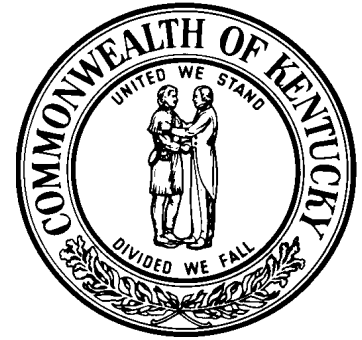


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 43, NUMBER 6
THURSDAY, DECEMBER 1, 2016

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

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet December 13, 2016, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 869 - 871 of this Administrative Register.

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

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

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VOLUME 43, NUMBER 6 – DECEMBER 1, 2016

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, DECEMBER 13, 2016, at 1:00 p.m., Room 149 Capitol Annex**

**FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission**

Commission

9 KAR 1:060. Requirements relating to fundraising activities and charitable nonprofit organizations.

GOVERNOR'S OFFICE

Early Childhood Development Authority

10 KAR 6:010. Duties of the Early Childhood Advisory Council.

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:060. Degree program approval; equal opportunity goals.

Interstate Reciprocity Agreements

13 KAR 4:010 & E. State Authorization Reciprocity Agreement. ("E" expires 4-12-2017)

**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary**

Travel Expense and Reimbursement

200 KAR 2:006 & E. Employees' reimbursement for travel. ("E" expires 3-14-2017)

**GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners**

Board

201 KAR 21:025. Board; officers; duties.

201 KAR 21:041. Licensing; standards, fees.

Board of Licensed Professional Counselors

Board

201 KAR 36:005. Definitions for 201 KAR Chapter 36.

201 KAR 36:020. Fees.

201 KAR 36:030. Continuing education requirements.

201 KAR 36:040. Code of ethics.

201 KAR 36:045. Distance counseling.

201 KAR 36:050. Complaint management process.

201 KAR 36:055. Administrative subpoena.

201 KAR 36:060. Qualifying experience under supervision.

201 KAR 36:065. Licensed professional clinical counselor supervisor.

201 KAR 36:070. Application, education, and examination requirements.

201 KAR 36:075. Renewal, late renewal, and reinstatement of license.

201 KAR 36:090. Administrative hearings for denials and revocation of probation.

Board of Licensure for Massage Therapy

Board

201 KAR 42:020. Fees.

201 KAR 42:040. Renewal.

Board of Durable Medical Equipment Suppliers

Board

201 KAR 47:010 & E. Home medical equipment and supplier licenses, requirements, and fees. ("E" Expires 2/21/2017)(Deferred from November)

201 KAR 47:020 & E. Inspections, discipline, reinstatement, and administrative appeals. ("E" Expires 2/21/2017) (Deferred from November)

PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

Authority

202 KAR 10:010. Unsolicited proposals.

202 KAR 10:020. Public-private partnerships.

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

Game

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas. (Deferred from October)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers. (Deferred from October)

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water**

Water Resources

401 KAR 4:070. Coal combustion residuals surface impoundments.

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Division of Waste Management

Special Waste

401 KAR 45:010. Definitions for 401 KAR Chapter 45.

401 KAR 45:060. Special waste permit-by-rule.

Coal Combustion Residuals (CCR)

401 KAR 46:101. Definitions for 401 KAR Chapter 46.

401 KAR 46:110. Standards for the disposal of coal combustion residuals (CCR) in CCR units.

401 KAR 46:120. Coal combustion residuals (CCR) permit-by-rule.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

Office of the Secretary

501 KAR 6:150. Eastern Kentucky Correctional Complex.

TRANSPORTATION CABINET

Department of Highways

Preconstruction

603 KAR 2:020. Public-private partnerships.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

Department of Education

School Administration and Finance

702 KAR 3:171. Repeal of 702 KAR 3:170. (Deferred from October)

Instructional Programs

705 KAR 4:231. General program standards for secondary career and technical education programs. (Deferred from October)

Board of Education

Department of Education

Instructional Programs

780 KAR 4:012. Repeal of 780 KAR 4:010. (Deferred from October)

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control

Advertising Distilled Spirits and Wine

804 KAR 1:071. Repeal of 804 KAR 1:070, 804 KAR 1:090, and 804 KAR 1:120. (Amended After Comments)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

State Health Plan

900 KAR 5:020 & E. State Health Plan for facilities and services. ("E" expires 3-26-2017)

Office of Inspector General

Division of Health Care

Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule.

902 KAR 20:013. Repeal of 902 KAR 20:014.

Office of Inspector General

906 KAR 1:151. Repeal of 906 KAR 1:150.

906 KAR 1:190. Kentucky National Background Check Program.

Department for Behavioral Health, Developmental and Intellectual Disabilities

Division of Intellectual and Developmental Disabilities

Mental Health

908 KAR 2:040. Hospital district assignments.

Division of Program Integrity

Institutional Care

908 KAR 3:081. Repeal of 908 KAR 3:080, 908 KAR 3:090, 908 KAR 3:100, 908 KAR 3:110, 908 KAR 3:120, 908 KAR 3:130, 908 KAR 3:140, 908 KAR 3:150, 908 KAR 3:160, and 908 KAR 3:180.

Department for Income Support

Child Support Enforcement

Family Support

921 KAR 1:001. Definitions for 921 KAR Chapter 1.

Department for Community Based Services

Division of Family Support

Supplemental Nutrition Assistance Program

921 KAR 3:030. Application process.

921 KAR 3:050. Claims and additional administrative provisions.

Division of Protection and Permanency

Child Welfare

922 KAR 1:140. Foster care and adoption permanency services.

922 KAR 1:360 & E. Private child care placement, levels of care, and payment. ("E" expires 3-27-2017)

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REGULATIONS REMOVED FROM DECEMBER AGENDA
EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board

General Administration

16 KAR 1:030. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial. (Comments Received, SOC ext., due 12/15/2016)

Assessment

16 KAR 6:010. Examination prerequisites for teacher certification. (Comments Received, SOC ext., due 12/15/2016)

Internship

16 KAR 7:010. Kentucky Teacher Internship Program. (Comments Received, SOC ext., due 12/15/2016)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training

Unemployment Insurance

787 KAR 1:070. Reasonable time for protesting claim. (Comments Received; SOC ext., due 12/15/2016)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations

Controlled Substances

902 KAR 55:035. Schedule V substances. (Comments Received, SOC ext., due 12/15/2016)

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, mailing address, e-mail 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 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
101 KAR 2:034E

This emergency administrative regulation is necessary for compliance with the requirement for promulgation of comprehensive administrative regulations for a compensation plan for all employees in the classified service pursuant to KRS 18A.110(1)(c) and (7)(b). This emergency administrative regulation addresses a pay inequity where an employee completing initial probation could receive a salary greater than that of a more senior status employee, even when the entry pay for both was equal. Specifically, this administrative regulation eliminates eligibility for a discretionary salary adjustment for an employee on initial probation at the time a special entrance rate is established. It is being promulgated pursuant to KRS 13A.190(1)(a)2. to prevent a loss of state funds. An ordinary amendment to the administrative regulation is not sufficient because establishment of special entrance rates needs to continue uninterrupted. A special entrance rate is established to counter market conditions of difficult recruitment or high turnover, particularly in job classes where public health, safety, or welfare is impacted. Delaying establishment until completion of the promulgation process for an ordinary amendment could make conditions worse. 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
THOMAS B. STEPHENS, Secretary

PERSONNEL CABINET
(Emergency Amendment)

101 KAR 2:034E. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

EFFECTIVE: November 15, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary an employee who is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

- (a) Is in the same job classification;
- (b) Is in the same work county; and
- (c) Has a similar combination of education and experience relating to the relevant job class specification.

Section 2. Reentrance to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated, or probationarily appointed in one (1) of the following ways:

- 1. In accordance with the standards used for making new

appointments in this administrative regulation; or

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed or probationarily appointed to a position in the classified service in one (1) of the following ways:

1. In accordance with the standards for making new appointments;

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary;

3. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary; or

4. At a salary up to five (5) percent above the grade entry level wage for each year of service in the KRS Chapter 18A system, if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one of the following ways:

1. In accordance with the standards for making new appointments; or

2. At five (5) percent above the minimum salary for each year of service in the unclassified service, if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(d) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary they were receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service.

(a) A former employee who is probationarily appointed at a salary below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

(b) A former employee who is probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under subsection (2)(b) of this section.

(2) Demotion.

(a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or

2. The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(b) An employee whose salary is not reduced by five (5)

percent per grade upon demotion shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, or pay grade change until he is moved to a job classification with a higher pay grade than that from which he was demoted. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(3) Reclassification.

(a) An employee who is advanced to a higher pay grade through reclassification shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job classification with a higher pay grade than that from which he was reclassified. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job classification with a higher pay grade than that from which he was reallocated. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher pay grade, shall be adjusted to:

1. The salary received prior to the promotion or detail; and
2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent;
2. The greater of the new grade minimum or ten (10) percent;
- or
3. The greater of the new grade minimum or a dollar amount approved by the secretary.

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

(8) Special entrance rates. If a special entrance rate is

established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification who is below the special entrance rate to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may uniformly grant to all employees in that job classification, except those employees who are on initial probation, a salary adjustment equal to the difference between the former entrance rate and the new entrance rate.

(9) Other salary adjustments.[(a)] On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a job classification within an agency who were eligible for, but did not receive, a five (5) percent salary adjustment as a result of a grade change applicable to the job classification, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal five (5) percent of the employee's salary immediately prior to the grade change.

~~[(b) On the 16th of a month, an appointing authority may grant a salary adjustment based on the establishment of a special entrance rate, under the following provisions:~~

~~1. The adjustment shall be uniformly granted to all employees within the agency who were eligible for, but did not receive, a salary adjustment equal to the difference in the former entrance rate and the new entrance rate at the time a special entrance rate was established; and~~

~~2. The total adjustment granted at the time of the special entrance rate and under this paragraph shall equal the difference in the former entrance rate and the new entrance rate.]~~

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

Section 4. Salary Advancements. (1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period, except as specified under Section 2(3) of this administrative regulation.

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Sections 3(2)(b), 3(3)(b), and 3(4)(b) of this administrative regulation.

(3) Annual increment dates shall be established as follows:

- (a) Upon completion of an initial probationary period;
 - (b) When a former employee has been probationarily appointed and has completed a total of twelve (12) months of service without receiving an increment; or
 - (c) When an employee returns from leave without pay under the provisions of subsection (5) of this section.
- (4) Annual increment dates shall not change if an employee:

- (a) Is in a position which is assigned a new or different pay grade;
- (b) Receives a salary adjustment as a result of a reallocation;
- (c) Is promoted;
- (d) Is transferred;
- (e) Is demoted;
- (f) Is detailed to special duty;
- (g) Receives an educational achievement award;
- (h) Returns from military leave;
- (i) Is reclassified; or
- (j) Receives a promotional increase after completion of a promotional probationary period.

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

(6) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining

increment eligibility.

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

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

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

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

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

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

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

- a. Outside of work hours;
- b. While in state service; and
- c. On or after January 1, 1984;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

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

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

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

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

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

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

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

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

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

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

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

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

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel and the Secretary of the Finance and Administration Cabinet.

(3) An employee who is eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums. (1) Shift premium.

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

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

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

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

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

(2) Weekend premium.

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

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

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

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

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

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

(3) Multilingual hourly premium.

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

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

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

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

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

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

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

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

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

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

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

(b) The employee has not received an ERA or a distinguished service award in the preceding twenty four (24) months, nor an Adjustment for continuing excellence (ACE) award in the preceding twelve (12) months; and

(c) 1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or

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

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

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

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

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

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

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

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

1. Sufficient funds are available within the department; and
2. The criteria and limitations established in this section have been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award;

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

(d) 1. The employee has demonstrated a sustained level of exceptional job performance;

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

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

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

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

(4) More than twenty-five (25) percent of the total number of full-time employees in a department, in a calendar year, shall not receive an ACE award.

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

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

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

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

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

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: November 15, 2016

FILED WITH LRC: November 15, 2016 at noon

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for administration of the pay plan for classified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity for administration of the pay plan for classified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of classified compensation.

(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 eliminates eligibility for a discretionary salary adjustment for an employee on initial probation at the time a special entrance rate (SER) is established. This amendment also specifies that SER discretionary adjustments shall only be granted at the time an SER is established.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses a pay inequity where an employee completing initial probation could receive a salary greater than that of a more senior status employee, even when the entry pay for both was equal.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes equity for classified compensation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and their agencies are 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: No additional action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment promotes equity for compensation.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with classified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030; and KRS 18A.110(1)(c) and (7)(b)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect.

(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.

(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.

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this 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:

STATEMENT OF EMERGENCY 101 KAR 2:180E

This emergency administrative regulation is necessary for compliance with requirements for a uniform system of annual employee evaluations for classified employees pursuant to KRS 18A.110(1)(i) and (7)(j). This emergency administrative regulation reduces the number of required interim reviews from three (3) to two (2) beginning with the 2017 performance year. Mid-year interim reviews cover the period from January 1 through June 30. Year-end interim reviews cover the period from July 1 through December 31. The Annual Employee Performance Evaluation form, incorporated by reference, is amended to reflect the changes. An ordinary amendment to the administrative regulation is not sufficient for the timely and consistent implementation of the changes to the state employee performance evaluation system. The current regulatory language must remain in effect through completion of 2016 performance year activities to ensure that the existing requirements and forms are utilized. The revisions to the regulation and evaluation form must be effective for the 2017 performance year for proper performance planning. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2016 performance year. The existing language in the regulation and on the Annual Employee Performance Evaluation form should remain until such time as the ordinary administrative regulation replaces this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

THOMAS B. STEPHENS, Secretary

PERSONNEL CABINET (Emergency Amendment)

101 KAR 2:180E. Employee performance evaluation system.

RELATES TO: KRS 18A.110

STATUTORY AUTHORITY: KRS 18A.110(1)(i), (7)(j)

EFFECTIVE: November 15, 2016

NECESSITY, FUNCTION and CONFORMITY: KRS 18A.110(1)(i) and (7)(j) requires the Secretary of the Personnel Cabinet to promulgate comprehensive administrative regulations for classified service employees to establish a uniform system of annual employee evaluations for classified employees. This administrative regulation establishes the uniform employee performance evaluation system.

