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of KY 393 and Cedar Point Road; proceeding to the south-southeast on KY 393 to the junction of the access road on the north side of Reformatory Lake and the Reformatory; proceeding to the east-	X	-	-

northeast on the access road to the junction with Dawkins Lane and the access road; proceeding to follow an electric power line east-northeast across from the junction of County Road 746 and Dawkins Lane to the east-northeast across KY 53 on to the LaGrange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on KY 146; proceeding along the power line south across KY 146 and the Seaboard System Railroad Track to adjoin the incorporated city limits of LaGrange; then proceeding east then south along the LaGrange city limits to a point abutting the north side of KY 712; proceeding east-southeast on KY 712 to the junction of Massie School Road and KY 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northwest on Zale Smith Road to the junction of KY 53 and Zale Smith Road; proceeding on KY 53 to the north-northwest to the junction of new Moody Lane and KY 53; proceeding on new Moody Lane to the south-southwest until meeting the city limits of LaGrange; then briefly proceeding north following the LaGrange city limits to the intersection of the northbound lane of Interstate 71 and the LaGrange city limits; proceeding southwest on the northbound lane of Interstate 71 until intersecting with the North Fork of Currys Fork; proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding

northwest along the Oldham-Jefferson County Line to the beginning.			
Trigg County			X
Rest of State			X

Section 8. Attainment Status Designations for Nitrogen Oxides.

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Statewide		X

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: April 14, 2016

FILED WITH LRC: April 14, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on May 26, 2016, at 10:00 a.m. (Eastern Time) in Conference Room 201B of the Division for Air Quality at 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2016, 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 shall be cancelled, and notification of the cancellation shall be posted at <http://air.ky.gov/pages/publicnoticesandhearings.aspx>. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of ambient air quality standards. Under the Clean Air Act (CAA), states have the primary responsibility for assuring air quality within the entire geographic area of the state by submitting an implementation plan to specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in a state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to identify geographic areas pursuant to Section 107 of the CAA and designate whether the area is attaining ambient air quality standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Section 107 of the Clean Air Act provides states with the primary responsibility for assuring air quality within the entire geographic area of the state. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards for the purposes of planning and implementation of air pollution control strategies. Further, KRS 224.20-110 prohibits pollution of the air of the Commonwealth in contravention of the emission standards or the ambient air standards adopted by the cabinet.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: The applicability of several regulations relates to the designation of an area as listed in this administrative regulation. The Kentucky state implementation plan (SIP) specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the state depending on the designation of the area as prescribed in this administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the description and attainment or nonattainment status of geographic areas in Kentucky in regard to new and revised national primary and secondary ambient air quality standards.

(b) The necessity of the amendment to this administrative regulation: Since this administrative regulation was last amended in 1997, a number of revisions have been promulgated to the designations of areas. The amendment to this administrative regulation is consistent with federal designations and eliminates discrepancies between federal and state law.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation identifies the status of geographic areas in Kentucky with regard to attainment of ambient air quality standards for the purposes of planning and implementation of the Kentucky SIP pursuant to Section 107 of the Clean Air Act.

(d) How the amendment will assist in the effective administration of statutes: The applicability of several regulations relates to the designation of an area as listed in this administrative regulation. The Kentucky SIP specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in a state depending on the designation of the area as prescribed in this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation designates all areas of the Commonwealth of Kentucky with regard to attainment of the NAAQS based on air quality data. The impact of this administrative regulation is indirect, as other regulations refer to the status designation. The number and types of affected facilities will vary depending on location of the facility and regulatory requirements based on the facility's operating parameters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will not have to take any action to directly comply with this administrative regulation. However, an entity may be required to meet more stringent requirements set forth in another administrative regulation due to the status designation in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this proposed amendment as it updates the status designations to be consistent with federal regulations. Entities will not have to take any action to directly comply with this administrative regulation. However, an entity may be required to meet standards set forth in another administrative regulation due to the status designation in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance and upon the designation of Attainment status, new sources will be subject to less stringent requirements than those in Nonattainment as a result of the air quality in that particular area, thus attracting new businesses and thereby encouraging economic development.

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

(a) Initially: The Division for Air Quality will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The Division for Air Quality will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division for Air Quality's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied. An area's air quality designation status is determined by ambient air quality data. The regulation is tiered based upon the severity of the area's non-compliance and triggers more stringent control strategies for areas not meeting the ambient air quality standards.

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 Division for Air Quality will continue to use the status designations in this regulation to determine applicability of other regulations. State and local governments that own or operate affected facilities may be subject to other regulatory requirements based on the location of the affected facility and the facility's operating parameters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), KRS 224.20-110, 42 U.S.C. 7407, 40 C.F.R. 81.318

(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 regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? The Division for Air Quality's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division for Air Quality's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

U.S. EPA promulgated the federal regulations in 40 C.F.R. 81.318

pursuant to 42 U.S.C. 7407.

2. State compliance standards. This administrative regulation designates the status of a geographic area in the Commonwealth as related to ambient air quality standards.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7407 obligates each state with the primary responsibility for assuring air quality within the entire geographic area of the state. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of ambient air quality standards for the purposes of planning and implementation of air pollution control strategies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Stricter standards or requirements are not imposed. The amendment to this administrative regulation provides regulatory consistency with 40 C.F.R. 81.318.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or requirements are not imposed.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 53:010. Ambient air quality standards.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 50, 51, 52, 53, 58, 75, 81, 42 U.S.C. 7401-7671g

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7401-7671g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Environmental and Public Protection] cabinet

to ~~promulgate~~[~~prescribe~~] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation ~~establishes~~[~~is to fix~~] ambient air quality standards necessary for the protection of the public health, the general welfare, and the property and people in ~~the~~[~~this~~] Commonwealth of Kentucky.

Section 1. Ambient Air Quality Standards. The primary and secondary ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, lead, hydrogen sulfide, gaseous fluorides, total fluorides, and odors are specified in Appendix A of this administrative regulation. Measurements ~~shall~~[~~will~~] be ~~made~~ by methods ~~and~~ frequency specified in Section 2 of this administrative regulation.

Section 2. Methods of Measurement. For those air contaminants for which there are state ambient air quality standards that are the same as the national ambient air quality standards, measurements shall be made ~~in accordance with 40 C.F.R. Parts 50 and 53~~[~~according to reference methods, or their equivalent methods~~]. For other air contaminants for which there are state ambient air quality standards, measurements shall be made according to methods ~~established in 401 KAR 50:015, this administrative regulation, or as prescribed by the cabinet.~~ The frequency of measurements for all air contaminants shall be prescribed by the cabinet, ~~in accordance with 40 C.F.R. Parts 50 and 53, 401 KAR 50:015, or this administrative regulation.~~

Section 3. Within sixty (60) days of promulgation or revision of any ~~primary or secondary~~ ambient air quality standard by the U.S. EPA, the cabinet shall initiate proceedings to promulgate or review this administrative regulation in conformance with the federal ambient air quality standards.

APPENDIX A TO 401 KAR 53:010 AMBIENT AIR QUALITY STANDARDS		
The following air contaminant concentrations shall apply to any single point location:		
Pollutant	Primary Standard	Secondary Standard
Carbon Monoxide		
Eight (8) hour average	9 ppm ⁽¹⁾ (10 mg/m ³)	--
One (1) hour average	35 ppm ⁽¹⁾ (40 mg/m ³)	--
Lead		
Rolling three (3) month mean	0.15 µg/m ³	Same as primary
Nitrogen Dioxide		
Annual arithmetic mean	53 ppb (100 µg/m ³) ⁽²⁾	Same as primary
One (1) hour average	100 ppb	--
Ozone		
One (1) hour average	0.12 ppm ⁽³⁾	Same as primary ⁽³⁾
Eight (8) hour average		
2015 standard	0.070 ppm	Same as primary
2008 standard	0.075 ppm	Same as primary
1997 standard	0.08 ppm ⁽⁴⁾	Same as primary ⁽⁴⁾
Particulate Matter, measured as PM ₁₀		
Twenty-four (24) hour average	150 µg/m ³	Same as primary
Particulate Matter, measured as PM _{2.5}		
Annual arithmetic mean		
2012 standard	12.0 µg/m ³	(5)
2006 standard	15.0 µg/m ³	Same as primary
1997 standard	15.0 µg/m ³	Same as primary
Twenty-four (24) hour average		
2012 standard	35 µg/m ³	(5)
2006 standard	35 µg/m ³	Same as primary
1997 standard	65 µg/m ³	Same as primary
Sulfur Dioxide		
Annual arithmetic mean	0.030 ppm ⁽¹⁾⁽⁶⁾	--
One (1) hour average	75 ppb	--
Three (3) hour average	--	0.5 ppm ⁽¹⁾

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<u>Twenty-four (24) hour average</u>	<u>0.14 ppm⁽¹⁾⁽⁶⁾</u>	--
<u>Gaseous Fluorides - (expressed as HF)</u>		
<u>Annual arithmetic mean</u>	<u>400 µg/m³ (0.5 ppm)</u>	--
<u>One (1) month average</u>	--	<u>0.82 µg/m⁽¹⁾ (1.00 ppb)</u>
<u>One (1) week average</u>	--	<u>1.64 µg/m³⁽¹⁾ (2.00 ppb)</u>
<u>Twenty-four (24) hour average</u>	<u>800 µg/m³⁽¹⁾ (1.0 ppm)</u>	<u>2.86 µg/m³⁽¹⁾ (3.50 ppb)</u>
<u>Twelve (12) hour average</u>	--	<u>3.68 µg/m³⁽¹⁾ (4.50 ppb)</u>
<u>Hydrogen Sulfide</u>		
<u>One (1) hour average</u>	--	<u>14 µg/m³⁽¹⁾ (0.01 ppm)</u>
<u>Odors</u>	--	<u>A mixture of one (1) volume of ambient air and seven (7) volumes of odorless air shall have no detectable odor at any time.</u>
<u>Total Fluorides</u>		
<u>Dry weight basis (as fluoride ion) in and on forage for consumption by grazing ruminants:</u>		
<u>Average concentration of monthly samples over growing season (not to exceed six (6) consecutive months)</u>	--	<u>40 ppm</u>
<u>Two (2) month average</u>	--	<u>60 ppm</u>
<u>One (1) month average</u>	--	<u>80 ppm</u>

Footnotes:

¹ Average is not to be exceeded more than once per calendar year.

² The official level of the annual NO₂ standard is 0.053 ppm, equal to fifty-three (53) ppb, which is shown for the purpose of clearer comparison to the one (1) hour standard.

³ The U.S. Environmental Protection Agency revoked the one (1) hour ozone standard in all areas in 2005. However, some areas have continuing obligations under the standard.

⁴ The U.S. Environmental Protection Agency revoked the 1997 eight (8) hour ozone standard in 2015. However, some areas have continuing obligations under the standard.

⁵ The secondary ambient air quality standard was not adjusted from the previously established standard.

⁶ The 1971 sulfur dioxide standards remain in effect until one (1) year after an area is designated for the 2010 standard, except that in areas designated nonattainment for the 1971 standards, the 1971 standards remain in effect until implementation plans to attain or maintain the 2010 standards are approved.

APPENDIX A TO 401 KAR 53:010 AMBIENT AIR QUALITY STANDARDS		
The following air contaminant concentrations shall apply at any single point location:		
CONTAMINANT	PRIMARY STANDARD	SECONDARY STANDARD
Sulfur Oxides (Sulfur Dioxide) µg/m ³ Annual Arithmetic Mean, not to exceed Maximum Twenty-Four-Hour Average Maximum Three-Hour Average	80 (0.03 ppm) 365 (0.14 ppm) ⁴ --	-- -- 1300 (0.50 ppm) ⁴
Particulate Matter, measured as PM ₁₀ - µg/m ³ Annual Arithmetic Mean, not to exceed Maximum Twenty-Four-Hour Average	50 ² 150 ²	50 ² 150 ²
Carbon Monoxide - mg/m ³ Maximum Eight-Hour Average Maximum One-Hour Average	10 (9 ppm) ⁴ 40 (35 ppm) ⁴	Same as primary Same as primary
Ozone - µg/m ³ Maximum Average	235 (0.12 ppm) ⁴	Same as primary
Nitrogen Dioxide - µg/m ³ Annual Arithmetic Mean, not to exceed	100 (0.05 ppm)	Same as primary
Lead - µg/m ³ Maximum Arithmetic Mean averaged over a calendar quarter	1.5	Same as primary
Hydrogen Sulfide - µg/m ³ Maximum One-Hour Average	--	14 (0.01 ppm) ⁴
Gaseous Fluorides - (expressed as HF) - µg/m ³ Annual Arithmetic Mean, not to exceed Maximum One-Month Average Maximum One-Week Average Maximum Twenty-Four-Hour Average Maximum Twelve-Hour Average	400 (0.5 ppm) -- -- 800 (1.0 ppm) ⁴ --	-- 0.82 (1.00 ppb) ⁴ 1.64 (2.00 ppb) ⁴ 2.86 (3.50 ppb) ⁴ 3.68 (4.50 ppb) ⁴
Total Fluorides - ppm Dry weight basis (as fluoride ion) in and on forage for consumption by grazing ruminants		

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The following concentrations are not to be exceeded: Average concentration of monthly samples over growing season (not to exceed 6 consecutive months) Two-Month Average One-Month Average	-- -- --	40 ppm (w/w) 60 ppm (w/w) 80 ppm (w/w)
Odors		At any time when 1 volume unit of ambient air is mixed with 7 volume units of odorless air, the mixture must have no detectable odor.

Footnotes:

¹This average is not to be exceeded more than once per year.

²The standard is attained when the expected annual arithmetic mean concentration, as determined in accordance with Appendix K to 40 C.F.R. 50, is less than or equal to fifty (50) $\mu\text{g}/\text{m}^3$.

³The standard is attained when the expected number of days per calendar year with a twenty-four (24) hour average concentration above 150 $\mu\text{g}/\text{m}^3$, as determined in accordance with Appendix K of 40 C.F.R. 50, is equal to or less than one (1).