Section 1. General Provisions. (1) The annual performance period shall be one (1) calendar year beginning on January 1.

(2) Except as provided in subsection (4)(d) of this section, performance evaluations shall be completed no later than January 31 after the end of the annual performance period.

(3) All agencies shall use the Annual Employee Performance Evaluation form.

(4)(a) Except as provided in paragraph (b) or (c) of this subsection, the first line supervisor of an employee when the evaluation is due shall be the evaluator.

(b) If the first line supervisor has not supervised the employee for at least sixty (60) calendar days during the performance year, the next line supervisor who meets the sixty (60) day requirement shall be the evaluator.

(c) If an employee changes jobs or reports to a different supervisor on or before November 1 of the performance year, the agency shall transfer all performance evaluation documentation for the performance year to the new evaluator for incorporation in the annual evaluation.

(d) If an employee changes jobs or reports to a different supervisor after November 1 of the performance year, the annual evaluation shall be completed by the former supervisor prior to the job change.

(5)(a) Except as provided in paragraph (b) of this subsection, the evaluator shall establish a performance plan for each eligible employee no later than January 31 after the start of the performance period.

(b) If an employee's position or job title changes during the performance year, the evaluator shall establish a new performance plan no later than thirty (30) calendar days after the start of the position or job title change. The new performance plan shall become a part of the original performance year evaluation documentation.

(6) The evaluator shall meet with the employee when completing the performance plan to discuss job duties and expectations.

(7) Performance evaluations shall be in writing. The evaluator shall:

(a) Present and explain all documentation relevant to an employee's performance evaluation;

(b) Discuss both the positive and negative aspects of performance with the employee at the annual evaluation;

(c) Elicit the employee's opinions and concerns; and

(d) Discuss measures to improve or enhance performance with the employee.

(8) The Personnel Cabinet or agency personnel shall provide supervisor evaluation training on the performance evaluation system.

(a) The appointing authority shall require that supervisor evaluation training is completed prior to completing performance planning, interim reviews, and annual evaluations of employees.

(b) The Personnel Cabinet shall monitor and validate compliance with supervisor evaluation training requirements.

(9) An employee shall complete orientation to the performance evaluation system prior to January 1 of the employee's initial performance evaluation period.

Section 2. Employee Eligibility. Performance evaluations shall be completed for all full-time classified employees with status at the beginning of the performance year who have remained in continuous merit status throughout the performance year.

Section 3. Performance Planning. (1) The performance plan shall specify job responsibilities and expectations in the four (4) categories established in this subsection.

(a) Job tasks.

1. The job tasks category shall identify specific duties and expectations of the position held by the employee.

2. The employee's job duties shall be consistent with the position description.

3. Duties and expectations shall be in writing.

4. The evaluator shall assign points to identified duties and expectations.

(b) Adaptability/initiative.

1. The adaptability/initiative category shall identify job requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points.

(c) Communication/teamwork.

1. The communication/teamwork category shall identify requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points.

(d) Self-management.

1. The self-management category shall identify requirements of the agency relating to workplace standards that shall include:

a. Attendance;

b. Punctuality;

c. Career development;

d. Responsibility; and

e. Dependability.

2. The evaluator shall place each requirement under this category in writing and assign points.

(2) The evaluator shall develop the performance plan after consultation with the employee.

(a) The employee and evaluator shall certify in writing in the performance planning section of the evaluation form that the employee has met with the evaluator and is aware of the performance plan.

(b) The next line supervisor shall certify that he or she has reviewed the duties and expectations of the employee and finds them to be reasonable and appropriate based upon the employee's job classification.

(3) Total points assigned for all four (4) categories shall equal 100 total points. The evaluator shall distribute points among the four (4) categories as follows:

(a) The job tasks category shall have a minimum of fifty (50) points designated; and

(b) The other three (3) categories shall have a minimum of five (5) points designated to each category.

(4) To obtain the point total for each category, points assigned to each job duty within each category shall be multiplied by the numerical rating provided by the evaluator, as described in Section 5(3) of this administrative regulation.

(5) Total points in all four (4) categories shall be added to obtain a final performance evaluation score.

Section 4. Performance Coaching and Feedback. (1) Modification of the performance plan may occur during the performance evaluation period if the changes are consistent with the duties reflected on an employee's position description.

(a) The employee shall be given written notice of changes to the performance plan.

(b) Changes to the performance plan shall be indicated on the evaluation form or on a supplemental sheet attached to the form.

(c) Changes to the performance plan shall be initialed and dated by the evaluator and the employee when changes become effective.

(2) Three (3) interim reviews shall be required during the 2016[a] performance year. A mid-year and year-end interim review shall be required during the 2017 performance year.

(a) The evaluator shall document the interim reviews.

1. Interim reviews shall not contain a rating.

2. The interim meeting section of the evaluation form shall contain comments by the evaluator for each category established in Section 3(1) of this administrative regulation.

(b) The employee and evaluator shall sign the performance evaluation form to certify that the interim reviews occurred.

(c) For consideration in the annual year evaluation, the employee may attach pertinent comments relating to the interim review within five (5) working days of the interim review meeting.

(d)1. The evaluator shall schedule interim reviews to discuss year 2016 performance January 1 through April 30, May 1 through August 31, and September 1 through December 31.

2. For the 2017 performance year, the evaluator shall schedule interim reviews to discuss performance January 1 through June 30

and July 1 through December 31.

(e) 1. Interim reviews for the 2016 performance year shall be completed no later than thirty (30) calendar days after the end of each interim review period.

2. For the 2017 performance year, the mid-year interim review shall be completed no later than July 31 after the end of the interim review period, and the year-end interim review shall be completed no later than January 31 after the end of the interim review period.

(f) Interim reviews shall document performance to justify the annual performance rating.

Section 5. Performance Evaluations and Ratings. (1) Except as provided in Section 1(4)(d) of this administrative regulation, the evaluator and the employee shall meet no later than January 31 after the performance period ends to discuss the performance ratings.

(2) Eligible employees shall be evaluated in the four (4) categories described in Section 3 of this administrative regulation.

(3) All job duties identified within the categories shall be rated on a scale of one (1) to five (5), with five (5) representing superior performance.

(4) The final performance evaluation shall consist of a defined numerical rating. Point values for the overall performance rating shall be:

- (a) Outstanding: 450 to 500 points;
- (b) Highly effective: 350 to 449 points;
- (c) Good: 250 to 349 points;
- (d) Needs Improvement: 150 to 249 points; or
- (e) Unacceptable: less than 150 points.

(5) Unresolved disagreements on ratings or any aspect of the performance evaluation shall be reviewed through the reconsideration process established in Section 7 of this administrative regulation.

(6) Signatures of the evaluator, employee, and next line supervisor shall be required on the final evaluation.

(a) The next line supervisor shall sign the evaluation after it is completed, signed, and dated by the evaluator and the employee.

(b) For the purpose of evaluating or managing the performance of the evaluator, the next line supervisor's signature shall certify that he or she is aware of the evaluation and has reviewed it.

Section 6. Performance Incentives. Annual leave shall be awarded as a performance incentive at the following rates:

(1) Two (2) workdays, not to exceed sixteen (16) hours, for an "Outstanding" rating; or

(2) One (1) workday, not to exceed eight (8) hours, for a "Highly Effective" rating.

Section 7. Reconsideration and Appeal Process. (1)(a) Within five (5) working days of the 2016[a] performance evaluation, an employee may request initial reconsideration of the performance evaluation by the evaluator.

(b) Within five (5) working days of the 2017 year-end interim review and annual performance evaluation meeting, an employee may attach pertinent comments relating to the year-end interim review and may request initial reconsideration of the annual performance evaluation by the evaluator.

(2) Within five (5) working days of the receipt of the request for reconsideration, the initial reconsideration shall be conducted by the evaluator.

(3) If the employee refuses to sign the form in the employee response section, the evaluation shall not be eligible for reconsideration.

(4) Within five (5) working days after the initial reconsideration by the evaluator, an employee may submit a written request for reconsideration of the evaluation by the next line supervisor. If neither the evaluator nor the next line supervisor responds to the request for reconsideration in the designated time period, the employee may submit a written request to the appointing authority for response to the request for reconsideration and compliance with this section.

(5) The next line supervisor shall:

(a) Obtain written statements from both the employee and the

evaluator; or

(b) Meet individually with the employee and the evaluator.

(6) The next line supervisor shall inform both the employee and evaluator in writing of the decision no later than fifteen (15) working days after receipt of the employee's request.

(7) Within sixty (60) calendar days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

Section 8. Evaluation-based Agency Action. If an employee receives an overall rating of unacceptable, the agency shall:

(1) Demote the employee to a position commensurate with the employee's skills and abilities; or

(2) Terminate the employee.

Section 9. (1) Except as requested in writing by the appointing authority and authorized by the Secretary of Personnel, all agencies shall comply with the provisions of this administrative regulation. An evaluator shall complete required performance planning, interim reviews, and annual evaluations for each eligible employee. If the Secretary of Personnel approves an exception, written justification for the decision shall be placed in the employee's personnel file.

(2) The exception decision shall be sent, in writing, to the appointing authority within ten (10) days of receiving the request for exception.

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

(a) "Annual Employee Performance Evaluation", March 2015; and

(b) "Annual Employee Performance Evaluation", January 2017[-is incorporated by reference].

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

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: November 15, 2016

FILED WITH LRC: November 15, 2016 at noon

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the uniform employee performance evaluation system.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a uniform system of annual employee evaluations for classified employees, and fulfills the secretary's statutory requirements to promulgate comprehensive regulations regarding the evaluation system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 requires the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A. Further, regulations which establish a uniform employee performance evaluation system are required pursuant to KRS 18A.110(1)(i) and (7)(j).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the uniform employee performance evaluation system, and explains how it is to be administered.

(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 provisions of the existing administrative regulation must remain in effect for completion of 2016 performance year activities. This amendment retains those provisions while simultaneously providing updated requirements and forms for 2017 performance planning. This regulation is amended for the 2017 performance year to reduce the requirement for three (3) interim reviews to two (2) interim reviews. The mid-year interim review, to be completed by July 31, covers the period from January 1 through June 30. The year-end interim review, to be completed by January 31, covers the period from July 1 through December 31. The regulation is further amended to provide for conduct of the year-end interim review and the annual performance evaluation in a single meeting. Finally, the Annual Employee Performance Evaluation form, incorporated by reference, is updated to reflect the changes to interim reviews.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to ensure the consistent application of the employee evaluation system to all KRS Chapter 18A classified employees.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with authority provided in KRS 18A.030; and KRS 18A.110(1)(i) and (7)(j).

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that the requirements of the employee evaluation system are applied consistently to all KRS Chapter 18A classified employees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and their agencies are 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: The Personnel Cabinet is responsible for communicating the changes to employees and agencies. No additional action is required for compliance by each regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Fewer formal interim reviews will allow more time for coaching and feedback and result in a more efficient and effective process.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with classified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030; and KRS 18A.110(1)(i) and (7)(j)

(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.

(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.

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this 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:

STATEMENT OF EMERGENCY 101 KAR 3:045E

This emergency administrative regulation is necessary for compliance with the requirement for promulgation of comprehensive administrative regulations for a compensation plan for employees in the unclassified service pursuant to KRS 18A.110(2) and 18A.155(1)(b). This emergency administrative regulation addresses a pay inequity where an employee completing initial probation could receive a salary greater than that of a more senior employee, even when the entry pay for both was equal. Specifically, this administrative regulation eliminates eligibility for a discretionary salary adjustment for an employee on initial probation at the time a special entrance rate is established. It is being promulgated pursuant to KRS 13A.190(1)(a)2. to prevent a loss of state funds. An ordinary amendment to the administrative regulation is not sufficient because establishment of special entrance rates needs to continue uninterrupted. A special entrance rate is established to counter market conditions of difficult recruitment or high turnover, particularly in job classes where public health, safety, or welfare is impacted. Delaying establishment until completion of the promulgation process for an ordinary amendment could make conditions worse. 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

THOMAS B. STEPHENS, Secretary

PERSONNEL CABINET (Emergency Amendment)

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

RELATES TO: KRS 18A.110, 18A.155, 18A.202, 199.555
STATUTORY AUTHORITY: KRS 18A.030(2), 18A.155(1)(b),
(e), 18A.110(2), 18A.202(1)
EFFECTIVE: November 15, 2016
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155

requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees. This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

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

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees. An appointing authority shall set the salary of a former classified or unclassified employee, other than a returning retiree:

(a) In accordance with the standards used for making new appointments in this administrative regulation; or

(b) Up to a salary formerly paid in the classified or unclassified service, if that salary is within the current pay grade.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.

(2) Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(a) The employee's salary shall be reduced to a rate that is not below the minimum for the job classification to which the demotion is made; or

(b) The employee shall retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(3) Reclassification.