⁴The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm (235 $\mu\text{g}/\text{m}^3$) is equal to or less than one (1), as determined by Appendix H of 40 C.F.R. 50.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: April 14, 2016

FILED WITH LRC: April 14, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on May 26, 2016, at 10:00 a.m. (Eastern Time) in Conference Room 201B of the Division for Air Quality at 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2016, 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 shall be cancelled, and notification of the cancellation shall be posted at <http://air.ky.gov/pages/publicnoticesandhearings.aspx>. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 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. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the ambient air quality standards (standards) for carbon monoxide, nitrous oxides, ozone, particulates, and sulfur dioxide, which are necessary to protect public health and welfare in the Commonwealth of Kentucky. This regulation also establishes additional standards for hydrogen sulfide, fluorides, and odor.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standards to protect public health and welfare in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the standards necessary to protect public health and welfare in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards necessary to protect public health and welfare in the Commonwealth of Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: How the amendment will change this existing administrative regulation: This amendment updates the standards to reflect changes to the National Ambient Air Quality Standards (NAAQS) that have been promulgated by U.S. EPA since this administrative regulation was last amended.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure consistency between the state and federal rulemaking.

(c) How the amendment conforms to the content of the authorizing statutes: 42 U.S.C. 7410(a)(1) requires states to adopt and submit a plan to U.S. EPA that provides for implementation, maintenance, and enforcement of the NAAQS. KRS 224.100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The Cabinet complies with this mandate by implementing and enforcing the standards of this administrative regulation.

(d) How the amendment will assist in the effective administration of statutes: This amendment assists the cabinet in fulfilling its statutory obligation to prevent, abate, and control air pollution by adopting updated NAAQS that have been promulgated by U.S. EPA since this administrative regulation was last amended.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes standards that apply to all sources that emit criteria pollutants, odor, fluorides, or hydrogen sulfide.

(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: Sources must install and operate pollution control devices that prevent the source from emitting pollutants above the standards established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of pollution control technologies varies depending on what the source chooses to install to mitigate emissions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the standards in this administrative regulation will provide air quality that is at a level determined by U.S. EPA and Kentucky to protect human health

and the environment.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The Division will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied. Standards for pollutants are established as either primary or secondary standards. They are also tiered based on averaging time.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to enforce the national ambient air quality standards (NAAQS). State and local governments constructing or modifying a source will have to meet these standards.

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

KRS 224.10-100(5), KRS 224.20-110, 40 C.F.R. Part 50, 42 U.S.C. 7401-7671q

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 regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? The Division for Air Quality's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division for Air Quality's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The U.S. EPA promulgated the federal regulations found in 40 C.F.R. Part 50 pursuant to 42. U.S.C. 7410(a)(1).

2. State compliance standards. This administrative regulation

establishes the ambient air quality standards in the Commonwealth of Kentucky.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 50 is the federal rule where the national ambient air quality standards are established for criteria pollutants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The ambient air quality standards for lead, sulfur dioxide, nitrogen dioxide, particulate matter, carbon monoxide, and ozone in this administrative regulation are identical to the NAAQS established 40 C.F.R. Part 50. The Kentucky specific ambient air quality standards are in addition to the federal standards. However, these requirements were not changed as part of this regulatory amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or requirements are not imposed on the federal standards. The Kentucky specific standards in this administrative regulation are established to comply with KRS 224.10-100(5) which states the Cabinet shall "provide for the prevention, abatement, and control of all water, land, and air pollution, including but not limited to that related to particulates, pesticides, gases, dust, vapors, noise, radiation, odor, nutrients, heated liquid, or other contaminants."

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (Amendment)

601 KAR 2:030 Ignition interlock[devices; the surrendering of license plates].

RELATES TO: KRS 45A, 186.010, 186.440, 186.442, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.240, 189A.250, 189A.340, 189A.345, 189A.400, 189A.410, 189A.420, 189A.440, 189A.500, 205.712, 18 U.S.C. 2721[57 C.F.R. 11772-11787]

STATUTORY AUTHORITY: KRS 189A.500[189A.085(1)(b); 189A.340(4)(f)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.500 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant charged with a violation of KRS 189.010 to obtain an ignition interlock device and license[KRS 189A.085 states that, after a license plate suspension by a judge pursuant to that provision, the circuit court clerk shall transmit surrendered plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulation. KRS 189A.340(4)(f) states that the Transportation Cabinet shall promulgate administrative regulations to carry out the provisions of that subsection regarding interlock devices. This administrative regulation outlines the procedure for surrendering plates to the Transportation Cabinet pursuant to court order, providing registration information on a convicted violator to the court, approving interlock device manufacturers, installers, and servicing entities and making an approved list available to the public].

Section 1. Definitions. (1) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(2) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(3) "Defendant" means an individual who is determined to be eligible and who is ordered by the court to drive only motor vehicles that have certified ignition interlock devices installed.

(4) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(5) "Device" means a breath alcohol ignition interlock device.

(6) "Fail-point" means the level at which the breath alcohol concentration is at or above .02 percent.

(7) "Ignition interlock certification of installation" is defined by KRS 189A.005(3).

(8) "Ignition interlock device" is defined by KRS 189A.005(2).

(9) "Ignition interlock device provider" or "device provider" is defined by KRS 189A.005(4).

(10) "Ignition interlock license" is defined by KRS 189A.005(5).

(11) "Ignition interlock service provider" or "service provider" means a certified supplier, installer, service provider, and, if applicable, manufacturer of the certified ignition interlock devices.

(12) "Lockout" means the ability of the ignition interlock device to prevent a motor vehicle's engine from starting.

(13) "Manufacturer" means the actual maker of the ignition interlock device that assembles the product and distributes it to device providers.

(14) "Medical accommodation" means non-standard calibration of a device that has been adjusted to detect the breath alcohol level of defendants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(15) "Motor vehicle" is defined by KRS 186.010(4).

(16) "NHTSA" means the National Highway Traffic Safety Administration.

(17) "Provider representative" means a device provider employee who provides oversight of the provider's ignition interlock operations within the Commonwealth of Kentucky.

(18) "Retest" means an additional opportunity to provide a breath sample.

(19) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(20) "Rolling retest" means a test of the defendant's breath alcohol concentration required at random intervals during operation of the motor vehicle.

(21) "Service facility" means the physical location where the service provider's technicians install, calibrate, or remove ignition interlock devices.

(22) "Service facility inspection" means the process of determining that a service provider and its technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(23) "Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device.

(24) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

(25) "Violation" means:

(a) A breath test indicating an alcohol concentration at the fail-point or above upon initial startup and retest during operation of the motor vehicle;

(b) Altering, concealing, hiding, or attempting to hide one's identity from the ignition interlock system's camera while providing a breath sample;

(c) Failure to provide a minimum of fifty (50) breath samples within a thirty (30) day period;

(d) Tampering that breaches the guidelines for use of the interlock device; or

(e) Failure to pay provider fees as established in Section 2(17) of this administrative regulation.

Section 2. Ignition Interlock Device Applications. (1) The requirements established in this administrative regulation shall not be applied retroactively to ignition interlock devices in use prior to the effective date of this administrative regulation.

(2)(a) Upon arraignment of an offense under KRS 189A.010

resulting in pretrial license suspension, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Pretrial Application to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 189A.200.

(b) Upon conviction of an offense under KRS 189A.010 resulting in license revocation, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Application to Court Upon Conviction for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.12, pursuant to KRS 189A.070.

(c) Upon judicial finding of a refusal under KRS 189A.107(2) and an acquittal of charges brought under KRS 186.010, the court may authorize the defendant to submit a completed Post-Acquittal Application for Authorization to Apply for an Ignition Interlock License and Device, AOC 495.10.

(d) An eligible defendant in compliance with KRS Chapters 186 and 205 shall receive an Order Upon Acquittal Authorizing Ignition Interlock License and Device, AOC-495.11.

(e) The cabinet shall issue an ignition interlock license for the period of suspension ordered by the court.

(3) A defendant requesting indigency status review shall file concurrently with the application a completed Financial Statement, Affidavit of Indigency, Request for Reduced Ignition Interlock Device Costs, AOC-495.8.

(4) Upon review of the appropriate application, the court may issue the defendant a Pretrial Order Authorizing Application for Ignition Interlock License and Device, AOC-495.5, or an Order Upon Conviction Authorizing Application for Ignition Interlock License and Device, AOC-495.13.

(5) Defendant eligibility guidelines, applications, and medical accommodation forms shall be made available electronically on the cabinet's Web site at <http://drive.ky.gov> and in printed form through the Department of Vehicle Regulation regional field offices. Regional office locations and contact information are available at <http://drive.ky.gov>.

(6)(a) Prior to application, a defendant shall be required to remit to the cabinet a non-refundable application fee in the amount of \$105 pursuant to KRS 189A.420(6). Payment shall be made by cashier's check, certified check, or money order at one (1) of the cabinet's regional field offices or the central office in Frankfort.

(b) A defendant's payment of the application fee shall not be subject to a court's determination of indigency.

(7) A defendant and his or her counsel are advised that a pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, or 205.712 shall result in the defendant's ineligibility to obtain an ignition interlock device. Eligibility guidelines are available at <http://drive.ky.gov>.

(8) A defendant shall submit to the cabinet a completed Ignition Interlock Application, TC 94-175, with a court order authorizing application and proof of insurance and valid vehicle registration.

(9) A defendant seeking a medical accommodation due to diminished lung capacity shall submit with the application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(10) The cabinet shall issue the defendant a letter providing notice of his or her eligibility or ineligibility to install an ignition interlock device based on whether his or her current driving history record conforms to the eligibility guidelines established in KRS Chapters 186 and 205.

(11) A defendant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet's Web site at <http://drive.ky.gov>.

(12) A technician designated by the device provider shall install a certified ignition interlock device on the defendant's vehicle upon receipt of the court order and letter of eligibility issued by the cabinet.

(13) A defendant shall be required to install an ignition interlock device on one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

(14) Nothing in this administrative regulation shall prohibit a

person from installing devices on multiple motor vehicles pursuant to subsection (13) of this section.

(15) Upon a defendant's payment of the appropriate fees, the service provider's technician shall install the device and issue to the defendant a Certificate of Installation for Ignition Interlock Device, TC 94-177.

(16) At the time of issuance of an ignition interlock license, a defendant shall:

(a) Present the Certificate of Installation to the circuit clerk in the defendant's county of residence; and

(b) Pay a licensing fee pursuant to KRS 186.531 in addition to the fees specified in subsection (20)(c) of this section. The license shall display an ignition interlock device restriction.

(17) After ten (10) days' written notice to the defendant, the provider shall notify the appropriate county attorney and the cabinet for nonpayment of fees on an account that is in arrears for thirty (30) days or more.

(18) A defendant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (13) of this section, and upon payment of the appropriate fees to the provider.

(19) A defendant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock period specified by the court.

(20)(a) Upon removal of the device, the service provider shall retain for their records and provide to the defendant a Certificate of Removal for Ignition Interlock Device, TC 94-178, documenting the successful removal of the interlock device and defendant's payment of all fees.

(b) Upon notice that the device has been removed, the cabinet shall update the defendant's driver history record authorizing the circuit clerk's office to issue the defendant a new license without the ignition interlock restriction.

(c) A defendant shall pay the appropriate fee for a duplicate or renewal license pursuant to KRS 186.531.

(21) A defendant with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Initial certification shall be valid for a period of eighteen (18) months. Extensions shall be for a period of two (2) years with two (2) subsequent renewals.

(2) Ignition interlock device providers certified under this administrative regulation shall obtain re-certification in compliance with this administrative regulation prior to providing devices and services.

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in its original certification request and is specifically certified by the cabinet pursuant to KRS 189A.500.

(5) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the defendant and other individuals operating a vehicle with an installed device.

(6)(a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an agreement is in place or for the purpose of replacing a defendant's provider due to that provider's insolvency or business interruption.

(b) The original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(7) A device provider shall notify the cabinet within fifteen (15)

days of a pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

(8) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for five (5) years from the date the device is removed from the defendant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and the provisions contained in this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) An ignition interlock device provider requesting certification of an ignition interlock device shall:

(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and

(b) Submit documentation for each model from either a certified, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the current NHTSA model specifications at [nhtsa.gov/staticfiles/nti/pdf/811859.pdf](https://www.nhtsa.gov/staticfiles/nti/pdf/811859.pdf).

(2) An ignition interlock device provider requesting certification shall:

(a) Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program, including a list of jurisdictions served by the device provider;

(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide sufficient notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(e) Provide a plan for the receipt, maintenance, and destruction or appropriate return of defendant records consistent with court rules and the confidential maintenance of defendant records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(f) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The provider's liability insurance shall be expressly considered primary in the policy;

(g) Designate a provider representative authorized to speak on behalf of and bind the device provider, and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(h) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by defendants to request assistance in the event of operational problems related to the device and shall include technical assistance and aid in obtaining roadside service if needed; and

(i) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts.

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:

(a) Device tampering or circumvention violations; or

(b) A defendant's failure to comply with a court order pursuant

to Section 6(6) of this administrative regulation.

(4) A provider shall indemnify and hold harmless the commonwealth and its employees and agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. Indemnification shall extend to acts or omissions by the cabinet, department, or its employees or agents due to verified errors in reporting ignition interlock activities by the provider.

Section 5. Ignition Interlock Device Installation. (1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:

(a) Standard ignition interlock device installation, or installation on alternative fuel motor vehicles or a motor vehicle with a push button starter;

(b) Device rental on a monthly basis;

(c) Scheduled device calibrations and monitoring as specified in the RFQ;

(d) Required insurance in case of theft, loss, or damage to the device and its components;

(e) Resets necessary due to the fault of the defendant;

(f) Missed appointments without notice;

(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and

(h) Device removal.

(2)(a) The court shall determine whether a defendant is indigent. A defendant declared indigent shall pay a proportionate amount of the fees agreed to in the RFQ based upon the guidelines established by the Kentucky Supreme Court in Amendment to Administrative Procedures of the Court of Justice, Part XVI, Ignition interlock, Amended Order 2015-13.

(b) A device and service provider shall accept the court ordered amounts paid by an indigent defendant as payment in full.

(3) The defendant shall remit the fees directly to the device or service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

(4) The device provider shall pursue collection of amounts in arrears and recovery of the devices, where applicable, through separate legal action.

(5) An ignition interlock device shall be installed by or under the direction and supervision of a cabinet-certified ignition interlock device provider in conformance with approved, prescribed procedures of the device manufacturer.

(6) A service provider and technician shall use the calibration units approved by NHTSA and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>.

(7) An ignition interlock device provider shall ensure that technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the previous period and send the information to the appropriate authority within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient pursuant to KRS 189A.500;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering or circumvention, record suspected violations, and transmit violation reports pursuant to Section 4(3) of this administrative regulation; and

(e) Conform to other calibration requirements established by the device manufacturer.