(a) An employee who is advanced to a higher pay grade through reclassification shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon reclassification to a higher grade.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

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

(b) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher pay grade shall be adjusted to:

1. The salary received prior to the detail; and
2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent;
2. The greater of the new grade minimum or ten (10) percent;

or

3. The greater of the new grade minimum or a dollar amount approved by the secretary.

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

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

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for but did not receive an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive at least a five (5) percent advancement as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an increase at the time of the grade change shall equal five (5) percent of the employee's salary immediately prior to the grade change.

~~[(c) An appointing authority may grant an employee who was eligible for, but did not receive an adjustment beyond the new minimum at the time the special entrance rate was established an increase equal to the difference between the old entrance rate and the new entrance rate.]~~

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

Section 4. Salary Advancements. (1) Initial appointment increase. An appointing authority shall grant a five (5) percent increase to an employee, except an interim employee:

(a) On the first day of the month following completion of six (6) months of service; or

(b) No later than the first day following twelve (12) months of service.

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

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

(3) Annual increment dates shall be established as follows:

(a) On the date of receiving an initial appointment increase;

(b) On the first of the month following completion of twelve (12) months service by a former employee who is appointed or reappointed, except in the case of an interim employee; or

(c) On the first day of the month following completion of twelve (12) months service by an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives an increase six (6) months following promotion.

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

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

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

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

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

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

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

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

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service;

c. After establishing an increment date; and

d. On or after January 1, 1984;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

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

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

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Weekend premium.

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

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

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

(d) The secretary may rescind authorization to pay weekend

premium at any time.

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

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

(3) Multilingual hourly premium.

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

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

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

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

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

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

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

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

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

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

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

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

(c) 1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or

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

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

acts or ideas upon which the ERA is based.

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

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

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

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

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

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

1. Sufficient funds are available within the department; and
2. The criteria and limitations established in this section have been met.

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

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award;

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

(d) 1. The employee has demonstrated a sustained level of exceptional job performance;

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

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

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

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

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

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

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

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

1. The criteria and limitations established in this section have been met; and
2. Funds are available within the department's current recurring base budget to support the award.

Section 11. Adoption Benefit Program. (1) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child, as defined by KRS 199.555(1), or any other child. Total state funds for this program shall not exceed \$150,000 in a fiscal year.

(2) The eligible employee shall receive:

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

(b) Up to \$3,000 in unreimbursed direct costs related to the

adoption of any other child.

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

- (a) Licensed adoption agency fees;
- (b) Legal fees;
- (c) Medical costs;
- (d) Court costs; and

(e) Other reasonable fees or costs associated with child adoption in accordance with state and federal law and after review and approval by the court at the finalization of the adoption.

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

- (a) Finalization of the adoption;
- (b) Certification by the Secretary of the Cabinet for Health and Family Services that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and
- (c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the time of finalization of the adoption.

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

(6) Upon approval of the application for financial assistance, the employee's agency shall disburse funds in the amount authorized by the Secretary of Personnel.

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

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

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: November 15, 2016

FILED WITH LRC: November 15, 2016 at noon

CONTACT PERSON: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity for administration of the pay plan and pay incentives for unclassified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.155 requires the secretary to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of compensation and pay incentives for employees in unclassified service.

(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 eliminates eligibility for a discretionary salary adjustment for an employee on initial probation at the time a special entrance rate (SER) is established. This amendment also specifies that SER discretionary adjustments shall only be granted at the time an SER is established.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses a pay inequity where an employee completing initial probation could receive a salary greater than that of a more senior employee in the same classification, even when the entry pay for both was equal.

(c) How the amendment conforms to the content of the authorizing statutes: The Personnel Cabinet Secretary is required to promulgate comprehensive administrative regulations for a compensation plan for employees in the unclassified service pursuant to KRS 18A.110(2) and 18A.155(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes equity for unclassified compensation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A unclassified employees and their agencies are 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: No additional action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment promotes equity for compensation.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with unclassified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.155(1)(b), (e), 18A.110(2), 18A.202(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? No revenue will be generated.

(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.

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this 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:

STATEMENT OF EMERGENCY **202 KAR 10:030E**

This emergency administrative regulation is promulgated to establish a system to collect and enforce tolls for all Kentucky Public Transportation Infrastructure Authority projects. This emergency administrative regulation is taken on an emergency basis to prevent a loss of state funds, in accordance with KRS 13A.190(1)(a)2, by ensuring there is a system to collect and enforce tolls, enforcement mechanisms, and an appeals process in place. Tolling is scheduled to begin in December 2016. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
GREG THOMAS, Secretary

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY **(New Emergency Administrative Regulation)**

202 KAR 10:030E. Tolling projects.

RELATES TO: KRS 65.245, 175B.010(11), (14), (16), 175B.015(12), 175B.035(8), 175B.040, 281A.010(8)
STATUTORY AUTHORITY: KRS 175B.015(12), 175B.040(4)(b)

EFFECTIVE: November 14, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.015(12)(c) authorizes the state authority to promulgate administrative regulations to collect and enforce tolls. KRS 175B.015(12)(a) authorizes the authority to establish the process for collection and enforcement procedures for fines, charges, assessments, and other enforcement mechanisms for the violation of KRS 175B.040(4), and for any violation of this administrative regulation. KRS 175B.015(12)(b) authorizes the state authority to establish an appeals process by which a person contesting a violation of this administrative regulation may obtain an administrative hearing to be conducted in accordance with KRS Chapter 13B. For the purpose of efficiently administering the toll systems, this administrative regulation establishes the process by which the state authority shall collect and enforce tolls, establish enforcement mechanisms, and an appeals process.

Section 1. Definitions. (1) "Commercial motor vehicle" is defined by KRS 281A.010(8).

(2) "Development agreement" means a written agreement containing the information required by KRS 175B.035(8).

(3) "Interlocal agreement" means a written agreement as contemplated by KRS 65.245.

(4) "Out-of-service notice" means an affixed notice as contemplated by 601 KAR 1:005, Section 6.

(5) "Photo toll" means a charge associated with a particular vehicle that is identified by the vehicle's license plate if the vehicle's registered owner does not have a toll account.

(6) "Project" is defined by KRS 175B.010(11).

(7) "Project document" means the development agreement, public-private partnership agreement, or interlocal agreement for a project.

(8) "Protestant" means a person who protests the imposition of a toll, fine, or fee.

(9) "Protestant's vehicle" means the registered vehicle of a protestant used when the unpaid toll, fine, or fee was assessed or the toll account was debited.

(10) "Public-private partnership" is defined by KRS 175B.010(14).

(11) "Public private partnership agreement" means the agreement contemplated by KRS 175B.020(1)(c)(4).

(12) "State authority" is defined by KRS 175B.010(16).

(13) "Toll account" means a prepaid account that is linked to a transponder, license plate, or other means of identification of a vehicle in order to pay a toll by automatic debit.

(14) "Toll operator" means any entity designated by the state authority to implement and operate a toll system for a project.

(15) "Transponder" means a device used to identify and automatically debit a toll account for purposes of toll collection.

Section 2. Toll Rates and Fees. (1) The state authority shall cause the identity of the toll operator, toll rates, escalation schedules, fees, and fines for each project on which tolls are implemented to be published yearly online at transportation.ky.gov/KPTIA/Pages/default.aspx and in at least two (2) statewide circulars. For projects between the commonwealth and another state, the state authority shall cause toll rates, escalation schedules, fee schedules, and fine schedules to be published in at least one (1) statewide circular with distribution in that state.

(2) Toll rates, toll payment methods, escalation schedules, fine schedules, and fee schedules for a project shall be determined as established in the project document based on traffic and revenue studies, total project financial obligations, and community socioeconomic factors.

(a) Fees shall be assessed for account statements, late payment notices, collection efforts, inactivity, returned checks, or the purchase or lease of transponders as established in the project document.

(b) Fines shall be assessed for failure to pay tolls or fees as established in the project document.

(3) The state authority shall use all-electronic toll equipment or toll booths to charge and collect tolls.

(4) There shall be a rebuttable presumption that charged tolls, fees, and fines are correct and accurate.

Section 3. Administrative Hearings. (1) If a protestant asserts that a toll, fine, or fee was assessed incorrectly or the protestant's account was debited incorrectly, the protestant shall file a written protest with the toll operator of the project that assessed the toll, fine, or fee within sixty (60) days of the toll operator mailing the disputed invoice or the debit being taken from the toll account.

(2) The written protest shall include:

(a) The grounds for the protest; and

(b) A copy of the disputed invoice or the account statement showing the disputed debit.

(3) The following shall be the exclusive grounds to protest a toll, fine, or fee:

(a) The license plate was misidentified;

(b) The protestant was incorrectly identified as the registered owner of the vehicle that was assessed the toll;

(c) The vehicle shown in the image associated with a toll assessed is not the vehicle to which the license plate shown in the image is assigned;

(d) The vehicle that used the tolled road or bridge had been sold, transferred, or stolen at the time of the use that resulted in the

toll, fine, or fee; or

(e) The protestant's vehicle classification was incorrectly assigned.

(4) The toll operator shall have the authority to request additional information from the protestant.

(5) The toll operator shall notify the protestant by mail of the toll operator's determination on the protest and the protestant's right to a hearing pursuant to KRS Chapter 13B within thirty (30) days of receipt of the written protest.

(6) If the toll operator determines, pursuant to subsection (3)(a) through (e) of this section, that the protestant owes the toll, fee, or fine and the protestant agrees with the determination made by the toll operator, the protestant shall pay the toll, fine, or fee within ten (10) days of receipt of the determination from the toll operator.

(7) If the protestant does not agree with the determination made by the toll operator, the protestant shall request an administrative hearing pursuant to KRS Chapter 13B.

(a) A request for an administrative hearing shall be made to the state authority with a copy to the toll operator within thirty (30) days of the notice of determination from the toll operator.

(b) The state authority shall assign a hearing officer to conduct a hearing and provide a recommended order pursuant to KRS Chapter 13B. The hearing officer shall provide notice of the hearing to the protestant and any entity with a financial interest in the toll, fee, or fine in dispute.

(c) The toll operator shall submit the following to the state authority at least ten (10) days prior to the date of the administrative hearing:

1. The video or photographic images of the crossing in question, which shall include time, date, and location of the crossing; and

2. Evidence of the license plate look-up and registration records from the agency responsible for registration information in the state where the vehicle is registered.

(d) The hearing officer shall provide a recommended order to the chairman of the state authority. The chairman of the state authority shall make a final determination, pursuant to subsection (3)(a) through (e) of this section, regarding the validity and amount of the toll, fine, or fee assessed.

(e) During the time the administrative hearing process is pending, the unpaid toll, fine, or fee shall not be escalated and additional fees or fines associated with the disputed charge shall not be assessed.

(f) If the chairman of the state authority determines, pursuant to subsection (3)(a) through (e) of this section, that the protestant owes a toll, fee, or fine, the protestant shall pay the toll, fee, or fine within thirty (30) days of the date of the determination.

Section 4. Toll, Fine, and Fee Enforcement. (1) A person shall be in violation of KRS 175B.040(4) if that person has not made a timely payment of a currently due and payable toll, fine, or fee as established in the project document. A toll operator for a project shall notify the Kentucky Transportation Cabinet Division of Motor Vehicle Licensing and the Kentucky Transportation Cabinet Division of Motor Carriers of people in violation of KRS 175B.040(4) and securely provide the following information to the Kentucky Transportation Cabinet Division of Motor Vehicle Licensing, the Kentucky Transportation Cabinet Division of Motor Carriers, and the Offices of the County Clerks:

(a) Identification of the vehicle used when the photo toll was assessed, evidence of the license plate look-up, and information showing to whom the vehicle was registered at the time the photo toll was assessed;

(b) Any photographic evidence showing the vehicle using the road or bridge when the toll, fine, or fee was assessed, along with the date, time, and location of the use;

(c) If an administrative hearing was requested, the determination of the chairman of the state authority;

(d) A copy of any invoice or violation notice related to the unpaid toll, fine, or fee, and any returned mail notice associated with those invoices and violations; and

(e) A record of any toll, fine, or fee currently due and payable, which shall be updated daily by the toll operator until payment in

full is made.

(2) Upon receiving notice from the toll operator, the Kentucky Transportation Cabinet Division of Motor Vehicle Licensing shall place a hold on the protestant's vehicle registration.

(3) Upon receiving notice that a commercial motor vehicle is in violation of KRS 175B.040(4), an officer or inspector of the Division of Motor Vehicle Enforcement shall be authorized to affix to the commercial motor vehicle an out-of-service notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated. A person shall not operate a commercial motor vehicle in violation of the out-of-service notice affixed to it.

GREG THOMAS, Secretary and Chairman

MAX BRIDGES, KPTIA General Counsel

APPROVED BY AGENCY: October 21, 2016

FILED WITH LRC: November 14, 2016 at noon

CONTACT PERSON: Megan M. McLain, Assistant General Counsel, 200 Mero Street, Frankfort, Kentucky 40622, phone (859) 940-7763, fax (502) 564-5238, email megan.mclain@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan M. McLain

(1) Provide a brief summary of:

(a) What this administrative regulation does: Pursuant to KRS 175B.015(12)(c), this administrative regulation establishes the process by which the state authority may collect and enforce tolls, fees, and fines. Pursuant to KRS 175B.015(12)(a), this administrative regulation also establishes the process for collecting and enforcing a fine, fee, and any other enforcement mechanism if a toll is not paid, KRS 175B.040(4) is violated or this administrative regulation is violated. Pursuant to KRS 175B.015(12)(b), this administrative regulation also establishes an appeals process by which a person may contest a violation of KRS 175B.040(4), or a violation of this administrative regulation, by way of an administrative hearing to be conducted in accordance with KRS Chapter 13B.