(8) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities available at <http://drive.ky.gov>;

(b) Make available an Ignition Interlock Application, TC 94-175, available at <http://drive.ky.gov> and in regional field offices and the central office in Frankfort;

(c) Make available a uniform Certificate of Installation for Ignition Interlock Device, TC 94-177 to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device installation; and

(d) Issue an ignition interlock license to eligible defendants upon receipt of a court order and in compliance with the requirements of this administrative regulation. The license shall have in-force status and indicate it is an ignition interlock license by displaying a restriction code for an ignition interlock device.

Section 6. Installation, Operation, Calibration, and Removal of Devices. (1) Prior to installing the device, the provider shall obtain and retain copies of the following from the defendant:

(a) Photo identification;

(b) A copy of the vehicle registration or title containing the VIN of the vehicle designated as primary by the defendant and the names of the operators of the motor vehicle; and

(c) Consent of the defendant or registered owner to install the device.

(2)(a) The device shall be inspected or calibrated by technicians designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter, as established in KRS 189A.420(4)(b).

(b) A defendant shall have the option to service the device at thirty (30) day intervals following the initial calibration.

(3) If a defendant fails to have the device inspected or recalibrated as required, the ignition interlock device shall be programmed to enter into a lockout condition, at which time the vehicle shall be required to be returned to the service provider.

(4) The defendant shall be responsible for costs related to roadside service unless it is determined that the interlock device failed through no fault of the defendant, in which case the device provider shall be responsible for the applicable costs.

(5) In the event of a violation resulting in an order from the court, the device provider shall remove the device and the cabinet shall suspend the defendant's ignition interlock license.

(6) A device provider shall, within ninety-six (96) hours of receipt of the court's order directing removal of the device, notify the defendant that he or she shall return the vehicle with the installed device for removal.

(7) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

Section 7. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency. (1) The department shall indefinitely suspend or revoke certification of an ignition interlock device provider for the following:

(a) A device in use by that provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

(b) The device provider's liability insurance is terminated or cancelled;

(c) The device provider makes materially false or inaccurate information relating to a device's performance standards;

(d) There are defects in design, materials, or workmanship causing repeated failures of a device;

(e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

(f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, vehicle damage, or a complaint brought by a third party;

(g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;

(h) A provider becomes insolvent or files for bankruptcy; or

(i) The device provider requests a voluntary suspension.

(2)(a) The device provider shall be given thirty (30) days written notice of the existence of one (1) or more of the conditions

specified in subsection (1) of this section by letter from the Commissioner of the Department of Vehicle Regulation, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

(b) The commissioner shall consider the provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the provider.

(c) The provider may appeal the commissioner's decisions pursuant to the provisions of KRS Chapter 13B.

(3) A device provider subject to revocation shall be responsible for, and bear the costs associated with:

(a) Providing notice to defendants; and

(b) The removal of currently installed devices or the installation of a new approved device by a device provider in good standing.

(4) A provider subject to revocation shall continue to provide services for currently installed devices for a time to be determined by the cabinet, but no longer than ninety (90) days.

(5) A provider subject to suspension shall continue to provide services for currently installed devices. A new ignition interlock installation shall not be permitted during the period of suspension.

(6)(a) A provider who terminates certification or goes out of business shall comply with the requirements established in subsection (3) of this section, and shall continue to provide services for currently installed devices for ninety (90) days from the date of the provider's notification to the cabinet that they will be terminating ignition interlock services.

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing defendants to other providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for approval by the commissioner within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.

(d) The provider shall be solely responsible for notifying defendants with currently installed devices serviced by the provider, and shall be solely responsible for charges related to installation of a device by a new provider.

Section 8. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plates pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by 12 noon Eastern time, the next working day after the request is received, if the request is received by 12 noon Eastern time. Requests received after 12 noon Eastern time shall be returned to the court by the close of business the second working day after they are received.

(3) Upon receipt of a court order suspending a licensee's plates, pursuant to KRS 189A.085, the Transportation Cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return confiscated license plates to the Transportation Cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plates.

(5) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner as follows:

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2); or

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 9. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) "Breath Alcohol Ignition Interlock Physician Statement", TC 94-176, August 2015;

(b) "Certificate of Installation for Ignition Interlock Device", TC 94-177, August 2015;

(c) "Certificate of Removal for Ignition Interlock Device", TC 94-178, August, 2015; and

(d) "Ignition Interlock Application", TC 94-175, August 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's Web site at <http://drive.ky.gov>, [Surrender of Motor Vehicle Registration Plates.

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(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 2. Breath Alcohol Ignition Interlock Device. (1) An ignition interlock device, installed pursuant to court order shall meet the following criteria:

(a) The ignition interlock device shall be designed and constructed to measure a person's breath alcohol concentration, as defined in KRS 189A.005(1), by utilizing a sample of the person's breath delivered directly into the device;

(b) The ignition interlock device shall be designed and constructed so that the ignition system of the vehicle in which it is installed will not be activated if the alcohol concentration of the operator's breath exceeds .02 alcohol concentration as defined in KRS 189A.005(1);

(c) The ignition interlock device shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), as published in 57 FR 11772-11787 (April 7, 1992);

(d) The ignition interlock device shall prevent engine ignition if the device has not been calibrated within a period of ninety-seven (97) days subsequent to the last calibration;

(e) The ignition interlock device shall:

1. Record each time the vehicle is started;

2. Record results of the alcohol concentration test;

3. Record how long the vehicle is operated; and

4. Detect any indications of bypassing or tampering with the device;

(f) The ignition interlock device shall permit a sample free restart for a period of two (2) minutes or less after a stall;

(g) The ignition interlock device shall require:

1. That the operator of the vehicle submit to a retest within ten (10) minutes of starting the vehicle;
2. That retests continue at intervals not to exceed sixty (60) minutes after the first retest;

3. That retests occur during operation of the vehicle; and
4. That the device enter a lockout condition in five (5) days if a retest is not performed or the results of the test exceeds the maximum allowable alcohol concentration;

(h) The ignition interlock device shall be equipped with a method of immediately notifying peace officers:

1. If the retest is not performed; or
2. If the results exceed the maximum allowable alcohol concentration; and

(i) The ignition interlock device shall include instructions recommending a fifteen (15) minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the device.

(2) An ignition interlock device shall be:

(a) Installed by the manufacturer or by private sector installers in conformance with the prescribed procedures of the manufacturer; and

(b) Be used in accordance with the manufacturer's instructions.

(3)(a) An ignition interlock device shall be calibrated at least once every ninety (90) days to maintain the device in proper working order.

(b) The manufacturer or installer shall calibrate the device or exchange the installed device for another calibrated device in lieu of calibration.

(c) The record of installation and calibration shall be kept in the vehicle at all times for inspection by a peace officer and shall include the following information:

1. Name of the person performing the installation and calibration;

2. Dates of activity;

3. Value and type of standard used;

4. Unit type and identification number of the ignition interlock device checked; and

5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.

4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.

Section 3. Division of Driver Licensing Requirements. (1) The Division of Driver Licensing shall maintain a list of all manufacturers of ignition interlock devices meeting the requirements of this administrative regulation who have provided documentation to the division confirming that they offer appropriate ignition interlock devices and related services within the Commonwealth.

(2) The list of manufacturers who provide appropriate devices, approved installers, and servicing and monitoring entities shall be published and periodically updated by the Division of Driver Licensing on the Transportation Cabinet Web site.

(3) The Division of Driver Licensing shall provide a notation on the face of the operator's license stating that:

(a) The licensee is required by order of the court to be using a vehicle with an ignition interlock device; and

(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.340, if granted by the court.

(4) Manufacturers, installers, and servicing and monitoring entities shall apply to the Division of Driver Licensing for approval and placement on the list maintained by the cabinet.

Section 4. Incorporation by Reference. (1) Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS), 57 FR 11772-11787 (April 7, 1992), 40 pages, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of Driver Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

GREG THOMAS, Acting Secretary

RODNEY KUHLMAN, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: March 17, 2016

FILED WITH LRC: March 29, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2016 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day (11:59 p.m.) on May 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.500.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.500.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary: This regulation will amend and replace 601 KAR 2:030, the current ignition interlock administrative regulation.

(a) How the amendment will change this existing administrative regulation: These amendments remove the definition for "permanent lockout"; require a provider to contact the county attorney and cabinet after ten (10) days' notice to the defendant and before removal of a device; remove the requirement for a provider to contact the cabinet within fifteen (15) days of an investigation; require the provider to retain records for five (5) years from the date the ignition interlock device is removed; ensure that the Certificate of Installation form is not readily available on the Web site; remove the obligation for a provider to verify insurance policy and expiration date; allow a defendant to return a vehicle to the service provider rather than the site of installation; and permit ninety-six (96) hours from receipt of court order to notify the defendant.

(b) The necessity of the amendment to this administrative regulation: These amendments are made in response to public hearing and written comments.

(c) How the amendment conforms to the content of the

authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon court approval.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will clarify provisions in the current administrative regulation

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of \$105 pursuant to KRS 189A.420(6).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If eligible pursuant to KRS chapter 186, defendants will be approved to drive with an Ignition Interlock license; businesses desiring to provide Ignition Interlock devices and services will be granted certification for devices and authority to provide services.

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

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at \$525,000.

(b) On a continuing basis: \$105 per defendant and up to approximately \$525,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially FHWA – Hazard Elimination Fund. There is presently no appropriation in place to administer or enforce this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to offset any costs KYTC.

(9) TIERING: Is tiering applied? No tiering is required for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for defendants in this program is pursuant to statute and judicially determined indigency status.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 189A.500(1)(f).

(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. For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

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

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

(c) How much will it cost to administer this program for the first year? Up to approximately \$525,000.

(d) How much will it cost to administer this program for subsequent years? Unknown.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 4:400. ABC basic application and renewal form incorporated by reference.

RELATES TO: KRS 164.772, 241.060(1), 243.090, 243.380, 243.390

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form. This administrative regulation prescribes the basic forms to be used to apply for and renew an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete and submit to the Department of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage License, with the exception of an applicant for:

(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, or out-of-state producer/supplier of malt beverage license;

(2) A temporary license; or

(3) An extended hours, supplemental bar, special Sunday, or sampling license.

Section 2. In addition to the Basic Application for Alcoholic Beverage License required by Section 1 of this administrative regulation, an applicant shall complete and submit to the Department of Alcoholic Beverage Control the special application form required by 804 KAR 4:410 if applicable.

Section 3. A licensee who is renewing a license pursuant to

KRS 243.090 shall complete and submit to the Department of Alcoholic Beverage Control the Application for License Renewal.

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

(a) "Basic Application for Alcoholic Beverage License", June 2015; and

(b) "Application for License Renewal", March 2016~~[June 2015]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov/>.

STEVEN A. EDWARDS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: March 15, 2016

FILED WITH LRC: March 16, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2016 at 1:00 pm Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the day on May 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: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the forms the department uses to issue and renew alcoholic beverage licenses.

(b) The necessity of this administrative regulation: This regulation is necessary because the department is required by statute to set forth what information is needed to obtain or renew an alcoholic beverage license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation clarifies what information needs to be provided to the department in order to obtain or renew an alcoholic beverage license. By incorporating the application and renewal application, the information that is required to apply for, or renew, an alcoholic beverage license is ascertainable.

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

(a) How the amendment will change this existing administrative regulation: It replaces the prior renewal form with the current version, which has information added to it on how to utilize the Kentucky One-Stop Business (KyBOS) Portal for on-line renewals.

(b) The necessity of the amendment to this administrative regulation: The renewal application needed to be amended to add information about the Kentucky One-Stop Business (KyBoS) Portal website for licensees to renew online through that portal, and this

amended form needs to be incorporated into the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license. This amendment will add the information to the renewal forms to clarify what website licensees need to use to utilize the One-Stop Business (KyBoS) Portal.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation clarifies what information licensees need in order to renew their alcoholic beverage licenses through the Kentucky One-Stop Business (KyBoS) Portal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any person or entity who wishes to renew an alcoholic beverage license online will be affected by this administrative regulation. The Department of Alcoholic Beverage Control will also be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The required actions are no different than the process the licensees and applicants currently follow to obtain or renew an alcoholic beverage license, although they will be receiving information on how to do this through the Kentucky One-Stop Business Portal instead of going directly through the department's website.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KyBos One-Stop Business Portal will be utilized for on-line renewals and is incorporated by reference on the revised renewal form. The Department's proposed budget allocates \$290,000 per year of its restricted funds for on-line renewals through the KyBos Portal. Throughout discussions with the Department about utilizing the KyBos Portal for online renewals, the Commonwealth Office of Technology ("COT"), through its representative(s), has repeatedly stated that the Department will have no additional costs for using the KyBos Portal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no financial benefits to this administrative regulation amendment.

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

(a) Initially: It is estimated that this will cost the Department approximately \$290,000 per year to utilize the One-Stop Business Portal and those costs are expected to come out of the agency's restricted funds.

(b) On a continuing basis: It is estimated that this will cost the Department approximately \$290,000 per year to utilize the KyBoS Portal for online license renewals and those costs are expected to come out of the agency's restricted funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: It is estimated that it will cost the Department approximately \$290,000 per year to utilize the KyBos Portal for online license renewals and those costs are expected to come out of the agency's restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to amend this administrative regulation based upon representations by COT representations.

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

(9) TIERING: Is tiering applied? No tiering is applied because

this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and the Commonwealth Office of Technology are the only government agency expected to be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations. The One-Stop Business Portal was created by the passage of KRS 14.250.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Department of Alcoholic Beverage Control is expected to spend approximately \$290,000 per year on this program. No revenue will be generated by this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be approximately \$290,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be approximately \$290,000 for each subsequent year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be approximately \$290,000 per year.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

921 KAR 3:035. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4
NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each

household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for at least:

(a) Twelve (12) ~~Six (6)~~ months; or

(b) Twenty-four (24) ~~Twelve (12)~~ months if all members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a ~~six (6) month or~~ twelve (12) or twenty-four (24) month certification as specified in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household:

1. Shall complete an interim report using the FS-2, SNAP REVIEW, every six (6) months during the household's certification period unless all household members meet criteria specified in subparagraph 2 of this paragraph; or

2. In which all members are elderly or have a disability as defined in 921 KAR 3:010 and have no earned income, shall complete an interim report using the [Form] FS-2 [SNAP 6-Month Review,] during the 12th month of the household's certification period [if the household reports:

1. A new household member who is non-elderly or non-disabled; or

2. A gain of earned income].

(b) If a household fails to return a completed FS-2 or the required ~~[income]~~ verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other

households and therefore shall require special or additional certification procedures. (1) A household with a self-employed member shall have its case processed as established in this subsection.