(b) The necessity of this administrative regulation: KRS 175B.040(1) authorizes the state authority to impose tolls to provide a fund sufficient with other revenues to pay the cost of maintaining, repairing and operating a project, unless the cost or any part thereof is paid by the commonwealth, pay the principal and interest on project revenue bonds and create reserves to exceed amounts specified in the development agreement. KRS 175B.040(4)(a) provides that every person utilizing a project and tolled under KRS Chapter 175B shall pay the appropriate toll. KRS 175B.040(4)(b) provides that any person who violates the provisions of KRS 175B.040(4) shall be subject to this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to the authorizing statutes at KRS 175B.015(12) and KRS 175B.040, this administrative regulation establishes the process by which the state authority shall collect and enforce tolls, fees and fines, establish enforcement mechanisms, establish an appeals process, and efficiently administer the toll system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the process by which the state authority shall collect and enforce tolls, fees, and fines, establishes an enforcement mechanism and establishes an appeals process.

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

(a) How the amendment will change the 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: It affects the Kentucky Public Transportation Infrastructure Authority, a toll operator, and a person who uses a project and is required to pay a toll.

(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 entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The administrative regulation provides the process by which the Kentucky Public Transportation Infrastructure Authority and any toll operator may collect and enforce a toll, fee, and fine and the enforcement mechanisms for collecting and enforcing an unpaid toll, fee, and fine. This administrative regulation provides the process by which a person who uses a project must pay a toll and the appeals procedure for appealing the assessment of a toll and a violation of 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 project document shall describe the state authority's and toll operator's costs in complying with this administrative regulation. The toll rates, toll payment methods, escalation schedules, fine schedules, and fee schedules for a person using a project shall be determined, as described in the project document, based on traffic and revenue studies, total project financial obligations, and community socioeconomic factors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The revenue generated from a toll, fee, and fine will finance the maintenance and operation of state authority projects. A person using a project will benefit from increased safety measures, convenience, and a reduction in travel times.

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

(a) Initially: No additional costs.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The revenue generated from a toll, fee, and fine.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement 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 establishes the process by which the state authority may collect and enforce tolls, fines, and fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied because this administrative regulation will charge different toll rates based on vehicle weight, vehicle length, vehicle height, number of axles, number of passengers, time of day, frequency of use and toll payment method used in order to maximize revenue to the commonwealth, encourage efficiencies with the drivers and charge a greater toll to those who create more damages on the roads and bridges. The state authority will tier tolls in order to encourage drivers to choose a payment method which costs the state less to administer and is more efficient for the state and the driver. The state authority will be encouraging the use of transponders in projects where transponders are accepted to decrease the amount of money and resources the state will need to expend to collect the tolls. Transponders will also be more efficient and cost-effective for the drivers. The state authority will tier tolls to encourage a person using a project to drive at specific times of day and carpool in order to reduce travel times and provide greater convenience to drivers. Tiering will be used to balance the financial impact on those persons who use a project more frequently. The purpose of the tiering regarding height, weight, and number of axles is to cause those vehicles that do the most damage to the roadway to be

charged a higher rate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet and the state authority will be impacted by this administrative regulation. The project document will describe whether a state or local government entity will be exempt from a project toll, fine, and fee.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 175B.015(12)(a) authorizes the state authority to promulgate an administrative regulation to establish the process for collecting and enforcing tolls, fines, and fees and other enforcement mechanisms if a toll, fine, or fee is not paid, KRS 175B.040(4) is violated or this administrative regulation is violated. KRS 175B.015(12)(b) authorizes the state authority to promulgate an administrative regulation to establish an appeal process by which a person contesting a violation of KRS 175B.040(4), or a violation of this administrative regulation by way of an administrative hearing to be conducted in accordance with KRS Chapter 13B. KRS 175B.015(12)(c) authorizes the state authority to establish by regulation any matters necessary to the efficient administration of a toll when implemented for a project developed under KRS 175B. KRS 175B.015(12)(d) authorizes the state authority to promulgate regulations to fulfill any requirements of KRS Chapter 175B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local governmental agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The project document will describe the expenditures and revenues of a state or local governmental agency for the first full year of the 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. The project document will describe the revenues generated for a state or local governmental agency for the first full year of the 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? The project document will describe the revenues generated for a state or local governmental agency for subsequent years of the administrative regulation.

(c) How much will it cost to administer this program for the first year? This administrative regulation will result in a net decrease in costs to the state government for the first year because operation and maintenance expenses for a project will now be taken from toll revenue rather than the Transportation Cabinet's road fund.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will result in a net decrease in costs to the state government for subsequent years because operation and maintenance expenses for a project will now be taken from toll revenue rather than the Transportation Cabinet's road fund.

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:

**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 October 25, 2016, and differs substantially by including a definition for "service call" in Section 1(21). 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, 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(4)(b), 189A.340(4)(f)]

EFFECTIVE: October 27, 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 call" means an onsite remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

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

(23) "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.

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

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

(26) "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 a roadside service call 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 Frankfurt:

(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:

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

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

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(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 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, Secretary
JOHN MARK HACK, Commissioner
D. ANN DANGELO, Office of Legal Services
APPROVED BY AGENCY: October 18, 2016
FILED WITH LRC: October 27, 2016 at noon
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, email Ann.Dangelo@ky.gov.

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 add a definition for "service call," 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 amendment 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
806 KAR 9:360E**

Senate Bill ("SB") 117, enacted during the General Assembly's 2016 Regular Session, became effective on July 15, 2016 and requires any entity acting as a "pharmacy benefit manager" to obtain a license from the Kentucky Department of Insurance ("Department") no later than January 1, 2017. Codified in relevant part at KRS 304.9-054, SB 117 requires the Department to promulgate administrative regulations to implement the licensure process for pharmacy benefit managers and specify the contents of the licensing application. This emergency administrative regulation is necessary to permit the Department a method by which to license pharmacy benefit managers and provide adequate time to process pharmacy benefit manager applications by the statutory deadline of January 1, 2017. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation, which is filed contemporaneously with this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DAVID A. DICKERSON, Secretary
H. BRIAN MAYNARD, Commissioner

**PUBLIC PROTECTION CABINET
Kentucky Department of Insurance
Agent Licensing Division
(New Emergency Administrative Regulation)**

806 KAR 9:360E. Pharmacy Benefit Manager License.

RELATES TO: KRS 304.1-050, 304.9-053, 304.9-054, 45 C.F.R. 156.122

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-053(2), 304.9-054(6)

EFFECTIVE: October 25, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-053(2) requires a pharmacy benefit manager seeking a license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(6) requires the department to promulgate administrative regulations to implement and enforce the provisions of KRS 304.9-054, 304.9-053, 304.9-055, and 304.17A-162. This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by KRS 304.1-050(2).

(3) "Maximum allowable cost" is defined by KRS 304.17A-161(3).

(4) "Pharmacy benefit manager" is defined by KRS 304.9-020(15)

Section 2. Initial License and Renewal. (1) An applicant for a pharmacy benefit manager license or renewal license from the commissioner shall submit the following in hard copy format to the department:

(a) The Pharmacy Benefit Manager License Application;
(b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053(5);

(c) The following evidence of financial responsibility:

1. The certificate of an insurer authorized to write legal liability insurance in this commonwealth, stating that the insurer has and will keep in effect on behalf of the pharmacy benefit manager a policy of insurance covering the legal liability of the licensed pharmacy benefit manager's erroneous acts or failure to act in his or her capacity as a pharmacy benefit manager, and payable to the benefit of any aggrieved party in the sum of not less than \$1,000,000; or

2. A cash surety bond issued by a corporate surety authorized to issue surety bonds in this commonwealth, in the sum of \$1,000,000, which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable;

(d) The name of at least one (1) responsible individual who shall be responsible for the pharmacy benefit manager's compliance with the insurance laws and administrative regulations of this state and who is:

1. Licensed as an administrator in Kentucky; and

2. Designated in accordance with KRS 304.9-133;

(e) If performing utilization review in accordance with KRS 304.17A-607, the pharmacy benefit manager's utilization review registration number;

(f) The following written policies and procedures to be used by the pharmacy benefit manager:

1. Appeals dispute resolution process;

2. Maximum allowable cost appeals process;

3. Exceptions policy and override policy required by 45 C.F.R. 156.122(c) and KRS 304.17A-163 and KRS 304.17A-165; and

4. Pharmacy and Therapeutics committee membership standards and duties as required by 45 C.F.R. 156.122(a); and

(g) Proof of registration with the Kentucky Secretary of State.

(2)(a) Upon receipt of a complete application as required by subsection (1) of this section, the commissioner shall review the application and

1.a. Approve the application; and

b. Issue the applicant the pharmacy benefit manager license;

2. Notify the applicant that additional information is needed in accordance with paragraph (b) of this subsection; or

3. Deny the application in accordance with paragraph (c) of this subsection.

(b)1. If supplemental or additional information is necessary to complete the application, the applicant shall submit that information within thirty (30) days from the date of the notification from the commissioner.

2. If the missing or necessary information is not received within thirty (30) days from the date of the notification, the commissioner shall deny the application unless good cause is shown.

(c) If the commissioner determines that the applicant does not meet the requirements for licensure, or if the application is denied pursuant to paragraph (b)2. of this subsection, the commissioner shall:

1. Provide written notice to the applicant that the application has been denied; and

2. Advise the applicant that a request for a hearing may be filed in accordance with KRS 304.2-310.

(4)(a) Except as provided in paragraph (b) of this subsection, a pharmacy benefit manager license shall:

1. Be renewed annually as required by subsection (5) of this section; or

2. Expire on March 31.

(b) If the license was issued on or before January 1, 2017, the license shall expire on March 31, 2018, if not renewed as required by subsection (5) of this section.

(5)(a) A renewal application shall include the items required by subsection (1) of this section.

(b) If the renewal application is submitted between April 1 and May 31, the application required by subsection (1) of this section shall be accompanied by a penalty fee of \$500 in accordance with KRS 304.9-053(5).

Section 3. Notice of Changes. Within thirty (30) days of any change, a licensee shall notify the commissioner of all changes among its members, directors, officers, and other individuals designated or registered to the license, and any changes to its written policies and procedures submitted pursuant to Section 2(1)(f) of this administrative regulation.

Section 4. Incorporation by Reference. (1) "Pharmacy Benefit Manager License Application", Form PBM, 09/2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

H. BRIAN MAYNARD, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 24, 2016

FILED WITH LRC: October 25, 2016 at 2 p.m.

CONTACT PERSON: Matt Niehaus, Deputy Commissioner, Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email Matthew.Niehaus@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt Niehaus

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the licensing process for pharmacy benefit managers, as required by KRS 304.9-054.

(b) The necessity of this administrative regulation: Senate Bill ("SB") 117, enacted during the 2016 Regular Session, requires entities acting as pharmacy benefit managers to obtain a license from the Department of Insurance to do business. Pharmacy benefit managers currently licensed as administrators in Kentucky are required to obtain a pharmacy benefit manager license no later than January 1, 2017, to continue to do business in the state. SB 117 requires the Department of Insurance to promulgate administrative regulations to specify the contents of the licensing application and to implement and enforce the provisions of SB 117.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation creates the licensure process for pharmacy benefit managers and incorporates by reference the licensing application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the application and other information that an entity must submit to the Department of Insurance to obtain a license as a pharmacy benefit manager. Additionally, it provides the time frames and deadlines for the licensing process and clarifies the actions the Department may take in reviewing the applications. The administrative regulation also sets forth the process for the annual renewal of a pharmacy benefit manager license.

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

(a) How the amendment will change this existing administrative regulation: Not Applicable.

(b) The necessity of the amendment to this administrative regulation: Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately twelve (12) entities that offer pharmacy benefit manager services 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: Entities currently performing pharmacy benefit manager services in Kentucky will need to apply for and be licensed as pharmacy benefit managers no later than January 1, 2017. Entities wishing to begin performing pharmacy benefit manager services will need to apply for and be licensed in Kentucky prior to doing business. Entities wishing to continue doing business as pharmacy benefit managers will need to complete the renewal process outlined in the administrative regulation on an annual basis.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee to apply for an initial pharmacy benefit manager license or to renew a pharmacy benefit manager license is \$1,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities licensed as pharmacy benefit managers will be permitted to do business in Kentucky.

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

(a) Initially: It is estimated that the updates to the Department of Insurance database necessary to track licensees will take approximately 40 days to develop and cost approximately \$25,000.

(b) On a continuing basis: Once developed, the cost on a continuing basis as a result of this administrative regulation is estimated at approximately \$15,000.00.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The costs to implement and enforce this administrative regulation will be paid by the entities licensed as pharmacy benefit managers and from the existing budget of the Department of Insurance.

(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 licensing fees set forth in KRS 304.9-053 will be necessary to implement this regulation. Any deficit in revenue received from license fees from the cost of implementing this regulation shall be assessed among licensees pursuant to KRS 304.9-054(7).

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all entities doing business as a pharmacy benefit manager.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, KRS 304.9-053, KRS 304.9-054.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department of Insurance anticipates receiving approximately \$12,000 in licensing fees as a result of 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? The Department of Insurance anticipates receiving approximately \$12,000 in licensing renewal fees as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? It is estimated that the updates to the Department of Insurance database necessary to track licensees will take approximately 40 days to develop and cost approximately \$25,000. Any deficit in revenue received from license fees from the cost of implementing this regulation shall be assessed among licensees pursuant to KRS 304.9-054(7).

(d) How much will it cost to administer this program for subsequent years? Once developed, the cost on a continuing basis as a result of this administrative regulation is estimated at approximately \$15,000.00. Any deficit in revenue received from license fees from the cost of implementing this regulation shall be assessed among licensees pursuant to KRS 304.9-054(7).

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

Revenues (+/-): .

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY **900 KAR 10:200E**

This emergency administrative regulation is being promulgated to establish the policies and procedures relating to the transition from the Kentucky Health Benefit Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156. This administrative regulation must be promulgated on an emergency basis: To meet the deadline of November 1, 2016 for open enrollment for individuals and small groups to begin purchasing health insurance on the SBE-FP. Pursuant to 42 U.S.C. Section 18031, which sets forth the federal requirements in operation of a SBE-FP, Kentucky must implement procedures for certification of qualified health plans and stand-alone dental plans, eligibility and enrollment in health insurance, creation of an application assister program, and agent participation on the SBE-FP. Failure to enact this administrative regulation on an emergency basis will compromise the ability of the SBE-FP to timely enroll individuals and small groups in a health insurance or dental plan. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. 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 **Office of the Kentucky Health Benefit and Information** **Exchange** **(New Emergency Administrative Regulation)**

900 KAR 10:200E. Kentucky State Based Exchange on the Federal Platform.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156.

STATUTORY AUTHORITY: KRS 194A.050(1)

EFFECTIVE: November 1, 2016

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of Health Benefit and Information Exchange, has responsibility to administer the State-Based Exchange on the Federal Platform. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to the transition from the

Kentucky Health Benefit Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) and the ongoing operation of the SBE-FP, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Definitions. (1) "Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act, Public Law 111-148, enacted March 23, 2010, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152, enacted March 30, 2010.

(2) "Agent" is defined by KRS 304.9-020(1).

(3) "Application assister" means a CAC, in-person assister, or navigator.

(4) "benefind" means information technology infrastructure utilized for application and enrollment in programs including the:

(a) Supplemental Nutrition Assistance Program (SNAP);

(b) Medicaid program under title XIX of the Social Security Act, 42 U.S.C. 301 et seq.;

(c) Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.; or

(d) Kentucky Transitional Assistance Program (K-TAP).

(5) "Cabinet for Health and Family Services" or "CHFS" is defined by KRS 194A.005.

(6) "Certified application counselor" or "CAC" means an individual employed by, or volunteer of, an entity designated by the office to perform the functions described in 45 C.F.R. 155.225.

(7) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(8) "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).

(9) "Enrollee" means an eligible individual enrolled in a qualified health plan or qualified stand-alone dental plan.

(10) "Health plan" is defined by 42 U.S.C. 18021(b)(1).

(11) "Health plan form" or "form" means an application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement filed in accordance with 806 KAR 14:007.

(12) "In-person assister" or "IPA" means an entity or individual selected by the office to perform the functions described in 45 C.F.R. 155.205(d) and (e) and 45 C.F.R. 155.215.

(13) "Indian" is defined by 25 U.S.C. 450b(d).

(14) "Individual exchange" means the Kentucky Health Benefit Exchange or SBE-FP that serves the individual health insurance market.

(15) "Individual market" is defined by KRS 304.17A-005(26).

(16) "Insurance affordability program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the Social Security Act, 42 U.S.C. 301 et seq.;

(b) A state children's health insurance program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code, 26 U.S.C. 36B, available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act, 42 U.S.C. 18701.

(17) "Issuer" is defined by 45 C.F.R. 144.103.

(18) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or SADP that utilizes the state provided information technology infrastructure known as kynect to provide for eligibility determinations and consumer enrollment in qualified health plans and stand-alone dental plans and that includes:

(a) An individual exchange; and

(b) SHOP.

(19) "Kentucky Office of Health Benefit and Information Exchange," "KOHBE," or "office" means the office created to administer the KHBE and the SBE-FP.

(20) "Kentucky online gateway" or "KOG" means the system for identity authentication services for users requesting to be listed

on the office's search tool for an application assister or agent.

(21) "Navigator" means an entity selected by the office that shall comply with the requirements of 1311(i) of the ACA, 45 C.F.R. 155.205(d)-(e), and 45 C.F.R. 155.210.

(22) "Organization" means an entity as follows:

- (a) Community health center;
- (b) Hospital;
- (c) Health care provider;
- (d) Indian health service provider;
- (e) Ryan White HIV/AIDS provider;
- (f) Behavioral or mental health provider; or
- (g) An agency with experience providing social services, energy assistance, or tax assistance that is a:

- 1. Non-federal government entity;
- 2. 501(c) organization; or
- 3. Local government agency.

(23) "Participating agent" means an agent as defined by KRS 304.9-020(1) who has been registered with the office on KOG.

(24) "Plan management data template" means the data collection templates used to facilitate data submission through SERFF for certification of qualified health plan issuers, qualified health plans, qualified stand-alone dental plan issuers, and qualified stand-alone dental plans as established in CMS Form Number CMS-10433, as amended.

(25) "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(26) "Qualified employer" means an employer that elects to make, at a minimum, all full-time employees of the employer eligible for one (1) or more QHPs or SADPs in the small group market offered through the SHOP.

(27) "Qualified health plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification.

(28) "Qualified individual" means an individual who has been determined eligible to enroll through the SBE-FP in a QHP or SADP in the individual market.

(29) "SHOP" means a Small Business Health Options Program operated by the Kentucky Health Benefit Exchange or the SBE-FP through which a qualified employer can provide a qualified employee and their dependents with access to one (1) or more QHPs or SADPs.

(30) "Small group" is defined by KRS 304.17A-005(42).

(31) "Stand-alone dental plan" or "SADP" means a dental plan as described by 45 C.F.R. 155.1065 that has been certified to provide a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), including a pediatric dental essential health benefit.

(32) "State Based Exchange on the Federal Platform" or "SBE-FP" means the state-based health insurance exchange approved by HHS pursuant to 45 C.F.R. 155.105 that will utilize the federally provided information technology infrastructure known as healthcare.gov to provide for eligibility determinations and consumer enrollment in qualified health plans and stand-alone dental plans and that includes:

- (a) An individual exchange; and
- (b) SHOP.

(33) "System for Electronic Rate and Form Filing" or "SERFF" means an online system established and maintained by the National Association of Insurance Commissioners (NAIC) that enables an issuer to send and a state to receive, comment on, and approve or reject rate and form filings.

Section 2. Eligibility and Enrollment. (1) The SBE-FP shall provide for an eligibility determination and consumer enrollment in a qualified health plan or a stand-alone dental plan.

(2) The SBE-FP shall rely on the federal call center to perform telephonic consumer support in applying for, and enrolling in, a qualified health plan or a stand-alone dental plan.

Section 3. Assistance for New Issuer Participation on SBE-FP. The office shall ensure any new issuer in the state is prepared to participate on the SBE-FP for each new plan year. The office shall provide information on:

- (1) Issuer registration;
- (2) Onboarding;
- (3) Training; and
- (4) Testing related transfer of electronic files.

Section 4. Participation Standards for Issuers Offering a Qualified Health Plan. (1) In order to participate on the SBE-FP, an issuer offering a QHP shall meet the following criteria:

(a) Hold a certificate of authority that would permit the issuer to offer a health benefit plan and be in good standing with the Kentucky Department of Insurance;

(b) Comply with benefit design standards as defined in 45 C.F.R. 156.20;

(c) Comply with applicable standards described in 45 C.F.R. Part 153;

(d) Not discriminate, with respect to a QHP, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation;

(e) Comply with the non-discrimination requirements in 42 U.S.C. 300gg-5;

(f) Comply with the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515;

(g) If not a managed care plan, meet the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515;

(h) Submit verification to DOI of compliance with the standards applicable to essential community providers of 45 C.F.R. 156.235;

(i) Submit verification to DOI of compliance with the meaningful difference standards of 45 C.F.R. 156.298;

(j) Submit verification of issuer compliance with the requirements of 45 C.F.R. 156.340(a)(4), including compliance of a delegated and downstream entity;

(k) Submit to DOI:

1. A quality improvement strategy plan in compliance with 45 C.F.R. 156.200(b)(5) and 45 C.F.R. 156.1130; and

2. An attestation that the issuer shall comply with the quality requirements identified in 45 C.F.R. 156.200(b)(5);

(l) Be accredited on the basis of local performance of a QHP by an accrediting entity recognized by HHS in categories identified by 45 C.F.R. 156.275(a)(1);

(m) Pursuant to 45 C.F.R. 156.275(a)(2), authorize the accrediting entity that accredits the QHP issuer to release to the office and HHS:

- 1. A copy of the most recent accreditation survey; and
- 2. Accreditation survey-related information that HHS may require, including corrective action plans and summaries of findings;

(n) For a QHP issuer that has not received accreditation, submit an attestation to the office that the issuer shall obtain accreditation in accordance with paragraph (l) of this subsection;

(o) Maintain accreditation so long as the QHP issuer offers a QHP;

(p) Comply with the provisions of 45 C.F.R. 156.210;

(q) For the individual exchange, offer at least a:

- 1. QHP with a silver metal level of coverage;
- 2. QHP with a gold metal level of coverage; and
- 3. Child-only plan;

(r) For the SHOP exchange, offer at least a:

- 1. QHP with a silver metal level of coverage; and
- 2. QHP with a gold metal level of coverage;

(s) Make its provider directory for an SADP available:

- 1. To potential enrollees in hard copy upon request; and
- 2. In accordance with 45 C.F.R. 156.230;

(t) Submit to DOI through the SERFF system:

1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;

2. Rate filings in compliance with KRS 304.17A-095 and applicable administrative regulations promulgated thereunder; and

3. Plan management data templates;

(u) 1. Receive approval from DOI for a rate filing prior to implementation of the approved rate; and

2. For a rate increase, post the justification prominently on the QHP issuer's Web site;

(v) Upon request by the DOI, submit an SBC for review of

compliance with 45 C.F.R. 147.200;

(w) Make available a published up-to-date, accurate, and complete formulary drug list on its Web site in a format and at time pursuant to 45 C.F.R. 156.122; and

(x) Comply with the maintenance of records standards pursuant to 45 C.F.R. 156.705.

(2) To be certified as a QHP by DOI for participation on the SBE-FP, a health plan shall provide coverage of the:

(a) Essential health benefits; or

(b) Essential health benefits excluding pediatric dental benefits if there is at least one (1) SADP offered in each county through the SBE-FP.

(3) The office shall ensure that each issuer that offers a QHP shall report changes in ownership pursuant to 45 C.F.R. 156.330 to HHS.

(4) The DOI shall certify a QHP within the timeframe specified by HHS.

Section 5. Participation Standards for Issuers Offering a Stand-Alone Dental Plan. (1) In order to participate on the SBE-FP, an issuer offering a stand-alone dental plan shall meet the following criteria:

(a) Hold a certificate of authority that would permit the issuer to offer a dental plan and be in good standing with the Kentucky Department of Insurance;

(b) Offer a dental plan in the individual exchange or SHOP exchange that complies with the requirements of KRS Chapter 304 Subtitle 17C;

(c) Submit to DOI through the SERFF system:

1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;

2. Rate filings in compliance with KRS 304.17-380 and administrative regulations promulgated thereunder; and

3. Dental plan management data templates;

(d) Comply with the:

1. Provider network adequacy requirements identified by KRS 304.17C-040 and maintain a network that is sufficient in number and types of dental providers to ensure that all dental services will be accessible without unreasonable delay in accordance with 45 C.F.R. 156.230;

2. Requirements for stand-alone dental plans referenced in 45 C.F.R. 156 Subpart E; and

3. Essential community provider requirements in 45 C.F.R. 156.235;

(e) Not discriminate, with respect to a pediatric dental plan, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation; and

(f) Make its provider directory for an SADP available:

1. To potential enrollees in hard copy upon request; and

2. In accordance with 45 C.F.R. 156.230.

(2) To be certified as an SADP by DOI for participation on the SBE-FP, a stand-alone dental plan shall:

(a) Provide the pediatric dental essential health benefits required by 42 U.S.C. 18022(b)(1)(J) for individuals up to twenty-one (21) years of age;

(b) Pursuant to 45 C.F.R. 156.150, provide within a variation of plus or minus two (2) percentage points:

1. A low level of coverage with an actuarial value of seventy (70) percent; or

2. A high level of coverage with an actuarial value of eighty-five (85) percent; and

(c) Have an annual limitation on cost-sharing for a stand-alone dental plan covering the pediatric dental EHB under 45 C.F.R. 155.1065 at or below:

1. \$350 for a plan with one (1) child enrollee; or

2. \$700 for a plan with two (2) or more child enrollees.

(3) The office shall ensure that each issuer that offers an SADP shall report changes in ownership pursuant to 45 C.F.R. 156.330 to HHS.

(4) The DOI shall certify an SADP within the timeframe specified by HHS.

Section 6. Consistency of Premium Rates on or off the SBE-FP

for the Same QHP or SADP. A QHP or SADP issuer shall charge the same premium rate without regard to whether the plan is offered on or off the SBE-FP.

Section 7. Enforcement by DOI. The DOI shall be responsible for enforcing the requirements of KRS Chapter 304 and any administrative regulations promulgated thereunder against any issuer.

Section 8. Toll-Free Hotline. The office shall operate a toll-free hotline to respond to requests from consumers including the capability to direct a consumer to the federally-operated call center or healthcare.gov to apply for and enroll in QHP or SADP coverage.

Section 9. SBE-FP Web site. The office shall operate a Web site that shall provide:

(1) Information for a consumer;

(2) The capability to direct a consumer to healthcare.gov to apply for and enroll in QHP or SADP coverage; and

(3) A tool for a consumer to use to find a local Navigator, CAC, IPA, or agent for assistance in applying for and enrolling in a QHP or SADP.

Section 10. KHBE Termination of Operations on the Individual and SHOP Exchange Utilizing kynect. KHBE shall not accept an enrollment from an individual on the individual exchange or from a qualified employee of a qualified employer for participation on the SHOP exchange with an effective date of coverage after December 31, 2016, unless the enrollment is the result of a special enrollment period granted to a qualified employee of a qualified employer participating on kynect in accordance with the criteria in 900 KAR 10:020.