(a) Income shall be annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or
2. Is received on a monthly basis which represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and
2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as established in this subsection.

(a) Income from the boarder shall:

1. Be treated as self-employment income; and
2. Include all direct payments to the household for:
 - a. Room;
 - b. Meals; and
 - c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as established in this subsection.

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;
2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as established in this subsection.

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as established in this subsection.

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if

identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as established in this subsection.

(a) An eligible household shall include:

- 1.a. A narcotic addict; or
- b. An alcoholic; and
2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The case processing procedures established in this subsection shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2.

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or
2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as established in this subsection.

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or
2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

- (a) Comparing the striking member's income the day prior to the strike, to the striker's current income;
- (b) Adding the higher of the prestrike income or current income to other current household income; and
- (c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change which causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, SNAP[6-Month] REVIEW", 4/16[42/45], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: March 29, 2016

FILED WITH LRC: April 1, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 23, 2016, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 16, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment

on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until May 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation establishes the certification process necessary to determine SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the certification process for SNAP eligibility determination.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the certification process for SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation extends certification periods for qualified SNAP households from six months to 12 months with an interim review conducted during the sixth month, and for qualified SNAP households who are elderly and disabled from 12 months to 24 months with an interim review conducted during the 12th month. The incorporated form has been revised accordingly, including inputs from the U.S. Department of Agriculture, Food and Nutrition Service. In addition, the administrative regulation makes other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary: to reduce access and participation hardships experienced by qualified SNAP households consistent with communications received from the Kentucky Equal Justice Center in 2014, and to better align with federal expectations. As a result, the amendment preserves federal funding and protects the health and welfare of households participating in SNAP, including the working poor, individuals with disabilities, and the elderly.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conform to the content of the authorizing statutes by allowing the longest certification period possible contingent upon circumstances and better conforming with federal expectations resulting from recent federal inputs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by extending SNAP certification periods to the extent possible based upon circumstances and incorporating recent federal guidance and inputs regarding SNAP access and participation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In February 2016, there were 39,685 SNAP applications, 47,042 SNAP recertifications, and 325,287 active households.

(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 regulated entities identified in the prior question will have a longer SNAP certification period with an interim review required at the mid-point of the certification period. Other reporting requirements of the household are unchanged during the certification period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities should realize reduced hardship in accessing and participating in SNAP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of a longer certification period, qualified households will be able to continue participation in SNAP with more minimal hardship and without adverse consequence to case accuracy.

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

(a) Initially: There is no new cost borne by the administrative body to implement this administrative regulation.

(b) On a continuing basis: There is no new cost borne by the administrative body to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

42 U.S.C. 5122, 5179

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative regulation will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation will not require any additional 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014,

NEW ADMINISTRATIVE REGULATIONS

GENERAL GOVERNMENT CABINET
Board of Social Work
(New Administrative Regulation)

201 KAR 23:055. Inactive status of license.

RELATES TO: KRS 335.070(3)

STATUTORY AUTHORITY: KRS 335.070(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(3) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990. This administrative regulation establishes the requirements for a licensee to request approval from the board to place his or her license on inactive (nonpractice) status. This administrative regulation establishes the requirements relating to inactive licenses, extension of inactive status, return to active status, and reinstatement.

Section 1. Request for Inactive Status. A licensee may request that his or her license be placed on inactive licensure status by submitting to the board:

(1) Written request for his or her license to be placed on inactive status, received by the board no sooner than ninety (90) days before the license expiration date;

(2) Payment of an inactive license status fee of fifty (50) dollars. The licensee shall be relieved of his or her obligation to pay the license renewal fee established in 201 KAR 23:020 for his or her license level; and

(3) A copy of certificates of attendance or completion to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 2. Additional Extension of Inactive Status. A licensee whose license is on inactive status may request an additional extension of the inactive license status and shall submit to the board:

(1) Written request to continue the license on inactive status, received by the board no sooner than ninety (90) days before the license expiration date;

(2) Payment of a fifty (50) dollar inactive status fee; and

(3) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 3. License Expiration. If the licensee does not submit a request for extension of the inactive status or the licensee fails to renew his or her license before the license expiration date, the license shall expire.

Section 4. Return to Active License Status. At any time within the three (3) year period of being granted inactive licensure status, a licensee may request his or her license be returned to active status by submitting to the board:

(1) Written request to the board to return his or her license to active status;

(2) Payment of the current license renewal fee as set forth in 201 KAR 23:020; and

(3) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 5. Renewal of Expired License. Following expiration of a license under Section 3 of this administrative regulation, a licensee who desires to practice social work in Kentucky shall follow the requirements for reinstatement established in 201 KAR 23:050.

WILLIAM M. ADCOCK, Chair

APPROVED BY AGENCY: April 12, 2016

FILED WITH LRC: April 14, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2016 at 9:00 a.m., local time, at the Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day (11:59 p.m. EST) on May 31, 2016. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Florence S. Huffman, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030, email florence.huffman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Florence S. Huffman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a new nonpractice level of license for licensees who do not want his or her license to expire, but who do not desire to practice social work in Kentucky, no longer need a license for their career, are employed in a position that does not require a license, or for those who have moved outside Kentucky. The licensee can request the change to inactive status, and as a result, pay a reduced fee and avoid expiration of the license and the time and cost of reinstatement. This administrative regulation establishes the requirements for licensees to request approval from the board to place their license on inactive (nonpractice) license status (at the time of the license renewal date); sets a fifty (50) dollar fee for the inactive status per renewal period; restates the continuing education requirements for renewal; and describes the procedures to extend the inactive status for subsequent renewal periods or to apply to return the license to active status.

(b) The necessity of this administrative regulation: This administrative is necessary to establish the requirements for a licensee to seek board approval to place his or her license on inactive status; establishes the standards for extension of the inactive status, for returning the license to active status, and for renewal and reinstatement, including continuing education requirements every renewal period. This administrative regulation also sets the inactive status fee in the amount of fifty (50) dollars.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(6) authorizes the board to renew licenses and require continuing education as a condition for license renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs a licensee that he or she may request the board to approve changing the status of his or her social work license from active to inactive, restates the continuing education requirements for renewal during the period of inactive status, describes the conditions for renewal and reinstatement established by the board. In addition, this administrative regulation will inform the licensee of the reduced fee paid for the license on inactive status.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 5,000 licensed social workers and many of these licensees may desire to have an option to maintain their Kentucky social work license in an inactive status as opposed to allowing it to expire. The reinstatement process when a license has expired can be timely and costly due to the \$100 penalty fee that is due on reinstatement.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes a new level of license for licensees who do not want his or her license to expire, but who do not desire to practice social work in Kentucky, no longer need a license for their career, are employed in a position that does not require a license, or for those who do not live in Kentucky. The licensee can request the change to inactive status, and as a result, pay a reduced fee and avoid expiration of the license and the time and cost of reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board has established a \$50 fee for inactive status license, which is reduced from the renewal fee for each level of license (\$200 renewal fee for licensed clinical social worker, \$125 for certified social worker, and \$75 for licensed social worker). It will cost less for a licensee to return his or her license to active status than if the license had expired.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A licensee will have the option to change his or her active social work license to inactive status when life circumstances make an active license to practice social work in Kentucky unnecessary.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this administrative regulation.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is wholly self-funded by various fees paid by the licensees, applicants and continuing education providers and sponsors.

(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 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: Yes, this administrative regulation directly establishes a decreased fee for inactive status of license at time of renewal.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees. 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? The Board of Social

Work will be impacted by this administrative regulation.

(2) Identify each state or federal statute or state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The board estimates that its revenues may decrease slightly due to the lowered fee for the inactive status.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of inactive licensee fees that will be generated by this administrative regulation is not known at this time.

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

(c) How much will it cost to administer this program for the first year? The board estimates that no additional costs of any significance will be incurred by this amendment.

(d) How much will it cost to administer this program for subsequent years? The board estimates that no additional costs of any significance for subsequent years will be incurred by this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Office of the Secretary (Repealer)

600 KAR 1:031. Repeal of 600 KAR 1:030 and 600 KAR 1:045.

RELATES TO: KRS Chapter 18A

STATUTORY AUTHORITY: KRS 174.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080 authorizes the secretary to promulgate administrative regulations related to the operations of the Transportation Cabinet. This administrative regulation repeals 600 KAR 1:030 and 600 KAR 1:045. These administrative regulations are obsolete.

Section 1. The following administrative regulations are hereby repealed:

(1) 600 KAR 1:030, Public comment hearings; and

(2) 600 KAR 1:045, Disciplinary and separation procedures.

GREG THOMAS, Acting Secretary

D. ANN DANIELO, Office of Legal Services

APPROVED BY AGENCY: March 16, 2016

FILED WITH LRC: March 22, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2016 tentatively at 1:00 p.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who

wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day (11:59 p.m.) on May 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 600 KAR 1:030, Public comment hearings; and 600 KAR 1:045, Disciplinary and separation procedures. These administrative regulations are outdated and obsolete.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal and remove obsolete administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 174.080 authorizes the secretary of the Transportation Cabinet to promulgate administrative regulations related to the operations of the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the efficient operations of the cabinet by removing administrative regulations that are no longer relevant.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation repeals two (2) administrative regulations that are obsolete and no longer effect anyone.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There are no costs involved.

(a) Initially: There are no costs.

(b) On a continuing basis: There are no costs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program. There are no fees involved.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulations are being removed. There are no associated costs.

(9) TIERING: Is tiering applied? No, this is a repealer of two (2) obsolete administrative regulations.

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 Transportation Cabinet is positively impacted because these obsolete administrative regulations will no longer be on the books.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310 authorizes the cabinet to repeal an administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs involved in this repealer regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs involved in this repealer regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Office of the Secretary (Repealer)

600 KAR 2:011. Repeal of 600 KAR 2:010, 2:020, 2:030, and 2:040.

RELATES TO: KRS 12.040, 12.080, Chapter 18A, Chapter 174, 175.450, 175.470, 175.520, 175.525

STATUTORY AUTHORITY: KRS 12.040, 12.080, 174.080, 175.470, 175.520, 175.525(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080 authorizes the secretary to promulgate administrative regulations related to the operations of the Transportation Cabinet. This administrative regulation repeals 600 KAR 2:010, 2:020, 2:030, and 2:040. These administrative regulations are obsolete and belong to a Transportation Cabinet division that was abolished in 2007.

Section 1. The following administrative regulations are hereby repealed:

(1) 600 KAR 2:010, Toll assessment on turnpikes;

(2) 600 KAR 2:020, Nonpaying toll road identification cards; emergency vehicles on the toll roads;

(3) 600 KAR 2:030, Toll road credit cards; and

(4) 600 KAR 2:040, Appearance requirements and uniforms of

Division of Toll Facilities' employees.

GREG THOMAS, Acting Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: March 16, 2016

FILED WITH LRC: March 22, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2016 tentatively at 1:00 p.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day (11:59 p.m.) on May 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 600 KAR 2:010, Toll assessment on turnpikes; 600 KAR 2:020, Nonpaying toll road identification cards, emergency vehicles on the toll roads; 600 KAR 2:030, Toll road credit cards; and 600 KAR 2:040, Appearance requirements and uniforms of Division of Toll Facilities' employees.

(b) The necessity of this administrative regulation: The Division of Toll Facilities was abolished in 2007. This administrative regulation is necessary to repeal and remove the obsolete administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 174.080 authorizes the secretary of the Transportation Cabinet to promulgate administrative regulations related to the operations of the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove administrative regulations that are no longer relevant.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Transportation Cabinet will be positively effected by removing four (4) obsolete administrative regulations from its books.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There are no costs involved.

(a) Initially: There are no costs.

(b) On a continuing basis: There are no costs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program. There are no fees involved.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulations are being removed. There are no associated costs.

(9) TIERING: Is tiering applied? No, this is a repealer of four (4) obsolete administrative regulations.

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 Transportation Cabinet is positively impacted because these obsolete administrative regulations will no longer be on the books.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310 authorizes the cabinet to repeal an administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs involved in this repealer regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs involved in this repealer regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET
Department of Vehicle Regulation
(Repealer)

601 KAR 1:032. Repeal of 601 KAR 1:030, 601 KAR 1:031, 601 KAR 1:045, 601 KAR 1:050, 601 KAR 1:065, and 601 KAR 1:070.

RELATES TO: KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.600, 281.610, 281.650, 281.801, 49 U.S.C. 11501

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080 authorizes the secretary to promulgate administrative regulations related to the operations of the Transportation Cabinet. This administrative regulation repeals 601 KAR 1:030, 601 KAR 1:031, 601 KAR 1:045, 601 KAR 1:050, 601 KAR 1:065, and 601 KAR 1:070. These administrative regulations are obsolete and no longer in use by the cabinet.

Section 1. The following administrative regulations are hereby repealed:

- (1) 601 KAR 1:030, Hearings;
- (2) 601 KAR 1:031, Procedure when no protest to notice of first-notice hearing is filed;
- (3) 601 KAR 1:045, Application for certificate filing;
- (4) 601 KAR 1:050, Rates and fares;
- (5) 601 KAR 1:065, Time schedules; and
- (6) 601 KAR 1:070, Notice.

GREG THOMAS, Acting Secretary

RODNEY KUHLE, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: March 16, 2016

FILED WITH LRC: March 22, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2016 tentatively at 1:00 p.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day (11:59 p.m.) on May 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals six (6) obsolete and outdated administrative regulations: 601 KAR 1:030, Hearings; 601 KAR 1:031, Procedure when no protest to notice of first-notice hearing is filed; 601 KAR 1:045, Application for certificate filing; 601 KAR 1:050, Rates and fares; 601 KAR 1:065, Time schedules; and 601 KAR 1:070, Notice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal and remove obsolete administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 174.080 authorizes the secretary of the Transportation Cabinet to promulgate administrative regulations related to the operations of the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer administrative regulation will remove administrative regulations that are no longer relevant.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Transportation Cabinet will be positively affected by removing six (6) obsolete administrative regulations from its books.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There are no costs involved.

(a) Initially: There are no costs.