Section 11. KOHBIE Application Assister Program. (1) The KOHBIE Application Assister Program, in accordance with the accessibility standards of 42 C.F.R. 155.205(c) and (d), shall include the following programs:

(a) The certified application counselor program described in Section 12 of this administrative regulation; or

(b) The in-person assister and navigator program described in Section 13 of this administrative regulation.

(2) An application assister shall:

(a) Complete QHP, SADP, and SHOP training provided by HHS;

(b) Complete Medicaid and CHIP training provided by CHFS;

(c) Submit certification of completion of the HHS and CHFS training to the office; and

(d) Sign a participation agreement with the office.

(3) The office and an application assister shall refer a consumer to other consumer assistance programs in Kentucky when available and appropriate.

(4) An application assister shall be prepared to serve both the individual exchange, SHOP, Medicaid program, and CHIP.

(5) An application assister shall comply with the privacy and security standards consistent with 45 C.F.R. 155.260.

Section 12. Certified Application Counselor Program. (1) The certified application counselor program shall comply with the provisions of 45 C.F.R. 155.225.

(2) An organization may apply to the office to be designated as a certified application counselor.

(3) Upon designation by the office to participate in the certified application counselor program, an organization shall:

(a) Act in the best interest of an applicant;

(b) Provide information in a manner that is accessible to individuals with disabilities directly or through a referral to an application assister; and

(c) Provide monthly reports of activities to the office.

(4) Staff and volunteers of a certified application counselor organization shall act as an application assister to:

(a) Provide information about insurance affordability programs and QHP or SADP coverage options;

(b) Assist an individual or employee to apply for coverage in a

QHP or SADP through the SBE-FP or an insurance affordability program through benefit; and

(c) Help to facilitate enrollment of a qualified individual in a QHP, SADP, or an insurance affordability program.

(5) An individual operating as a certified application counselor shall:

(a) Be identified by a designated organization described in subsection (2) of this section as an employee or a volunteer of the designated organization;

(b) Agree to act in the best interest of an applicant;

(c) Provide information with reasonable accommodation for an individual with a disability, as defined by the Americans with Disabilities Act, if providing in-person assistance; and

(d) Register with the office through the Kentucky online gateway.

Section 13. In-Person Assister and Navigator Program. (1) In accordance with 45 C.F.R. 155.205(d) and (e), 45 C.F.R. 155.315, 45 C.F.R. 155.210(d) to (e), and 45 C.F.R. 210, the office shall establish an IPA and navigator program to authorize an eligible public or private entity to carry out consumer assistance functions as described in 45 C.F.R. 205 and this section.

(2) An entity wishing to participate as an IPA or navigator shall:

(a) Be awarded a contract by the office pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;

(b) Designate an individual as the participating entity representative who shall:

1. Register with the office through the Kentucky online gateway as the individual authorized by the agency;

2. Serve as a primary contact for the office;

3. Be responsible for ensuring that only office certified application assister employees of the entity or navigators are registered through the Kentucky online gateway;

4. Comply with 45 C.F.R. 155.210(d) regarding a conflict of interest; and

5. As an individual IPA or navigator employee, comply with this subsection;

(c) Designate the individual employees who shall participate through the IPA application assister or navigator entity and who shall register with the office through the Kentucky online gateway;

(d) Submit to the office a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e); and

(e) Provide monthly reports of activities to the office.

(3) An employee designated as an IPA or navigator by the application assister entity shall:

(a) Be eighteen (18) years of age or older;

(b) Provide an authorization to the IPA or navigator entity to conduct a state background check for evidence of good character; and

(c) Travel, if necessary, to assist applicants with enrollment.

(4) An IPA or navigator entity and its employees shall:

(a) Inform applicants of the functions and responsibilities of all application assister and participating agents;

(b) Obtain authorization for the disclosure of applicant information prior to assisting the applicant with prescreening and completion of the application process; and

(c) Provide technical support to other application assister, application assister entities, or the office upon request.

(5) Upon authorization by the office, an IPA or navigator employee may assist:

(a) A qualified individual with enrollment in any QHP or SADP offered through the SBE-FP in the individual market;

(b) A qualified employer with selecting a QHP or SADP and enroll a qualified employee in a QHP or SADP offered through the SBE-FP in the small group market;

(c) An individual with applying for advance payments of the premium tax credit and cost-sharing reductions; and

(d) An individual with applying for insurance affordability programs, including Medicaid or KCHIP.

(6) An IPA or navigator entity and its employees shall:

(a) Maintain expertise in eligibility, enrollment, and program

specifications and conduct public education activities to raise awareness about a QHP, SADP, or insurance affordability program;

(b) Provide information and services in a fair, accurate, and impartial manner; and

(c) Provide information regarding other health programs.

(7) An IPA or navigator entity and its employees shall not:

(a) Impose any charge or fee on an applicant for their assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(8) An IPA or navigator entity and its employees shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, section 504 of the Rehabilitation Act, and 29 U.S.C. 794.

(9) An IPA or navigator entity or its employees shall provide referrals to the DOI or HHS for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.

(10) An IPA or navigator entity or its employees shall demonstrate to the office that the entity has existing relationships, or could readily establish relationships, with:

(a) Employers and employees;

(b) Consumers, including uninsured and underinsured consumers; or

(c) Self-employed individuals eligible for a QHP, SADP, or other insurance affordability program.

(11)(a) In accordance with Section 14 of this administrative regulation, the office shall withdraw certification if it finds noncompliance with the terms and conditions of the participation agreement from:

1. An individual in-person assister;

2. All in-person assisters associated with a particular entity;

3. An individual navigator; or

4. All navigators associated with a particular entity.

(b) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

Section 14. Withdrawal of Certification for Application Assisters and Appeals. (1) If the office finds noncompliance with the terms and conditions of a participation agreement with an application assister, the office shall:

Withdraw certification from:

1. An individual in-person assister;

2. All in-person assisters associated with a particular entity;

3. An individual navigator;

4. All navigators associated with a particular entity;

5. An individual certified application counselor; or

6. All certification application counselors of a designated organization;

(b) Provide the application assister entity or application assister employee with notice that the applicable certification shall be withdrawn as of the date on the notice;

(c) Allow the application assister entity or application assister employee an opportunity to submit evidence of compliance or additional information within ten (10) business days of notice of withdrawal;

(d) Review any information submitted by the application assister entity or application assister employee; and

(e) Based on a review of the information provided, issue a final decision to withdraw or reinstate the applicable certification of the application assister entity or application assister employee.

(2) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

(3) An application assister entity or application assister employee may appeal a final decision to withdraw the applicable certification by submitting a written request to the office within ten (10) business days of the final decision.

(4) After one (1) year following a decision to withdraw

certification of an application assister entity or application assister employee, the employee or entity may reapply in accordance with this administrative regulation.

Section 15. Agents. An agent wishing to participate on the SBE-FP in accordance with 42 U.S.C. 18031, 45 C.F.R. Part 155 shall:

- (1) Complete QHP, SADP, and SHOP training provided by HHS;
- (2) Submit certification of completion of the HHS training to the office; and
- (3) Not be listed on the agent broker suspension and termination list on healthcare.gov.

Section 16. Right to Appeal to HHS. (1) If an applicant or enrollee disagrees with an eligibility determination made on the SBE-FP, the applicant or enrollee may request an appeal from HHS.

(2) An applicant or an enrollee denied a request for an exemption by HHS under 45 C.F.R. 155.625(b) may appeal the decision to HHS.

CARRIE BANAHAN, Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Chandra Venettozzi (phone (502) 564-7940, chandra.venettozzi@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to the transition from the Kentucky State Based Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures relating to the transition from the Kentucky State Based Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the policies and procedures relating to the transition from the Kentucky Health Benefit Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the policies and procedures relating to the transition from the Kentucky Health Benefit Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will affect:

(a) Kentucky issuers seeking to offer health insurance plans on the SBE-FP in the individual market or small group market (3 issuers),

(b) Individuals and small employers seeking to enroll in health insurance on the SBE-FP (approximately 84,000 individuals and 100 small groups),

(c) Application assisters wishing to provide application and enrollment assistance on the SBE-FP (approximately 730), or

(d) Insurance agents wishing to provide application and enrollment assistance on the SBE-FP (approximately 2,470).

(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: Regulated entities will now be utilizing the SBE-FP for eligibility and enrollment in health insurance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will create minimal cost or additional burden on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from this administrative regulation as they will have policies and procedures related to the operation of the SBE-FP.

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

(a) Initially: This administrative regulation has no initial cost to implement.

(b) On a continuing basis: This administrative regulation has no fiscal impact 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 to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit and Information Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156

2. State compliance standards. 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures related to the transition from the Kentucky State Based Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

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3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156

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 will impose no stricter requirements, or 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 Cabinet for Health and Family Services, Kentucky Office of Health Benefit and Information Exchange 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), 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year 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 does not generate revenue and will not generate any additional revenue during the first year.

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

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

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

STATEMENT OF EMERGENCY 902 KAR 20:091E

As part of the Cabinet for Health and Family Service's efforts to enhance access to mental health and substance abuse services, the Office of Inspector General is promulgating this emergency administrative regulation to align the list of behavioral health services that may be provided by community mental health centers with the list of Medicaid coverable behavioral health services established by 907 KAR 1:044, Section (4). Additionally, this administrative regulation is being amended to establish standards for community mental health centers which elect to provide primary care services pursuant to KRS 210.410 and KRS 205.6313. This action must be implemented on an emergency basis in accordance with KRS 13A.190(1)(a) to enhance patient access to a wide array of behavioral health services and primary care services offered by community mental health centers. This emergency administrative regulation is being filed concurrently with Kentucky Medicaid administrative regulations 907 KAR 1:045E and 907 KAR 1:046E.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. 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 Office of Inspector General Division of Health Care (Emergency Amendment)

902 KAR 20:091E. Facilities specifications, operation and services; community mental health center.

RELATES TO: KRS 17.500, 198B.260, 202A.011(4), 202B.010(6), 205.6313, 210.370, 210.410, 210.450, 216B.010, 216B.015, 216B.030, 216B.105, 216B.990, 222.211, 309.080, 309.130, 311.560(4), 314.011(8), 314.042(8), 319.056, 319.064, 319C.010, 320.210(2), 335.080, 335.100, 335.300, 335.500, 439.3401, 645.020(5), 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 210.450(1), 216B.010, 216B.042

EFFECTIVE: November 1, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Kentucky Cabinet for Health and Family Services to regulate health facilities and services. KRS 210.450(1) requires the secretary to promulgate administrative regulations to establish[prescribing] standards for qualification of personnel, quality of professional service, and personnel management operations. This administrative regulation establishes licensure requirements for the operation and services, and facility specifications of a community mental health center. In addition, this administrative regulation establishes standards for community mental health centers that elect to provide primary care services pursuant to KRS 210.410 and KRS 205.6313.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A psychiatric nurse as defined by subsection (22) of this section;

(h) A physician assistant licensed under KRS 311.840 to 311.862;

(i) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(j) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(k) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in

accordance with KRS 319.064:

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Center" means a community mental health center.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Certified prevention specialist" means an individual who is currently certified as a certified prevention specialist by the Kentucky Certification Board for Prevention Professionals.

(6) "Client" means an individual described by KRS 210.410(2).

(7) "Community mental health center" means a program established pursuant to KRS Chapter 210.

(8) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(9)(2) "Clinical psychologist" means a clinical psychologist certified or licensed pursuant to KRS 319.050(7), 319.056(2), (4), or 319.064(5).

(3) "Crisis stabilization unit" means a community-based facility operated by or under contract with a center to provide emergency services as described in Section 8 of this administrative regulation to no more than twelve (12) clients who require overnight stays.

(10)(4) "Designated regional service area" means the geographical area to be served by the community mental health center.

(11) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(12) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(13) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(14) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(15)(5) "Licensed marriage and family therapist" means an individual licensed in accordance with KRS 335.300(2).

(6) "Licensed professional clinical counselor" means an individual licensed in accordance with KRS 335.500(3).

(7) "Licensee" means the governing body legally responsible for the community mental health center.

(16) "Mechanical restraint" means any device attached or adjacent to a client's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(17) "Mental health associate" means an individual who meets the mental health associate requirements established in the Community Mental Health Center Behavioral Health Services Manual incorporated by reference in 907 KAR 1:044, Section 13.

(18) "Patient" means a client, as described by KRS 210.410(2), or any other individual who seeks primary care services from a community mental health center.

(19) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(20)(8) "Plan of care" means a written plan that delineates the services to be provided to a client, and includes the short- and long-term goals of the plan.

(21) "Professional equivalent" means an individual who meets the professional equivalent requirements established in the Community Mental Health Center Behavioral Health Services Manual incorporated by reference in 907 KAR 1:044, Section 13.

(22)(9) "Psychiatric nurse" means a registered nurse who:

(a) Has a master's of science degree in nursing with a specialty in psychiatric or mental health nursing;

(b) Is a graduate of a four (4) year educational program with a bachelor of science degree in nursing and a minimum of one (1) year of experience in a mental health setting;

(c) Is a graduate of a three (3) year educational program with

two (2) years of experience in a mental health setting; or

(d) Is a graduate of a two (2) year educational program with an associate degree in nursing and three (3) years of experience in a mental health setting.

(23) "Time out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his or her behavior. (14) "Qualified social worker" means a social worker with a master's degree from an accredited school of social work who is licensed or exempt from licensure pursuant to KRS Chapter 335.

(14) "Time out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his behavior.

Section 2. Scope of Operation and Services. (1) A community mental health center:

(a) Shall provide a comprehensive range of accessible and coordinated behavioral health (mental health and substance abuse services) and [mental retardation] services for individuals with an intellectual or developmental disability, including direct or indirect [mental health or mental retardation] services, to the population of a designated regional service area, as required by KRS 210.370 to 210.480; and

(b) May provide primary care services:

1. As permitted by KRS 210.410; and

2. In accordance with the requirements established in Section 7 of this administrative regulation.

(2) A center's services, including primary care services if provided, shall be available to the client population described by KRS 210.410(2).

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for:

1. The center;

2. The establishment of administrative policy; and

3. Compliance with federal, state, and local law pertaining to the operation of the center.

(b) To obtain or renew a license to operate a center, the licensee shall comply with the requirements of this administrative regulation and the requirements of relevant statutes and administrative regulations.

(2) Executive director. The licensee shall designate an executive director, qualified by training and experience, who shall be responsible for:

(a) The total program of the center and its affiliates in accordance with the center's written policies; and

(b) Evaluation of the program as it relates to the client's needs.

(3) Policies. The licensee shall establish written policies for the administration and operation of the center, which shall be available to staff and which shall include:

(a) A description of the organizational structure specifying the:

1. Responsibility, function, and interrelations of each organizational unit; and

2. [the] Lines of administrative and clinical authority;

(b) The appropriate method and procedure for storage, dispensing, and administering of a drug or biological agent;

(c) Client grievance procedure;

(d) Confidentiality and use of client records in accordance with federal, state, and local statutes and regulations, including subsection (4) of this section; and

(e) Personnel policy, including:

1. A job description and qualifications for each personnel category;

2. Wage scale, hours of work, vacation and sick leave;

3. A plan for orientation of personnel to the policies and objectives of the center, [and for] on-the-job training, if necessary, and ongoing in-service training programs related to the employee's job activities; and

4. Annual [Periodic] evaluation of employee performance.

(4) Client records. A client record shall be maintained for each individual receiving services.

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

(b) Ownership.

1. Client records shall be the property of the center.

2. The original client record shall not be removed from the center except by court order or subpoena.

3. Copies of a client record or portions of the record may be used and disclosed as established by paragraph (d) of this subsection.

(c) A client record shall be retained for at least ~~six (6)~~^{five (5)} years or, in the case of a minor, three (3) years after the client reaches the age of majority, whichever is longer.

(d) Confidentiality and security: use and disclosure.

1. The center shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

2. The center may use and disclose client records. Use and disclosure shall be as established or required by:

a. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

b. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

3. A center may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

~~(e); (c) Each client record shall be kept in a locked file and treated as confidential. Information contained in a client record shall:~~

~~1. Be disclosed to an authorized person; and~~

~~2. Not be disclosed to an unauthorized person;~~

~~(d) Each client record shall contain:~~

~~1. An identification sheet;~~

~~2. Information on the purpose for seeking a service;~~

~~3. A history of findings and treatments rendered;~~

~~4. Screening information pertaining to the problem;~~

~~5. Staff notes on services provided;~~

~~6. Pertinent medical, psychiatric, and social information;~~

~~7. Disposition;~~

~~8. Assigned status;~~

~~9. Assigned personnel[therapists]; and~~

~~10. A termination summary[study] recapitulating findings and events during treatment, clinical impressions, and condition on termination.~~

Section 4. Staff Requirements. (1)[(5) Personnel.] A community mental health center shall employ the following full-time personnel:

(a) An executive director as required by Section 3(2) of this administrative regulation who:

1. May serve in a dual role as the center's program director;

2. Shall meet the education requirements established by the center's governing board for the executive director, or have a master's degree in business administration or a human services field or a bachelor's degree in a human services field, including:

a. Social work;

b. Sociology;

c. Psychology;

d. Guidance and counseling;

e. Education;

f. Religion;

g. Business administration;

h. Criminal justice;

i. Public administration;

j. Child care administration;

k. Christian education;

l. Divinity;

m. Pastoral counseling;

n. Nursing;

o. Public health; or

p. Another human service field related to working with children with severe emotional disabilities or clients with severe mental illness; and

3.a. Shall have two (2) years of prior supervisory experience in a human services program for an executive director with a master's degree;

b. Shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program for an executive director with a bachelor's degree; or

c. Shall meet the experience requirements established by the center's governing board for the executive director;

(b)[4-] A program director who:

1. Shall be a:

a. Psychiatrist;

b. Certified[or—licensed] psychologist with autonomous functioning, licensed psychological practitioner, or licensed psychologist;

c. Psychiatric nurse;

d. Licensed professional clinical counselor;

e. Licensed marriage and family therapist; or

f. Licensed clinical[Qualified] social worker or certified social worker;

2. May serve as[. 2. The program director may be] the executive director; and

3. Shall be responsible for maintenance of the center's therapeutic milieu;

(c) A medical director[(b)1. A board-certified or board-eligible psychiatrist] who shall:

1. Be a board certified or board eligible psychiatrist licensed in the state of Kentucky;

2.[a.] Be responsible for treatment planning; and

3.[b. Provide psychiatric service as indicated by client needs; and

e.] Supervise and coordinate the provision of psychiatric services by the center;

(d) A licensed psychologist or licensed psychological practitioner pursuant to KRS 319.050, 319.056, or 319.064;

(e) A sufficient number of personnel to provide services as described in Section 5 of this administrative regulation; and

(f) A records librarian or a designated staff person who shall assure that client records are maintained and that information is immediately retrievable.

(2) Background checks.

(a) The executive director and all personnel of a center shall:

1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;

2. Not have a criminal conviction or plea of guilty to a:

a. Sex crime as specified in KRS 17.500;

b. Violent crime as specified in KRS 439.3401;

c. Criminal offense against a minor as specified in KRS 17.500;

or

d. Class A felony; and

3. Not be listed on the following:

a. Central registry established by 922 KAR 1:470;

b. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or

c. Caregiver misconduct registry established by 922 KAR 5:120.

(b) A center may use the Kentucky national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

(c) A center shall perform annual criminal record and registry checks as described in paragraph (a) of this subsection on a random sample of at least fifteen (15) percent of all personnel who have not been subject to the annual background check during the previous three (3) year period.

(d) A center may use the Kentucky national background check program established by 906 KAR 1:190 to satisfy the annual background check requirements of paragraph (c) of this subsection upon implementation of the continuous assessment service, also referred to as rap back.[2. This position may be filled by more than

one (1) psychiatrist if the total hours worked are equivalent to one (1) full-time position;

(c) A clinical psychologist who shall provide evaluation and screening services for the client and individual or group therapy;

(d) A licensed professional clinical counselor who shall provide evaluation and screening services for the client and individual or group therapy;

(e) A licensed marriage and family therapist who shall provide evaluation and screening services for the client and individual or group therapy;

(f) A psychiatric nurse who shall provide or supervise nursing service for psychiatric care;

(g) A qualified social worker who shall provide social services as required; and

(h) A person who shall assure that client records are maintained and that information is immediately retrievable.]

Section 5[4]. Services. (1) The center shall provide services in the designated regional service area directly or through contract.

(2) Direct services. The center shall provide services as described in subsection (4) of this section and offer a sufficiently wide range of treatment to meet client needs, which may include behavioral health services described in subsection (5) of this section[including:

(a) Individual therapy;

(b) Family therapy;

(c) Group therapy;

(d) Play therapy;

(e) Behavior modification; and

(f) Chemotherapy].

(3) Plan of care.

(a) Each client receiving direct treatment under the auspices of a community mental health center shall have an individual plan of care signed by an independently licensed behavioral health professional[a clinically licensed or certified professional provider of the treatment].

(b) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.

(4) The center shall provide:

(a) Partial hospitalization or psychosocial rehabilitation services pursuant to KRS 210.410(1)(c)[A therapeutic program for a person who requires less than twenty-four (24) hour a day care, and more than outpatient care (i.e., partial hospitalization or day care)]. A psychiatrist shall be present on a regularly scheduled basis to provide consultant services to staff;

(b) 1. Inpatient services pursuant to KRS 210.410(1)(a) through affiliation with a licensed[community] hospital for a person requiring full-time inpatient care; or

2. If the[-A] center[that] does not have an affiliation contract in effect, documentation offshall be considered to be in compliance with this requirement if the center documents a good faith effort to enter into an affiliation contract;

(c) Outpatient services pursuant to KRS 210.410(1)(b)[service] on a regularly scheduled basis with arrangements made for a nonscheduled visit during a time of increased stress or crisis. The outpatient service shall provide diagnosis and evaluation of a psychiatric problem and a referral to other services or agencies as indicated by the client's needs;

(d) Emergency services pursuant to KRS 210.410(1)(d)[service] for the immediate evaluation and care of a person in a crisis situation on a twenty-four (24) hour a day, seven (7) day a week basis. All components of the emergency service shall be coordinated into a unified program that enables a client receiving an emergency service to be readily transferred to another service of the center as client needs dictate; and

(e) Consultation and education services pursuant to KRS 210.410(1)(e) for individuals,[for an individual and various] community agencies, and groups to increase the visibility, identifiability, and accessibility of the center and to promote services for intellectual disabilities and mental health disorders, substance use disorders, or co-occurring disorders[through the

distribution of relevant mental health knowledge].

(5) Rehabilitative mental health and substance use services, which may be provided by a center in accordance with a plan of care, include the following:

(a) Screening that shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, professional equivalent, mental health associate, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice to determine the:

1. Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and

2. Need for an assessment;

(b) Assessment that shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, mental health associate, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice who gathers information and engages in a process with the client, thereby enabling the professional to:

a. Establish the presence or absence of a mental health, substance use, or co-occurring disorder;

b. Determine the client's readiness for change;

c. Identify the client's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the client in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing that shall:

1. Be performed by a licensed psychologist, licensed psychological associate, licensed psychological practitioner, or an individual who meets the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing; and

2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention that:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

2. Shall consist of clinical intervention and support services necessary to provide:

a. Integrated crisis response;

b. Crisis stabilization interventions; or

c. Crisis prevention activities;

3. Shall be provided:

a. On-site at the center;

b. As an immediate relief to the presenting problem or threat;

and

c. In a face-to-face, one-on-one encounter;

4. May be provided as a telehealth consultation;

5. May include:

a. Verbal de-escalation;

b. Risk assessment; or

c. Cognitive therapy;

6. Shall be provided by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Professional equivalent;

d. Mental health associate;

e. Certified alcohol and drug counselor;

f. Licensed clinical alcohol and drug counselor; or

g. Licensed clinical alcohol and drug counselor associate;

7. Shall be followed by a referral to non-crisis services, if

applicable; and

8. May include:

a. Further service prevention planning, including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

(e) Mobile crisis services that shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. Be a multi-disciplinary team based intervention that ensures access to acute mental health and substance use services and supports to:

a. Reduce symptoms or harm; or

b. Safely transition an individual in an acute crisis to the appropriate, least restrictive level of care;

5. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services;

6. Be provided face-to-face in a home or community setting by

a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Professional equivalent;

d. Mental health associate;

e. Certified alcohol and drug counselor;

f. Licensed clinical alcohol and drug counselor; or

g. Licensed clinical alcohol and drug counselor associate; and

7. Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(f) Day treatment that shall:

1. Be a nonresidential, intensive treatment program designed for youth who:

a. Have a substance use disorder, mental health disorder, or co-occurring disorder;

b. Are under twenty-one (21) years of age; and

c. Are at high risk of out-of-home placement due to a behavioral health issue;

2. Consist of an organized, behavioral health program of treatment and rehabilitative services for substance use disorder, mental health disorder, or a co-occurring disorder;

3. Have unified policies and procedures that address:

a. The program's philosophy;

b. Admission and discharge criteria;

c. Admission and discharge process;

d. Staff training; and

e. Integrated case planning;

4. Include the following:

a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

b. Behavior management and social skill training;

c. Independent living skills that correlate to the age and development stage of the client; and

d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

5. Be provided as follows:

a. In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

b. On school days and during scheduled school breaks;

c. In coordination with the child's individual educational plan or Section 504 plan if the child has an individual educational plan or Section 504 plan;

d. By personnel that includes the following practicing within his or her scope of practice:

(i) Behavioral health professional;

(ii) Behavioral health professional under clinical supervision;

(iii) Professional equivalent;

(iv) Mental health associate;

(v) Certified alcohol and drug counselor;

(vi) Licensed clinical alcohol and drug counselor;

(vii) Licensed clinical alcohol and drug counselor associate; or

(viii) Peer support specialist; and

e. According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

6. Not include a therapeutic clinical service that is included in a child's individualized education plan;

(g) Peer support that shall:

1. Be provided by a peer support specialist;

2. Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;

3. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; and

4. Be identified in the client's plan of care;

(h) Intensive outpatient program services that shall:

1. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

2. Be provided at least three (3) hours per day at least three (3) days per week;

3. Include the following:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy unless contraindicated;

d. Crisis intervention; or

e. Psycho-education during which the client or client's family member shall be:

(i) Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

(ii) Taught how to cope with the client's diagnosis or condition in a successful manner;

4. Include a treatment plan that shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lower level of care;

5. Be provided by the following practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Professional equivalent;

d. Mental health associate; or

e. Certified alcohol and drug counselor;

6. Include access to a board-certified or board-eligible psychiatrist for consultation;

7. Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

8. Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;

(i) Individual outpatient therapy that shall:

1. Be provided to promote the:

a. Health and well-being of the client; or

b. Recovery from a substance related disorder;

2. Consist of a face-to-face therapeutic intervention with the client provided in accordance with the client's plan of care, which may be provided as a telehealth consultation;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the client;

and

c. Improving functioning;