(b) On a continuing basis: There are no costs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program. There are no fees involved.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulations are being removed. There are no associated costs.

(9) TIERING: Is tiering applied? No, this is a repealer of six (6) obsolete administrative regulations.

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 Transportation Cabinet is positively impacted because these obsolete administrative regulations will no longer be on the books.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310 authorizes the cabinet to repeal an administrative regulation.

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

administrative regulation will not affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs involved in this repealer regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs involved in this repealer regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TRANSPORTATION CABINET
Department of Vehicle Regulation
(Repealer)**

601 KAR 9:056. Repeal of 601 KAR 9:055.

RELATES TO: KRS Chapter 186

STATUTORY AUTHORITY: KRS 186.281, 281.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080 authorizes the secretary to promulgate administrative regulations related to the operations of the Transportation Cabinet. This administrative regulation repeals 601 KAR 9:055. The statutory authority for this administrative regulation was repealed effective June 24, 2015.

Section 1. 601 KAR 9:055, Seat taxes, is hereby repealed:

GREG THOMAS, Acting Secretary

RODNEY KUHLE, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: March 16, 2016

FILED WITH LRC: March 22, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2016 tentatively at 1:00 p.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day (11:59 p.m.) on May 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 601 KAR 9:055.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal and remove an obsolete administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 174.080 authorizes the secretary of the Transportation Cabinet to promulgate administrative regulations related to the operations of the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer administrative regulation will remove an administrative regulation where statutory authority no longer exists.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Transportation Cabinet will be positively affected by removing an obsolete administrative regulation from its books.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There are no costs involved.

(a) Initially: There are no costs.

(b) On a continuing basis: There are no costs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program. There are no fees involved.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation is being removed. There are no associated costs.

(9) TIERING: Is tiering applied? No, this is a repealer of one (1) obsolete administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Transportation Cabinet is positively impacted because this obsolete administrative regulation will no longer be on the books.

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

regulation. KRS 13A.310 authorizes the cabinet to repeal an administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs involved in this repealer regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs involved in this repealer regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Vehicle Enforcement
(Repealer)**

601 KAR 15:030. Repeal of 601 KAR 15:010 and 601 KAR 15:020.

RELATES TO: KRS Chapter 18A, 189.227, 281.765, 281.771, 281.772, 281.773

STATUTORY AUTHORITY: KRS Chapter 18A, 189.227, Executive Order 2008-707

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080 authorizes the secretary to promulgate administrative regulations related to the operations of the Transportation Cabinet. This administrative regulation repeals 601 KAR 15:010 and 601 KAR 15:020. These administrative regulations relate to the Division of Vehicle Enforcement, which is no longer associated with the Transportation Cabinet. In 2008, the Division of Vehicle Enforcement became a part of the Kentucky State Police pursuant to Executive Order 2008-707.

Section 1. The following administrative regulations are hereby repealed:

(1) 601 KAR 15:010, Disciplinary actions relating to commissioned employees; and

(2) 601 KAR 15:020, Employment requirements for safety-sensitive employees of the Department of Vehicle Regulation.

GREG THOMAS, Acting Secretary

RODNEY KUHL, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: April 4, 2016

FILED WITH LRC: April 7, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2016 tentatively at 1:00 p.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to

attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments shall be accepted until the end of the day on May 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 601 KAR 15:010 and 601 KAR 15:020.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal and remove two (2) obsolete administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 174.080 authorizes the secretary of the Transportation Cabinet to promulgate administrative regulations related to the operations of the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer administrative regulation will remove two (2) administrative regulations belonging to a division that no longer exists at the cabinet.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Transportation Cabinet will be positively affected by removing two (2) obsolete administrative regulations from its books.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There are no costs involved.

(a) Initially: There are no costs.

(b) On a continuing basis: There are no costs.

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

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: These are repealer administrative regulations and there are no associated costs.

(9) TIERING: Is tiering applied? No, this is a repealer of two (2) obsolete administrative regulations.

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 Transportation Cabinet is positively impacted because these obsolete administrative regulations will no longer be on the books.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310 authorizes the cabinet to repeal an administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs involved in this repealer regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs involved in this repealer regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Division of Nondepository Institutions (New Administrative Regulation)

808 KAR 9:050. Required forms, procedures, and fees for applicants and licensees.

RELATES TO: KRS 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-070, 286.9-071, 286.9-073, 286.9-080, 286.9-104

STATUTORY AUTHORITY: KRS 286.9-090(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.9-090(1) provides that the commissioner may adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-040 to KRS 286.9-070 and KRS 286.9-073 authorize the commissioner to prescribe the form of and the filing procedures for an application for a license under KRS Chapter 286.9 and the information and documents that must be submitted to the commissioner with an application for a license. KRS 286.9-070 requires licensees to file a written request for a change of control and to pay the cost incurred by the commissioner in investigating the change of control request. KRS 286.9-080 requires the submission of a renewal application and fees and also provides for the reinstatement of a license. KRS 286.9-104 requires each licensee to file an annual report with the commissioner in a form as may be reasonably required by the commissioner and further provides for the commissioner to prescribe certain information that must be submitted. This administrative regulation establishes the required forms,

information, documents, fees, and filing procedures for licensees and applicants proceeding pursuant to these statutes.

Section 1. Definitions. (1) "Applicant" is defined by KRS 286.9-010(2).

(2) "Check casher license" means a license issued pursuant to KRS Chapter 286.9 to engage in a combined business, which includes both of the following:

(a) The business of cashing checks; and

(b) The business of accepting deferred deposit transactions.

(3) "Commissioner" is defined by KRS 286.9-010(16).

(4) "Licensee" is defined by KRS 286.9-010(18).

(5) "Limited check casher license" means a license issued pursuant to KRS Chapter 286.9 to engage in the business of cashing checks.

(6) "Person" is defined by KRS 286.9-010(22).

Section 2. Pursuant to KRS 286.9-071, a license issued prior to July 2, 2009, is a check casher license.

Section 3. Application for Limited Check Casher License. A person applying for a limited check casher license shall complete and submit the following:

(1) Form LCC-1, Application for Limited Check Casher License with all required attachments;

(2) The investigation fee established in KRS 286.9-060(1), which shall be nonrefundable;

(3) If the applicant has a license, registration, or claim of exemption related to the financial services industry in any other state, a Form COMB-1, State License Confirmation Form for Check Casher License or Limited Check Casher License;

(4) An audited financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles dated as of the previous year end. A financial statement shall include a balance sheet, income statement, a statement of cash flows, and all notes. If the applicant is a start-up company, an initial statement of condition and a pro-forma income statement shall be submitted in lieu of the income statement and statement of cash flows;

(5) Evidence that the applicant has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

(6) One (1) of the following, which shall be deposited with and made payable to the commissioner:

(a) An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

(b) An original corporate surety bond furnished by a surety company authorized to do business in Kentucky. The name of the principal insured on the bond shall match exactly the full legal name of the applicant. The bond shall be submitted on Form COMB-2, Surety Bond for Check Casher License or Limited Check Casher License, in an amount required by KRS 286.9-040(1)(b);

(c) Evidence that the applicant has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c), with an escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Casher License or Limited Check Casher License; or

(d) A savings certificate of a federally insured financial institution in Kentucky established by the applicant that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d), with an escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Casher License or Limited Check Casher License.

Section 4. Renewal Applications. A licensee applying for renewal of a check casher license or limited check casher license pursuant to KRS 286.9-080(1) shall complete and submit the following on or before June 20 of each year:

(1) Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments; and

(2) The license fee established in KRS 286.9-080(1), which

shall be nonrefundable.

Section 5. Reinstatement Applications. A licensee applying for reinstatement of a check casher license or limited check casher license pursuant to KRS 286.9-080(2) shall complete and submit the following prior to August 1 of the year that the renewal application was due:

(1) Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments;

(2) The license fee established in KRS 286.9-080(1), which shall be nonrefundable; and

(3) The late fee and reinstatement fee established in KRS 286.9-080(2), which shall be nonrefundable.

Section 6. Annual Report. A licensee filing an annual report pursuant to KRS 286.9-104 shall complete and submit the following on or before March 1 of each year:

(1) Form COMB-5, KRS 286.9-104 Annual Report to the Department of Financial Institutions; and

(2) A financial statement for the previous calendar year prepared in accordance with generally accepted accounting principles. A financial statement shall include a balance sheet, income statement, and all notes.

Section 7. Interpretation of KRS 286.9-030(3). A person shall be deemed principally engaged in the business of cashing checks and not principally engaged in the retail sale of goods or services at any particular location if the location's gross annual check cashing receipts exceed more than fifty (50) percent of the location's annual revenue.

Section 8. Change of Control. A licensee making a request for a change of control pursuant to KRS 286.9-070(5) shall complete and submit the following:

(1) Form COMB-6, Change of Control Request for Check Casher License or Limited Check Casher License with all required attachments;

(2) If the person obtaining control of the licensee is not a licensee, an investigation fee of \$500, which shall be nonrefundable;

(3) If the person obtaining control of the licensee has a license, registration, or claim of exemption related to the financial services industry in any other state, a Form COMB-1, State License Confirmation Form for Check Casher License or Limited Check Casher License for the person obtaining control of the licensee;

(4) An audited financial statement for the person obtaining control of the licensee prepared by a certified public accountant in accordance with generally accepted accounting principles as of the previous year end. A financial statement shall include a balance sheet, income statement, a statement of cash flows, and all notes. If the person obtaining control of the licensee is a start-up company or new entity, an initial statement of condition and a pro-forma income statement shall be submitted in lieu of the income statement and statement of cash flows;

(5) Evidence that the person obtaining control of the licensee has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

(6) One (1) of the following, which shall be deposited with and made payable to the commissioner:

(a) An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

(b) An original corporate surety bond furnished by a surety company authorized to do business in Kentucky. The name of the principal insured on the bond shall match exactly the full legal name of the person obtaining control of the licensee. The bond shall be submitted on Form COMB-2, Surety Bond for Check Casher License or Limited Check Casher License, in an amount required by KRS 286.9-040(1)(b);

(c) Evidence that the person obtaining control of the licensee has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c), with an

escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Casher License or Limited Check Casher License; or

(d) A savings certificate of a federally insured financial institution in Kentucky established by the person obtaining control of the licensee that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d), with an escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Casher License or Limited Check Casher License.

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

(a) Form LCC-1, "Application for Limited Check Casher License", April 2016;

(b) Form COMB-1, "State License Confirmation Form for Check Casher License or Limited Check Casher License", April 2016;

(c) Form COMB-2, "Surety Bond for Check Casher License or Limited Check Casher License", April 2016;

(d) FORM COMB-3, "Escrow Agreement for Check Casher License or Limited Check Casher License", April 2016;

(e) Form COMB-4, "Renewal Application for Check Casher License or Limited Check Casher License", April 2016;

(f) Form COMB-5, "KRS 286.9-104 Annual Report to the Department of Financial Institutions", April 2016; and

(g) Form COMB-6, "Change of Control Request for Check Casher License or Limited Check Casher License", April 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: April 15, 2016

FILED WITH LRC: April 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2016, at 2:00 p.m., EST, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Jessica R. Sharpe, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica R. Sharpe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the required forms, information, documents, fees, and filing procedures for licensees and applicants under KRS Chapter 286.9.

(b) The necessity of this administrative regulation: This regulation is needed to comply with the statutes directing the commissioner to establish the required forms, information,

documents, fees, and filing procedures for licensees and applicants under KRS Chapter 286.9.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.9-090(1) provides that the commissioner may adopt reasonable administrative regulations for the enforcement of Chapter 286.9. KRS 286.9-040 to KRS 286.9-070 and KRS 286.9-073 authorize the commissioner to prescribe the filing procedures, fees, and form of an application for a license under KRS Chapter 286.9 and the information and documents that must be submitted to the commissioner. KRS 286.9-070 requires licensees to file a written request for a change of control and to pay the cost incurred by the commissioner in investigating the change of control request. KRS 286.9-104 requires each licensee to file an annual report with the commissioner in a form as may be reasonably required by the commissioner and further provides for the commissioner to prescribe certain information that must be submitted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by providing clarity as to the required forms, information, documents, fees, and filing procedures for licensees and applicants under KRS Chapter 286.9.

(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 regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect persons who are currently licensed to engage in the business of cashing checks or accepting deferred deposit transactions in Kentucky. There are currently 76 companies that operate a total of 517 locations that are licensed to engage in the business of cashing checks or accepting deferred deposit transactions in Kentucky. This regulation will also affect persons who wish to obtain control of an existing licensee and persons who wish to apply for a license to engage in the business of cashing checks in Kentucky. It is unknown how many persons wish to obtain control of an existing licensee or to apply for license to engage in the business of cashing checks in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The new regulation will require these entities to file both an initial application and renewal applications, submit certain information and documents, file an annual report, file a request for a change of control, and pay certain fees that are provided by statute to do business in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will have to pay the fees established by statute or by this regulation each time they file an initial or renewal application, seek to reinstate a license, or make a change of control request.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation will ensure that the entities are vested with sufficient information to comply with the requirements of the statute.

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

(a) Initially: No net change anticipated.

(b) On a continuing basis: No net change anticipated.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: Funds generated from the filing fees prescribed by statute and the investigation fee established in this regulation are anticipated to cover the cost of enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary

to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a fee for licensees who make a change of control request if the person obtaining control of the licensee is not a licensee. The other fees referenced in this regulation are established in KRS Chapter 286.9.

(9) TIERING: Is tiering applied? Yes. This regulation creates a new tier of license for persons to engage in the business of cashing checks, but not in the business of accepting deferred deposit transactions. Tiering is necessary because KRS 286.9-071 has established a moratorium on the issuance of licenses authorizing persons to conduct the business of accepting deferred deposit transactions. Also, tiering is applied to the review of a change of control request. An investigation fee of \$500 applies for licensees who make a change of control request if the person obtaining control of the licensee is not a licensee. No fee is applied if the person obtaining control of the licensee is a licensee. A fee is assessed for non-licensees obtaining control of a licensee because the commissioner must conduct an initial investigation and review of the non-licensee, whereas an initial investigation and annual reviews have already been conducted for existing licensees resulting in minimal additional costs associated with the review of an existing licensee obtaining control of another licensee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 286.9-090(1), KRS 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-070, 286.9-071, 286.9-073, 286.9-080, 286.9-104.

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. For the first full year this administrative regulation is in effect, the regulation is estimated to have a minimal effect on expenditures (less than \$100 per year) and a net increase in revenue (estimated annual increase of approximately \$600 to \$6,500).

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is estimated to generate revenue in the first full year of approximately \$600 to \$6,500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenues from this administrative regulation are expected to remain within the range of \$600 to \$6,500 in subsequent years.

(c) How much will it cost to administer this program for the first year? It is anticipated that there will be minimal additional costs to administer this program for the first year (less than \$100 for additional printing and mailing costs).

(d) How much will it cost to administer this program for subsequent years? It is anticipated that the cost to administer this program for subsequent years will remain minimal (less than \$100 per year for additional printing and mailing costs).

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

regulation.

Revenues (+/-): This regulation is anticipated to result in a net increase in revenues of approximately \$600 to \$6,500 annually.

Expenditures (+/-): This regulation is anticipated to result in a minimal effect on expenditures (less than \$100 per year for additional printing and mailing costs).

Other Explanation: None.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of April 11, 2016

Members: Senators Ernie Harris, Alice Forgy Kerr; and Julie Raque-Adams and Representatives Linda Belcher, Mary Lou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Ange Bertholf, Emily Caudill, Betsy Cupp, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

Guests: Kendy Parks, Department of Revenue; Joseph Patrick Bowman, Jennifer Jones and Brian Thomas, Retirement Systems; Leanne Diakov, Board of Medical Licensure; Myra Goldman, Spencer Robinson, and Paula Schenk, Board of Nursing; Dr. Karen Waldrop, David Wicker, Fish and Wildlife Resources; Amy Barker, Department of Corrections; Stephanie Brammer-Barnes, Stephanie Hold, Office of the Inspector General; Justin Dearing, Wendy Morris, Department for Behavioral Health, Developmental and Intellectual Disabilities; Veronica Cecil, Beth Ennis, Leslie Hoffmann, Department of Medicaid; Chell Austin, Brain Injury Alliance of Kentucky; Malicia Hitch, Kevin McManis, Department for Protection and Advocacy; Lili Solinger Lutgens, Therapeutic Intervention Services; Dale Lynn, Kentucky Occupational Therapy Association; Shannon McCracken, Kentucky Association of Private Providers; Jean Russell, Seven Counties Services; Jane Stahl, and Mark White.

The Administrative Regulation Review Subcommittee met on Monday, April 11, 2016, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms

103 KAR 3:010. General Administrative Forms Manual. Kendy Parks, taxpayer service specialist, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Retirement Systems: General Rules

105 KAR 1:145 & E. Voluntary cessation of participation by employers. Joseph Bowman, staff attorney; Jennifer Jones, assistant general counsel; and Brian Thomas, general counsel, represented the systems.

In response to questions by Co-Chair Harris, Mr. Thomas stated that this administrative regulation established the process for an agency to end participation in Kentucky Retirement Systems. The agency would apply to cease participation and pay the full actuarial cost. There were several mechanisms in place for accruing military service time, including free military service and purchased service that required contributions. The purpose of the military service provision in this administrative regulation was to ensure that Kentucky Retirement Systems identified eligible military service time so that an individual member could get credit for that service before the agency ceased participation in the systems.

In response to questions by Representative Belcher, Mr. Thomas stated that one (1) reason an agency might opt to end participation in Kentucky Retirement Systems was the contribution rate. Individual members in an agency that opted to end participation in the systems would stop accruing service hours as of the cessation date; however, earned credit prior to that cessation date would be preserved for the retirement date of each individual member. If an individual member transferred to an agency that still participated in Kentucky Retirement Systems, service hours would begin to accrue again and build on the existing account established prior to the cessation date.

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. Leanne Diakov, general counsel, represented the board.

In response to a question by Co-Chair Harris, Ms. Diakov stated that the two (2) drugs referenced in this administrative regulation were for the treatment of addiction to opioids or treatment for long-term controlled substance abuse.

In response to a question by Co-Chair Marzian, Ms. Diakov stated that Naloxone was an independent drug, separate from the two (2) drugs referenced in this administrative regulation, and was for use in preventing death after heroin overdose. The two (2) drugs referenced in this administrative regulation were for the treatment of long-term addiction related to opioids, including but not limited to heroin, or controlled substances.

Board of Nursing: Board

201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing. Myra Goldman, education consultant; Spencer Robinson, staff attorney; and Paula Schenk, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 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.

In response to questions by Co-Chair Harris, Ms. Schenk stated that nursing schools did not determine enrollment based on the number of available beds at hospitals and healthcare facilities. Ms. Goldman stated that the calculation pertaining to available beds was for clinical facilities. There was nursing student competition for clinical facilities, and the board established the calculation to ensure that facilities could accommodate nursing students.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220; and (3) to amend Section 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:320. Standards for curriculum of prelicensure nursing programs.

In response to a question by Co-Chair Harris, Ms. Schenk stated that some definitions were deleted because they were moved into a different administrative regulation within this package.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY para-

graph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 and 2 to use consistent terminology; and (4) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220; and (2) to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify that accredited programs of nursing are: (a) deemed to be in regulatory compliance only for the eight (8) year compliance reviews that are required for non-accredited programs; and (b) subject to the same site visit criteria as non-accredited programs; (2) to amend Sections 2 and 3 to clarify the types of information that must be provided to the board; (3) to amend Section 3 to specify that revisions to an evaluation plan or report must be submitted with the annual report; (4) to amend Section 6 to clarify when the board may grant additional time for a program of nursing to correct a deficiency; and (5) to amend Sections 1 through 3, 5 through 7, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:370. Applications for licensure.

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

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 8 to clarify program approval criteria; (2) to amend Section 6 to align discipline procedures with the board's authorizing statutes; and (3) to amend Sections 1, 6, 9, 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 3:005. Public use of newly acquired or newly managed lands. Dr. Karen Waldrop, deputy commissioner, and David Wicker, general counsel, represented the department.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. Amy Barker, assistant general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Barker stated that this administrative regulation was in compliance with federal guidelines regarding LGBTI inmates. Protections for LGBTI inmates included an abuse investigation and reporting framework, including provisions for anonymous reporting.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) update policy titles; (2) clarify procedures for the release of inmate funds if an inmate dies; (3) align open records

procedures with statutory requirements; (4) comply with the drafting requirements of KRS Chapter 13A; and (5) update the edition dates of the amended policies. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:275. Mobile health services. Stephanie Brammer – Barnes, regulation coordinator, and Stephanie Hold, acting inspector general, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 3 and 5 to add citations; and (2) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

907 KAR 1:835. Michelle P. waiver services and reimbursements. Veronica Cecil, deputy commissioner, and Leslie Hoffmann, executive director, represented the department. Lili Lutgens, licensed clinical social worker, Therapeutic Intervention Services; Shannon McCracken, executive director, Kentucky Association of Private Providers (KAPP); and Jean Russell, vice president of developmental services, Seven Counties Services, appeared in op-position to these administrative regulations.

In response to questions by Representative Belcher, Ms. Cecil stated that 907 KAR 1:835 and 907 KAR 12:010 and 12:020 reflected the final federal home and community based rules pertaining to the setting for providing waiver services. Services were not being cut, but operation of the waivers was being changed. Ms. Hoffmann stated that these administrative regulations established a person centered approach to conflict free case management in which the case manager was not the service provider.

In response to a question by Representative Belcher, Co-Chair Marzian stated that there may be fewer available occupational, physical, and speech therapy providers due to different requirements between the existing waiver programs and the provider requirements established in the State Health Plan, to which program these therapies were being transferred as part of this administrative regulation package. Ms. Cecil agreed and stated that access was vital; therefore, the department provided a procedure for therapy providers to transfer from the waiver programs to the State Health Plan. Once a therapy provider transitioned to the State Health Plan, if the provider so chose, the provider may provide care to any Medicaid recipient, not just waiver recipients.

Ms. Cecil stated that upon transitioning from the KYNECT to the Benefind system, a conversion error generated letters to many Medicaid recipients erroneously informing them that they were no longer eligible to receive services as of April 1, 2016. These recipients were still eligible for services and were listed as eligible in the Kentucky Health Net database that providers used to determine patient eligibility. Providers and managed care organizations had been notified to continue to provide services to these recipients. Ms. Cecil was unsure if a follow-up letter had been sent directly to the recipients to clarify that they were not ineligible. Representative Belcher requested that the department provide a copy of the follow-up letter if it was determined that a letter had been sent.

In response to questions by Co-Chair Marzian, Ms. Hoffmann stated that reimbursement for occupational, physical, and speech therapies would be transferred to the State Health Plan. The Sup-ports for Community Living (SCL) waiver was preparing for renew-al, and the Michelle P. waiver was being amended commensurate with the final federal rule. Therapy services would not be lost but, pursuant to 907 KAR 8:040 and 8:045 and the State Health Plan, reimbursement rates were different. Ms. Cecil stated that, because the federal Centers for Medicare and Medicaid Services (CMS) refused to renew support

for the waiver programs if occupational, physical, and speech therapies continued to be provided through the waivers, as each waiver prepared for renewal, reimbursement for the therapies was being transferred for coverage under the State Health Plan.

Ms. Cecil also stated that, pursuant to the State Health Plan, reimbursement for occupational, physical, and speech therapies was different, both the rates themselves and the units on which the rates were based. In some cases the equivalent reimbursement rates would be lower, while in other cases the equivalent reimbursement rates would be higher. Kentucky's State Health Plan reimbursement rates for occupation, physical, and speech therapies were comparable to the reimbursement rates for those therapies in other states. The reimbursement rate for speech therapy was especially lower under the State Health Plan than the rates were under the waiver programs. An increase of the speech therapy reimbursement rate would apply to every Medicaid recipient, not just those recipients who had received the lower rate under a waiver program. The department did not have the administrative or fiscal resources to increase the speech therapy reimbursement rate for the entire Medicaid population. The department would continue to research ways to address the issue, but the reimbursement rate was not something that could be increased immediately. The department, in discussions with providers, determined that, while lower in many cases, the reimbursement rate changes for occupation and physical therapies were more manageable for the providers than the changes to the reimbursement rate for speech therapy.

Ms. Hoffmann stated that speech therapy, under the State Health Plan, was administratively coded differently than the waiver coding. Ms. Cecil stated that a speech therapy provider may be able to raise a reimbursement rate by adjusting coding practices.

Co-Chair Harris stated that transferring the reimbursement for occupational, physical, and speech therapies under the State Health Plan provided more transparency regarding who is providing services and established more frequent review of individual progress. Ms. Cecil agreed with CoChair Harris's statement that the transfer improves accountability and transparency, while maintaining continuity of care. Long-term therapy would still be available; however, outcome based accountability would be required to determine the appropriate duration. Historical information regarding individual patients would not be lost.

In response to a question by CoChair Marzian, Ms. Cecil stated that an occupational, physical, or speech therapy provider who was enrolled as a provider pursuant to a waiver program had not been previously required to be enrolled as a provider pursuant to the State Health Plan. Such a provider previously had the option to be enrolled under both programs, once the State Health Plan began covering occupational, physical, and speech therapies, but such a provider had not been required to be enrolled under the State Health Plan. Because occupational, physical, and speech therapy were transferring for implementation under the State Health Plan, providers would be required to enroll under that program and meet those requirements that were different from provider requirements under the waiver programs.

Ms. Russell stated that Seven Counties Services was currently serving over 200 recipients receiving occupational, physical, or speech therapies pursuant to a waiver program; however, Seven Counties Services would not qualify as eligible to provide these services pursuant to the State Health Plan. The requirements under the State Health Plan required electronic billing and a claims department, which were not affordable for many small providers. The requirements were more burdensome, but the reimbursement rates were lower. The REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT stated that there was no cost to the regulated entities, except for administrative costs for enrolling in the Medicaid program. Much more than just administrative costs would result from this administrative regulation package, especially for smaller providers.

Ms. McCracken stated that KAPP represented ninety-three (93) providers that operated primarily pursuant to the SCL and Michelle P. waivers, serving approximately 10,000 patients with intellectual and developmental disabilities. KAPP was concerned

with unnecessary administrative burdens that did nothing to enhance patient care. KAPP thanked the department for amendments that would decrease administrative burdens, but there were still concerns. A significant concern was expanded requirements to use the Medicaid Waiver Management Application (MWMA). The MWMA was initially intended for use in case management; however, this administrative regulation package required it for use by all service providers for all therapy notes and records. Case managers were trained to use the MWMA by a contracted entity, but service providers had not received the training. The training that was offered was inadequate. The MWMA system did not function properly. The helpdesk was not helpful, and users had to seek help from the contracted entity. Downloading notes and records into the MWMA portal was a tedious and expensive administrative process. KAPP requested that required use of the MWMA be delayed until the portal functioned properly and all affected parties were appropriately trained. KAPP requested that a department and service provider workgroup be established to ensure effective use of the MWMA system. KAPP requested that the paper process be allowed to continue until the MWMA system was functioning correctly and everyone was trained.

In response to questions by CoChair Harris, Ms. McCracken stated that some small service providers were still very paper oriented. These small providers may have a computer, but may not have the needed scanner to scan handwritten treatment notes. They did not have the necessary technological training to use the scanner and the MWMA portal. KAPP preferred a delay of at least one (1) year before expanding required use of the MWMA portal to service providers.

In response to a question by CoChair Marzian, Ms. McCracken stated that the department was unprepared to actually review all of the treatment notes and records that would be entered into the MWMA portal. Ms. Lutgens requested that service providers not be required to use the MWMA portal.

Ms. Lutgens stated that these administrative regulations basically required two (2) sets of electronic medical recordkeeping on the same patients for the same services, and both systems were essentially paid for with tax dollars. MWMA did not interface with other electronic medical recordkeeping systems; therefore, notes and records already entered into one (1) system could not be directly uploaded into the MWMA portal. Instead, those notes and records had to be printed, scanned, and then uploaded into MWMA. Taxpayers should not have to pay for duplicative electronic recordkeeping systems.

CoChair Harris requested that the department respond to the primary issues brought up during the testimony. Ms. Cecil stated that these administrative regulations authorized the establishment of a multi-therapy agency and authorized use of some licensure categories, such as a mobile health category. The SCL and Home and Community Based (HCB) waivers were on hold for renewal until the reimbursement for occupational, physical, and speech therapies were removed. CMS gave Kentucky extensions on the renewal of waivers until this matter was worked out; however, if the reimbursement for occupational, physical, and speech therapies was not removed, CMS may choose to not renew the waivers, and the programs would be lost altogether.

In response to questions by CoChair Marzian, Ms. Cecil stated that the SCL and HCB waivers were pending with CMS and had received extensions. Ms. Hoffmann stated that the extension for the HCB waiver expired today, and another extension had to be requested. If that extension is granted, the new expiration was anticipated to be in June 2016. The Michelle P. and Acquired Brain Injury – Long-term Care waivers had not expired yet, but would need to be addressed soon. Ms. Cecil stated that CMS would not allow the State Health Plan to establish a separate category for special populations regarding reimbursement rates for occupational, physical, and speech therapies. CMS would allow the State Health Plan to establish an assessment for an enhanced rate for those therapies; however, that assessment would be available for all Medicaid recipients, regardless of if they were part of a waiver program. Such an assessment would be an administrative and financial impracticality.

Ms. Hoffmann stated that three (3) of the six (6) waiver programs were already required to use MWMA. Ninety-three (93) to ninety-seven (97) percent of providers in the other three (3) waiver programs were already voluntarily using the MWMA portal. Ms. Cecil stated that MWMA was implemented too late to create an interface with existing electronic medical recordkeeping systems. The department would research interface options for future system enhancements.

In response to questions by Representative Belcher, Ms. Hoffmann stated that the department needed the daily treatment notes to verify billing and critically needed incident reports. This allowed staff to investigate evidence relevant to an incident or complaint remotely to reduce travel costs and may reduce, although not eliminate, the number of site audits required. Ms. Cecil stated that staff who currently conducted site audits needed the treatment notes and incident reports to remotely determine if a site audit was necessary. Entering treatment notes into the portal also provided verification that the notes were being done pursuant to the requirements.

In response to questions by Co-Chairs Harris and Marzian, Ms. Hoffmann stated that all the administrative regulations in this package were interrelated; therefore, it was not possible to defer a specific administrative regulation independent of the package.

Ms. Cecil stated that MWMA training was conducted through-out the state at the initial commencement of the portal's use. There was also a training Webinar available online, and the department was available to provide onsite training for specific providers. Some service providers decided not to attend the initial training as a protest of being required to use the portal. CMS established the federal participation rates of contribution. The occupational, physical, and speech therapy rates were based on Medicare's established rates for those therapies.

In response to questions by Senator Kerr, Ms. Cecil and Ms. Hoffmann stated that the SCL and Michelle P. waiver administrative regulations needed to proceed through the promulgation process, rather than being deferred from today's Subcommittee meeting, because of federal requirements. Transfer of the occupational, physical, and speech therapy reimbursements also needed to proceed today. Medicaid expansion created all of these issues. Ms. Cecil stated that the reason for the urgency for this administrative regulation package to move forward through the process was the time it took for the department to try to compromise on some of these issues with CMS, for example to request an enhanced reimbursement rate for special populations for occupational, physical, and speech therapy reimbursement rates.

A motion was made and seconded to approve the following amendments: (1) to delete Sections 1(54), 15, 16, and 17, which were inserted in the Amended After Comments version, relating to corrective action plans, provider certification, and voluntary moratorium; (2) to amend Sections 7 and 20 to correct the names of two (2) forms incorporated by reference; (3) to amend Section 11 to clarify the incident reporting process; (4) to amend Section 12 to require the department to remove from the waiting list an individual who has informed the department that the individual does not wish to continue to pursue enrollment in the program; (5) to insert a new Section 17 to establish provisions relating to federal approval and federal financial participation; and (6) to amend Sections 3, 6, 7, 8, 9, 11, 12, 18, 19, and 20 to comply with the drafting and formatting requirements of KRS Chapter 13A. With the objection of Representative Belcher noted, and with agreement of the agency, the amendments were approved.

Occupational, Physical, and Speech Therapy

907 KAR 8:005. Definitions for 907 KAR Chapter 8. Veronica Cecil, deputy commissioner, and Leslie Hoffmann, executive director, represented the department. Stephanie Brammer – Barnes, regulation coordinator, represented the Office of Inspector General. Chell Austin, executive director, Brain Injury Alliance of Kentucky; Beth Ennis, chair, Therapy Technical Advisory Committee for Medicaid Services; Malicia Hitch, attorney, Protection and Advocacy; Lili Lutgens, licensed clinical social worker, Therapeutic Intervention Services; Dale Lynn, vice

president, Kentucky Occupational Therapy Association; Shannon McCracken, executive director, Kentucky Association of Private Providers (KAPP); Kevin McMannis, attorney, Protection and Advocacy; Jean Russell, vice president of developmental services, Seven Counties Services; Jane Stahl, state director, Neuro Restorative; and Mark White, parent of Matt White, who suffered an acquired brain injury, appeared in opposition to these administrative regulations. Steve Shannon, executive director, Kentucky Association of Regional Programs, appeared concerning 907 KAR 8:040.

In response to a question by CoChair Harris, Ms. Cecil stated that these administrative regulations established a framework to transition service providers for occupational, physical, and speech therapies currently under waiver programs, and also agencies that provided services pursuant to waiver programs so that those agencies may provide services to Medicaid recipients under the State Health Plan. Some providers and agencies that were qualified under the waiver programs would not automatically qualify pursuant to the State Health Plan because the requirements were different.

Ms. Lutgens stated that Therapeutic Intervention Services provided primarily behavioral and mental health services to children and adults with intellectual and developmental disabilities, but did provide some occupational and speech therapy services and nutritional services. This administrative regulation package, through the waiver to State Health Plan transfer, effectively reduced reimbursement rates for occupational, physical, and speech therapies, regardless of how the therapies were coded. Reimbursement rates for speech therapy were significantly reduced. For children and adults with intellectual and developmental disabilities, office based speech therapy was not effective. For example, a child with acute autism or a child with cerebral palsy needed to be in a normal living environment to determine what communication was trying to be expressed in a speech therapy context. In some cases, when the speech – communication issues were addressed, the accompanying behavioral problems were also resolved. This was not practical in an office based setting, which did not typically include caregivers in the therapy process. Home-based therapy was able to include the caregiver, which was crucial for nonverbal patients. Home-based therapy was not practicable if the reimbursement rate was too low, especially given extended travel, which meant fewer patients would receive services. In these situations, office based speech therapy was actually a waste of money because the therapy itself was ineffective under those conditions.

In response to a question by CoChair Marzian, Ms. Lutgens stated that travel to and from home-based therapy was not reimbursable, although it was tax deductible.

Ms. Russell stated that Seven Counties Services was opposed to 907 KAR 8:040 and 8:045 because the lower reimbursement rates for occupational, physical, and speech therapies would result in less patient access.

In response to questions by CoChair Marzian, Ms. Russell stated that as a waiver provider, Seven Counties Services would not automatically qualify pursuant to State Health Plan requirements. Ms. Cecil stated that, as an agency, Seven Counties Services needed licensure for those services under the State Health Plan. The department agreed to consider amending the State Health Plan and 907 KAR 8:040 to address these licensure concerns when the State Health Plan was again due for amendment. Mr. Shannon stated the State Health Plan could be amended to resolve many of these licensure issues, as well as other issues pertaining to waiver programs other than the SCL and Michelle P. programs.

Ms. McCracken stated that KAPP concurred with concerns already expressed regarding reimbursement rates for speech therapy.

Ms. Stahl stated that, as a registered nurse, mother of a child with a brain injury, and state director of Neuro Restorative, she agreed with previous testimony regarding the inadequacy of the occupational, physical, and speech therapy reimbursement rates. Neuro Restorative also had concerns regarding medical necessity and clinical appropriateness provisions. The Interqual system was

used for determinations of medical necessity, but Interqual was not appropriate for post-acute community integrated brain injury criteria. Through Interqual, populations with brain injuries may become underserved, which may result in regression and possible institutionalization. The department should develop a platform of criteria for these populations for use in making determinations of medical necessity. 907 KAR 8:045 created a coverage versus care situation. Reimbursement rates were tiered, and healthcare extender rates were reduced even more significantly than the reductions already discussed. Access problems and service reductions would result from such low reimbursement rates.

Mr. White stated that he represented his son, Matt White, who suffered an acquired brain injury and was currently a recipient in the Acquired Brain Injury Long-term Care waiver program. Matt White received nine (9) combined hours of occupational, physical, and speech therapy per week. Mr. White was concerned that therapy would be limited to twenty (20) hours each year unless the recipient was assessed to need more. The administrative regulations were unclear as to how many more than twenty (20) would be authorized and under what conditions and process. A break in continuation would be seriously detrimental to Matt White and would likely cause him to regress; therefore, it was important that the assessment process be time sensitive. It was unclear from these administrative regulations if more than one (1) extension of the twenty (20) visit limit was available. Without an advocate the brain injury population would have a difficult time maneuvering through this very complicated process. The lower reimbursement rates for occupational, physical, and speech therapies may result in the loss of some of these experts from Kentucky. Why didn't the department accept CMS's alternative tiering for recipients assessed to need therapy services at an enhanced reimbursement rate?

Mr. Austin stated that the Brain Injury Alliance of Kentucky was a nonprofit organization that provided a voice to those affected by brain injury. The Brain Injury Alliance of Kentucky agreed that reduced reimbursement rates for occupational, physical, and speech therapies may create access and service problems. Community based services were less expensive in the long term and more effective than institutional services. Waiver programs should recognize the difference between medical necessity in an acute setting and clinical necessity required in a long-term setting. Disruptions in therapies were likely to result in regression, resulting in greater caregiver burden to the family and the state. The participant directed option mandating that an immediate family member shall not provide traditional waiver services would be detrimental to the care and progress of the recipient and would result in financial hardship for many Kentucky families. The Brain Injury Alliance of Kentucky requested that these administrative regulations be deferred for further consideration and meetings with stakeholders. These administrative regulations should reflect best practices in the treatment of waiver recipients, consider the needs of each individual regarding the levels of support and therapy needed, and be approved by an independent third party without a financial stake in the outcome.

Ms. Ennis stated that the Therapy Technical Advisory Committee for Medicaid Services was concerned that 907 KAR 8:045 established a tiered reimbursement service differential that would cause major access issues. Even for occupational and physical therapies, the reimbursement reductions would only be absorbable spread across the board, which was not possible within this regulatory framework. Medicare and other state plans did not utilize a tiered reimbursement service differential.

Mr. Lynn stated that the Kentucky Occupational Therapy Association agreed that the reimbursement rates for occupational therapists and assistants was a significant problem. Rates would not cover costs, and access and services would be lost. Some practices spent thousands for a Certificate of Need, which was then useless under the State Health Plan. Niche practices should not need a Certificate of Need.

Ms. Hitch stated that Protection and Advocacy requested clarification regarding: (1) how many therapy treatments after the initial twenty (20) would be authorized after a determination of medical necessity; (2) what constituted "periodic evaluation;" (3)

what was the specific criteria for "medically necessary;" and (4) therapy allotments, which should not be affected by therapy pursuant to an individualized education program (IEP) for children. Additionally, and children under twenty-one (21) years of age should not have a therapy allotment if the therapy is deemed medically necessary. 907 KAR 3:130 should be cross referenced, and 907 KAR 1:715 already governed school based health services, with medical necessity in these situations being barred from outside review.

Mr. McMannis stated that waiver recipients were afraid, especially regarding the twenty (20) therapy limit. There should be specific references and criteria pertaining to rehabilitative services, as opposed to just "medical necessity."

Co-Chair Harris requested that the department respond to the primary issues brought up during the testimony. Ms. Cecil stated that the reimbursement rate differential between the licensed therapist and the assistant was already established in the State Health Plan when the plan was amended to reflect the Medicaid expansion. The current budget was based on that differential; however, the department agreed to take the differential reimbursement rate into consideration when the State Health Plan was next due for amendment.

In response to questions by Co-Chair Marzian, Ms. Cecil stated that the State Health Plan would again be due for amendment once a decision had been made regarding changes to Medicaid. The department had not been able to provide guidance on many issues up to this point because these administrative regulations were incomplete. Once final, the department would be able to fine tune these processes and be more able to address concerns and determine if a CON was necessary in certain cases. Some requirements for waivers did not align directly with requirements under the State Health Plan. In order to remedy some of the issues of concern, it would be necessary to amend these administrative regulations, as well as the State Health Plan; therefore, deferral of these administrative regulations at this time was not prudent. Ms. Brammer – Barnes stated that the CON had a private office exemption established by statute and administrative regulation. If a private office or clinic was solely owned by a practitioner or a group of practitioners, in order to claim the exemption from the CON process and licensure, the owner of the facility shall be responsible for all decisions regarding patient treatment. If a facility hired a practitioner, such as a speech therapist, who was not part owner, the facility would not qualify for the exemption. Such a facility may be better served by obtaining a mobile health service provider license when that administrative regulation becomes effective.

Ms. Cecil stated that CMS would not allow the State Health Plan to establish a separate category for special populations regarding reimbursement rates for occupational, physical, and speech therapies. CMS would allow the State Health Plan to establish an assessment for an enhanced rate for those therapies; however, that assessment would be available for all Medicaid recipients, regardless of if they were part of a waiver program. Such an assessment would be an administrative and financial impracticality.

In response to questions by Co-Chair Harris, Ms. Cecil stated that after twenty (20) occupational, physical, or speech therapy visits, the additional number of visits would be individually based on need, depending on the outcome goal stated in the treatment plan developed by the therapist. The provider would make that request prior to the initial twenty (20) visits expiration, and the assessment determination was required to be made by Carewise in no more than seventy-two (72) hours.

In response to a question by Representative Belcher, Ms. Cecil stated that a student's IEP already determined medical necessity. Medical necessity and therapy pursuant to an IEP was a completely separate issue and would not impact therapy relative to the State Health Plan.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) delete the definitions of "adult" and "child" because those terms were not used in 907 KAR Chapter 8; and (2) comply with the formatting requirements of KRS 13A.220(5). Without objection, and with agreement of the agency,

the amendments were approved.

907 KAR 8:040. Coverage of occupational therapy, physical therapy, and speech language pathology services provided by various entities.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 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.

907 KAR 8:045. Reimbursement of occupational therapy, physical therapy, and speech language pathology provided by various entities.

Division of Community Alternatives: Supports for Community Living Waiver

907 KAR 12:010. New Supports for Community Living Waiver Service and coverage policies. Veronica Cecil, deputy commissioner, and Leslie Hoffmann, executive director, represented the department. Lili Lutgens, licensed clinical social worker, Therapeutic Intervention Services; Shannon McCracken, executive director, Kentucky Association of Private Providers (KAPP); and Jean Russell, vice president of developmental services, Seven Counties Services, appeared in opposition to these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) delete the annual continuing education requirement for case manager supervisors and for positive behavior support specialists; and (b) revise the definition of "community access specialist" for clarity; (2) to delete Sections 1(102), 14, 15, and 16, which were inserted in the Amended After Comments version, relating to corrective action plans, provider certification, and voluntary moratorium; (3) to amend Section 3 to: (a) clarify documentation requirements for a memorandum of understanding; (b) delete the room and board limit that a residential provider may charge an SCL participant; (c) delete continuing education requirements for SCL providers; and (d) establish an option regarding crisis prevention and intervention training in which providers may propose curriculums that meet certain criteria to the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) rather than have to take the DBHDID conducted training; (4) to amend Section 4 to: (a) delete the requirement that a direct support professional supervisor sign and date when the supervisor reviewed a direct support professional's documentation; (b) delete the fading plan requirement for positive behavior support plans; (c) delete a requirement for supported employment ongoing support; and (d) establish parallel provisions to those established in 907 KAR 12:020 to avoid conflicts between the two (2) administrative regulations; (5) to amend Section 6 to: (a) delete the case management code of ethics requirement; (b) delete the requirement that a case manager be accountable to a participant, participant's person centered service team, and the case manager's employer; (c) revise documentation requirements, including deleting the monthly DBHDID approved person centered monitoring tool; and (d) revise requirements for case managers; (6) to amend Sections 7 and 8 to reduce the number of members required to serve on a human rights committee or a behavior intervention committee; (7) to amend Section 11 to clarify the incident reporting process; (8) to insert a new Section 17 to establish provisions relating to federal approval and federal financial participation; and (9) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 13, 18, 19, and 20 to comply with the drafting and formatting requirements of KRS Chapter 13A. With the objection of Representative Belcher noted, and with agreement of the agency, the amendments were approved.

907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver Services.

A motion was made and seconded to approve the following

amendments: (1) to amend Section 3 to establish parallel provisions to those established in 907 KAR 12:010 to avoid conflicts between the two administrative regulations; (2) to insert a new Section 8 to establish provisions relating to federal approval and federal financial participation; (3) to amend Section 8 and the material incorporated by reference to: (a) change the edition date; (b) comply with the drafting and formatting requirements of KRS Chapter 13A; and (c) update the requirements in the Kentucky Exceptional Supports Protocol; and (4) to amend Sections 1, 3, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. With the objection of Representative Belcher noted, and with agreement of the agency, the amendments were approved.

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. Justin Dearing, regulation coordinator, and Wendy Morris, acting commissioner, represented the division. Jeff Edwards, director, Protection and Advocacy Division, appeared in support of this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the May 10, 2016, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Social Work: Board

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

Board of Licensed Diabetes Educators: Board

201 KAR 45:110. Supervision and work experience.

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.

815 KAR 6:040. Home inspector prelicensing providers.

815 KAR 6:080. Continuing education provider.

815 KAR 6:090. Procedures for complaints and administrative hearings.

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.

The Subcommittee adjourned at 4:30 p.m. until May 10, 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

K - 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

K - 15

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

K - 31

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

K - 32

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
VOLUME 41					
The administrative regulations listed under VOLUME 41 are those administrative regulations that were originally published in Volume 41 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2015 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			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	
			Withdrawn		3-10-16
			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.
EMERGENCY ADMINISTRATIVE REGULATIONS:					
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)					
13 KAR 2:045E	2062	3-2-15			
Replaced		See 42 Ky.R.			
31 KAR 4:180E	2527	5-5-15			
Replaced		See 42 Ky.R.			
103 KAR 3:030E	1958	1-16-15			
Replaced	2226	7-6-15			
103 KAR 3:040E	1742	12-31-14			
Replaced	2199	6-5-15			
201 KAR 2:360E	2529	5-14-15			
Replaced		See 42 Ky.R.			
201 KAR 21:090E	1969	2-10-15			
Replaced	2026	7-15-15			
601 KAR 1:112E	1481	12-5-14			
Withdrawn		7-8-15			
900 KAR 7:030E	1755	12-31-14			
Replaced	1891	6-5-15			
907 KAR 1:045E	1759	12-31-14			
Expired		8-1-15			
907 KAR 3:017E	1764	12-31-14			
Replaced	2224	6-5-15			
908 KAR 2:220E	1766	1-7-15			
Replaced	2560	6-17-15			
908 KAR 2:230E	1770	1-7-15			
Replaced	2562	6-17-15			
908 KAR 2:260E	1773	1-7-15			
Replaced	2565	6-17-15			
921 KAR 2:015E	1776	12-30-14			
Replaced	1932	6-5-15			
921 KAR 3:060E	2530	4-30-15			
Replaced		See 42 Ky.R.			
921 KAR 3:070E	2533	4-30-15			
Replaced		See 42 Ky.R.			
ORDINARY ADMINISTRATIVE REGULATIONS:					
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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201 KAR 46:050	2450	See 42 Ky.R.	703 KAR 5:200		
201 KAR 46:060	2452	See 42 Ky.R.	Amended	2034	
201 KAR 46:070			AmComments	2236	See 42 Ky.R.
Amended	2308	See 42 Ky.R.	703 KAR 5:225		
Withdrawn		3-10-16	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.
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Amended	1891	6-5-15	AmComments	2268	
900 KAR 10:010			As Amended	2556	7-6-15
Amended	2651	See 42 Ky.R.	907 KAR 1:350		
900 KAR 10:020			Amended	2136	
Amended	2658	See 42 Ky.R.	As Amended	2559	7-6-15
900 KAR 10:040	2464	See 42 Ky.R.	907 KAR 3:017	1943	
900 KAR 10:050			As Amended	2224	6-5-15
Amended	2664	See 42 Ky.R.	907 KAR 9:005		
900 KAR 10:100			Amended	2417	See 42 Ky.R.
Amended	2667	See 42 Ky.R.	907 KAR 9:010		
900 KAR 10:110	2704	See 42 Ky.R.	Amended	2425	See 42 Ky.R.
900 KAR 4:040			907 KAR 9:015	2475	See 42 Ky.R.
Repealed	2051	6-5-15	907 KAR 9:020	2487	See 42 Ky.R.
902 KAR 4:041(r)	2051	6-5-15	907 KAR 10:014		
902 KAR 10:020			Amended	2428	See 42 Ky.R.
Repealed	2468	9-4-15	907 KAR 10:016		
902 KAR 10:021			Amended	2442	See 42 Ky.R.
Repealed	2468	9-4-15	907 KAR 10:020	2491	See 42 Ky.R.
902 KAR 10:022(r)	2468	9-4-15	907 KAR 10:025	2503	See 42 Ky.R.
902 KAR 20:091			907 KAR 10:825		
Amended	1896		Repealed	2181	10-1-15
AmComments	2245		907 KAR 10:826(r)	2181	10-1-15
902 KAR 20:160			907 KAR 10:830	2182	See 42 Ky.R.
Amended	2374	See 42 Ky.R.	907 KAR 15:080	2507	See 42 Ky.R.
902 KAR 20:180			907 KAR 15:085	2515	10-2-15
Amended	2383	See 42 Ky.R.	908 KAR 2:220		
902 KAR 20:320			Amended	1925	
Amended	2393	See 42 Ky.R.	AmComments	2273	
902 KAR 20:400			As Amended	2560	6-17-15
Amended	1905		908 KAR 2:230		
AmComments	2256	See 42 Ky.R.	Amended	1929	
902 KAR 45:010			AmComments	2277	
Repealed	2469	9-4-15	As Amended	2562	6-17-15
902 KAR 45:011(r)	2469	9-4-15	908 KAR 2:260	1945	
902 KAR 45:030			AmComments	2280	
Repealed	2469	9-4-15	As Amended	2565	6-17-15
902 KAR 45:040			910 KAR 1:140		
Repealed	2469	9-4-15	Amended	2138	
902 KAR 45:050			As Amended	2568	6-17-15
Repealed	2469	9-4-15	910 KAR 1:170		
902 KAR 45:060			Amended	2143	
Repealed	2469	9-4-15	As Amended	2573	See 42 Ky.R.
902 KAR 45:110			910 KAR 1:210		
Amended	2414	See 42 Ky.R.	Amended	2150	
902 KAR 45:120			As Amended	2578	6-17-15
Amended	2672	See 42 Ky.R.	910 KAR 1:220		
902 KAR 45:130			Amended	2157	
Repealed	2469	9-4-15	As Amended	2583	6-17-15
902 KAR 45:160	2470	See 42 Ky.R.	921 KAR 2:015		
907 KAR 1:044			Amended	1932	6-5-15
Amended	1910		921 KAR 3:045		
AmComments	2261		Amended	2177	7-15-15
As Amended	2553	7-6-15	921 KAR 3:060		
907 KAR 1:045			Amended	2682	See 42 Ky.R.
Amended	1915		921 KAR 3:070		
907 KAR 1:046	1940		Amended	2685	See 42 Ky.R.
AmComments	2266				
907 KAR 1:055					
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
VOLUME 42					
SYMBOL KEY:			902 KAR 55:020E	1706	11-4-15
* Statement of Consideration not filed by deadline			Replaced	1975	3-4-16
** Withdrawn before being printed in Register			906 KAR 1:190E	2022	11-20-15
**** Emergency expired after 180 days			Withdrawn		3-15-16
(r) Repealer regulation: KRS 13A.310-on the effective date of an			921 KAR 3:035E	2708	4-1-16
administrative regulation that repeals another, the regulations			921 KAR 3:060E		See 41 Ky.R.
compiler shall delete the repealed administrative regulation and the			Replaced	1214	11-6-15
repealing administrative regulation.			921 KAR 3:070E		See 41 Ky.R.
			Replaced	1216	11-6-15
			921 KAR 3:090E		7-2-15
			922 KAR 1:320E		
			Amended	2530	
			922 KAR 2:020E		
			Amended	2534	
			922 KAR 2:160E		
			Amended	2540	
			922 KAR 2:260E		
			Amended	2550	
			ORDINARY ADMINISTRATIVE REGULATIONS:		
13 KAR 2:045		See 41 Ky.R.	9 KAR 1:025	2292	4-1-16
Replaced	9	7-13-15	11 KAR 4:080		
31 KAR 4:180E		See 41 Ky.R.	Amended	2611	
Replaced	658	9-4-15	11 KAR 5:145		
101 KAR 2:210E	1084	9-15-15	Amended	2612	
103 KAR 3:030E	1996	12-7-15	11 KAR 15:090		
103 KAR 3:040E	2007	12-7-15	Amended	44	
Replaced		4-1-16	As Amended	1121	10-12-15
105 KAR 1:145E	2017	12-3-15	11 KAR 15:100	627	See 41 Ky.R.
200 KAR 5:365E	231	6-16-15	As Amended	1124	10-12-15
Replaced	1130	11-6-15	11 KAR 16:060		
201 KAR 2:360E		See 41 Ky.R.	Amended	449	
Replaced	273	9-4-15	As Amended	1125	10-12-15
201 KAR 11:170E	233	6-29-15	13 KAR 2:045		See 41 Ky.R.
Replaced	1466	12-4-15	As Amended	9	7-13-15
201 KAR 11:175E	236	6-29-15	16 KAR 2:020		
Replaced	1468	12-4-15	Amended	72	
201 KAR 11:235E	238	6-29-15	As Amended	660	9-14-15
Replaced	1473	11-13-15	16 KAR 2:100		
201 KAR 11:240E	240	6-29-15	Amended	794	
Replaced	1475	12-4-15	As Amended	1446	12-4-15
201 KAR 12:110E	244	6-17-15	16 KAR 2:110		
Replaced	1132	11-6-15	Amended	796	
201 KAR 35:010E	1086	8-25-15	As Amended	1447	12-4-15
201 KAR 35:015E	1088	8-25-15	16 KAR 2:140		
201 KAR 35:020E	1089	8-25-15	Amended	797	
201 KAR 35:030E	1092	8-25-15	As Amended	1447	12-4-15
201 KAR 35:040E	1095	8-25-15	16 KAR 2:150		
201 KAR 35:050E	1098	8-25-15	Amended	799	
201 KAR 35:055E	1100	8-25-15	As Amended	1448	12-4-15
201 KAR 35:060E	1102	8-25-15	16 KAR 2:160		
201 KAR 35:070E	1104	8-25-15	Amended	801	
201 KAR 35:075E	1108	8-25-15	As Amended	1449	12-4-15
201 KAR 35:090E	1110	8-25-15	16 KAR 2:170		
301 KAR 2:221E	1699	11-3-15	Amended	803	
Replaced	1921	3-4-16	As Amended	1450	12-4-15
301 KAR 2:222E	1701	11-3-15	16 KAR 2:200		
Replaced	1923	3-4-16	Amended	805	12-4-15
301 KAR 2:225E	1111	8-21-15	16 KAR 3:030		
505 KAR 1:100E	246	7-1-15	Amended	807	
505 KAR 1:110E	248	7-1-15	As Amended	1451	12-4-15
505 KAR 1:130E	250	7-1-15	16 KAR 3:040		
601 KAR 1:113E	252	7-8-15	Amended	809	
601 KAR 2:030E	1114	9-1-15	As Amended	1452	12-4-15
Withdrawn		3-29-16	16 KAR 4:030		
Resubmitted	2702	3-29-16	Amended	74	
787 KAR 2:040E	6	5-21-15	As Amended	661	9-14-15
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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/KAR/frntpage.htm>.

‡ - Pursuant to KRS 13A.320(e), this indicates a technical change was made to this administrative regulation during the promulgation process.

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11 KAR 3:001		4/27/2016
11 KAR 4:020		4/27/2016
11 KAR 4:030		4/27/2016
11 KAR 4:040		4/27/2016
11 KAR 5:200		4/27/2016
11 KAR 6:010		4/27/2016
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11 KAR 18:010		4/27/2016
11 KAR 19:030		3/11/2016
13 KAR 2:025		7/15/2015
101 KAR 3:015		9/21/2015
103 KAR 3:010	‡	2/16/2016
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103 KAR 3:040	‡	1/21/2016
103 KAR 3:040	‡	2/17/2016
103 KAR 3:050		2/17/2016
201 KAR 2:370	‡	2/15/2016
201 KAR 9:270	‡	3/23/2016
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