4. Not exceed three (3) hours per day; and

5. Be provided by the following personnel practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Licensed behavior analyst;

d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
e. Professional equivalent;
f. Mental health associate;
g. Certified alcohol and drug counselor;
h. Licensed clinical alcohol and drug counselor; or
i. Licensed clinical alcohol and drug counselor associate;
(j) Group outpatient therapy that shall:
1. Be provided to promote the:
a. Health and well-being of the client; or
b. Recovery from a substance related disorder;
2. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care, and which may be provided as a telehealth consultation;
3. Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a:
a. Spouse;
b. Significant other;
c. Parent or person with custodial control;
d. Child;
e. Sibling;
f. Stepparent;
g. Stepchild;
h. Step-brother;
i. Step-sister;
j. Father-in-law;
k. Mother-in-law;
l. Son-in-law;
m. Daughter-in-law;
n. Brother-in-law;
o. Sister-in-law;
p. Grandparent; or
q. Grandchild;
4. Focus on the psychological needs of the client as evidenced in the client's plan of care;
5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
6. Not include:
a. Physical exercise;
b. A recreational activity;
c. An educational activity; or
d. A social activity;
7. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;
8. Ensure that the group has a deliberate focus and defined course of treatment;
9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and
10. Be provided by one (1) or more of the following personnel practicing within his or her scope of practice, and who shall maintain individual notes regarding each client within the group in the client's record:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Licensed behavior analyst;
d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
e. Professional equivalent;
f. Mental health associate;
g. Certified alcohol and drug counselor;
h. Licensed clinical alcohol and drug counselor; or
i. Licensed clinical alcohol and drug counselor associate;
(k) Family outpatient therapy that shall:
1. Consist of a face-to-face behavioral health therapeutic intervention, which may be provided as a telehealth consultation, and shall be provided through scheduled therapeutic visits between the therapist, the client unless the corresponding current procedural terminology code establishes that the recipient is not present, and at least one (1) member of the client's family;

2. Address issues interfering with the relational functioning of the family;
3. Seek to improve interpersonal relationships within the client's home environment;
4. Be provided to promote the health and well-being of the client or recovery from a substance use disorder;
5. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and
6. Be provided by the following personnel practicing within his or her scope of practice:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Professional equivalent;
d. Mental health associate;
e. Certified alcohol and drug counselor;
f. Licensed clinical alcohol and drug counselor; or
g. Licensed clinical alcohol and drug counselor associate;
(l) Collateral outpatient therapy that shall consist of a face-to-face behavioral health consultation on behalf of a client under the age of twenty-one (21) and may be provided as a telehealth consultation;
1. With a:
a. Parent;
b. Caregiver;
c. Person who has custodial control;
d. Household member;
e. Legal representative;
f. School staff person; or
g. Treating professional;
2. Provided by the following personnel practicing within his or her scope of practice:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Licensed behavior analyst;
d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
e. Professional equivalent;
f. Mental health associate;
g. Certified alcohol and drug counselor;
h. Licensed clinical alcohol and drug counselor; or
i. Licensed clinical alcohol and drug counselor; and
3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;
(m) Service planning that shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, or mental health associate to:
1. Assist a client in creating an individualized plan for services needed for maximum reduction of the effects of a mental health disorder;
2. Restore a client's functional level to the client's best possible functional level; and
3. Develop a service plan that:
a. Shall be directed by the client; and
b. May include:
(i) A mental health advance directive being filed with a local hospital;
(ii) A crisis plan; or
(iii) A relapse prevention strategy or plan;
(n) Screening, brief intervention, and referral to treatment for substance use disorders that shall:
1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;
2. Consist of:
a. Using a standardized screening tool to assess the individual for risky substance use behavior;
b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;

and

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

3. Be provided by the following personnel practicing within his or her scope of practice:

- a. Behavioral health professional;
- b. Behavioral health professional under clinical supervision;
- c. Professional equivalent;
- d. Mental health associate;
- e. Certified alcohol and drug counselor;
- f. Licensed clinical alcohol and drug counselor;
- g. Licensed clinical alcohol and drug counselor associate; or
- h. Certified prevention specialist;
- (o) Assertive community treatment for mental health disorders

that shall:

- 1. Include:
 - a. Assessment;
 - b. Treatment planning;
 - c. Case management;
 - d. Psychiatric services;
 - e. Medication prescribing and monitoring;
 - f. Individual and group therapy;
 - g. Peer support;
 - h. Mobile crisis services;
 - i. Mental health consultation;
 - j. Family support; and
 - k. Basic living skills;
- 2. Be provided by a multidisciplinary team of at least four (4) professionals, including:
 - a. A psychiatrist;
 - b. A nurse;
 - c. A case manager;
 - d. A peer support specialist; and
 - e. Any other behavioral health professional, behavioral health professional under clinical supervision, professional equivalent, or mental health associate; and

3. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;

- (p) Comprehensive community support services that shall:
 - 1. Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;

2. Consist of using a variety of psychiatric rehabilitation techniques to:

- a. Improve daily living skills;
- b. Improve self-monitoring of symptoms and side effects;
- c. Improve emotional regulation skills;
- d. Improve crisis coping skills; and
- e. Develop and enhance interpersonal skills; and

- 3. Be provided by a:
 - a. Behavioral health professional;
 - b. Behavioral health professional under clinical supervision;
 - c. Community support associate;
 - d. Licensed behavior analyst;
 - e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
 - f. Professional equivalent; or
 - g. Mental health associate;

(q) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a severe emotional disability that shall:

1. Include services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;

2. Establish the client's own rehabilitative goals within the person-centered plan of care;

3. Be delivered using a variety of psychiatric rehabilitation techniques focused on:

- a. Improving daily living skills;
- b. Self-monitoring of symptoms and side effects;
- c. Emotional regulation skills;

d. Crisis coping skills; and

e. Interpersonal skills; and

4. Be provided individually or in a group by a:

- a. Behavioral health professional;
- b. Behavioral health professional under clinical supervision;
- c. Peer support specialist;
- d. Professional equivalent; or
- e. Mental health associate;
- (r) Partial hospitalization that shall:

1. Be provided by the following practicing within his or her scope of practice:

- a. Behavioral health professional;
- b. Behavioral health professional under clinical supervision;
- c. Professional equivalent;
- d. Mental health associate; or
- e. Certified alcohol and drug counselor;

2. Be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24) hour, intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to substance use disorder, mental health disorder, or co-occurring disorder;

3. Be provided to an adult or a child;

4. Ensure that admission criteria for partial hospitalization is based on an inability to adequately treat the individual through community-based therapies or intensive outpatient services;

5. Consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication prescribing and monitoring;

6. Typically be provided for at least four (4) hours per day and focused on one (1) primary presenting problem, which may include substance use, sexual reactivity, or another problem; and

7. Include the following personnel for the purpose of providing medical care if necessary:

- a. An advanced practice registered nurse;
- b. A physician assistant or physician available on site; and
- c. A board-certified or board-eligible psychiatrist available for consultation;

(s) Residential treatment services for substance use disorders as described in Section 6 of this administrative regulation;

(t) Targeted case management services that shall:

1. Include services to one (1) or more of the following target groups:

- a. An adult or a child with substance use disorder;
- b. An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;
- c. A child with a severe emotional disability; or
- d. An adult with severe mental illness;

2. Be provided by a case manager who meets the requirements of 908 KAR 2:260; and

3. Include the following assistance:

a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

b. Development of a specific care plan that shall be based on information collected during the assessment and revised if needed upon reassessment;

c. Referral and related activities, which may include:

(i) Scheduling appointments for the client to help the individual obtain needed services; or

(ii) Activities that help link the client with medical, social, educational providers, or other programs and services that address identified needs and achieve goals specified in the care plan;

d. Monitoring, which shall be face-to-face and occur no less than once every three (3) months to determine that:

(i) Services are furnished according to the client's care plan;

(ii) Services in the care plan are adequate; and

(iii) Changes in the needs or status of the client are reflected in the care plan; and

e. Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

(i) Access services;

(ii) Identify needs and supports to assist the client in obtaining services; and

(iii) Identify changes in the client's needs; or

(u) Pregnant women substance use prevention services or substance use case management services.

(6) Quality assurance and utilization review.

(a) The center shall have an on-going, written quality assurance and [a] utilization [and] review program that:

1. Includes effective mechanisms for reviewing and evaluating client care and, if applicable, patient care in order to identify problems or opportunities to improve care;
2. Provides for appropriate responses to findings;
3. Assigns responsibility for monitoring and evaluating client and, if applicable, patient care;
4. Delineates the scope of care provided by the center;
5. Identifies the aspects of care that the center provides;
6. Identifies indicators and appropriate clinical criteria that can be used to monitor these aspects of care;
7. Collects and organizes data for each indicator;
8. Contains written procedures for taking appropriate corrective action;
9. Assesses the effectiveness of the actions taken to correct problems and documents the improvement in care; and
10. Communicates relevant information to other individuals, departments, or services as to the quality assurance program [plan for the evaluation of the service needs of each client].

(b) The need for continuing services [a service element for each individual] shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition [with sufficient frequency] to ensure that proper arrangements have been made for:

1. Discharge;
2. [, for] Transfer [to other elements of service,] or
3. Referral to another service provider, if appropriate.

(7) Medications.

(a) 1. If a center uses electronic prescribing, the center shall maintain a paper copy of each prescription.

2. If a center does not use electronic prescribing, the center shall document each prescription on a form designated specifically for medications. [A treatment involving medication or chemotherapy shall be administered under the direction of a licensed physician or other qualified practitioner, acting within the scope of his practice, and:

(a) Medication or chemotherapy used in treatment shall be recorded in the staff notes on a special medications chart in the client record.]

(b) Documentation [A copy] of the prescription shall be kept in the client record. [;]

(c) Blood or another laboratory test or examination shall be performed in accordance with accepted medical practice. [on each individual receiving medication prescribed or administered by the center;]

(d) Drug supplies shall be stored under proper sanitary, temperature, light, and moisture conditions. [;]

(e) Medication kept by the center shall be properly labeled. [;]

(f) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist or another person licensed to transfer the medication. [; and]

(g) Medication kept in the center shall be kept in a locked cabinet.

1. A controlled substance shall be kept under double lock (e.g., in a locked box in a locked cabinet).
2. There shall be a controlled substances record, in which is recorded:
 - a. The name of the patient;
 - b. The date, time, dosage, balance remaining, and method of administration of each controlled substance;
 - c. The name of the prescribing physician or other ordering practitioner acting within the limits of his statutory scope of practice; and
 - d. The name of the nurse who administered it, or staff who supervised the self-administration.
3. Except for medication to be self-administered in a crisis

stabilization unit, access to the locked cabinet shall be restricted to a designated medication nurse or other authorized personnel. Medication to be self-administered in a crisis stabilization unit shall be made available to the patient at the time of administration.

Section 6. Residential Treatment Services for Substance Use Disorders. (1) If a center licensed under this administrative regulation provides residential services to clients with a substance use disorder, the center shall obtain separate licensure as a residential alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.

(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a center that provides residential services for substance use disorders shall:

(a) Provide intensive treatment and skills building in a structured and supportive environment;

(b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

(c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;

(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;

(e) Provide services under the medical direction of a physician; and

(f) Provide continuous nursing services in which a registered nurse shall be:

1. On-site during traditional first shift hours, Monday through Friday;

2. Continuously available by phone after hours; and

3. On-site as needed in follow-up to telephone consultation after hours.

Section 7. Primary Care Services. (1) Basic services. The center may provide a variety of preventive, medical diagnostic, laboratory, x-ray, treatment, and therapeutic (physical, occupational, and speech therapy) services by appropriately licensed or certified health professionals to meet the usual physical health care needs of:

(a) The center's clients as described by KRS 210.410(2) to help ensure continuity of care; and

(b) Other individuals seeking primary care services from the center.

(2) Referrals. If a center provides primary care services to its clients, the center shall provide appropriate referrals for clients who require services that are above the level of basic primary care services not provided by the center.

(3) Policies.

(a) Administrative policies. A center that provides primary care services shall have written administrative policies in addition to the requirement established in Section 3(3) of this administrative regulation, including:

1. A description of organizational structure for the delivery of primary care services, which may include therapeutic services, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of primary care and therapeutic services directly provided by the center, which may include the provision of services in a home- or community-based setting;

5. A description of the administrative and patient health records and reports; and

6. A policy to specify the provision of emergency medical services.

(b) Patient care policies.

1. Patient care policies shall be developed by the center's medical director required by subsection (4)(b) of this section and other professional staff for all medical aspects of the center's program, including written protocols for standing orders, rules of practice, and medical directives that apply to services provided by

the center.

2. The protocols shall be signed by the medical director.

3. A system shall be established to ensure that, if feasible, the patient shall be always cared for by the same health professional or health team, to assure continuity of care.

(c) Patient rights policies. The center shall adopt written policies regarding the rights and responsibilities of patients. These patient rights policies shall assure that each patient shall be:

1. Informed of these rights and of all rules and requirements of 902 KAR Chapter 20 governing patient conduct and responsibilities, including a procedure for allowing the patient to voice a grievance or recommend changes in policies and services. Upon the patient's request, a grievance or recommendation shall be conveyed within a reasonable time to a decision making level within the organization with the authority to take corrective action;

2. Informed of services available at the center;

3. Informed of his or her medical condition, unless medically contraindicated as documented in his or her health record;

4. Afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

5. Encouraged and assisted to understand and exercise his or her patient rights;

6. Assured confidential treatment of his or her records and shall be afforded the opportunity to approve or refuse release of the records to any individual not involved in the patient's care, except as required by applicable law or third-party payment contract; and

7. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.

(4) Personnel.

(a) Primary care provider team. Each center that provides primary care services shall be staffed with at least:

1. One (1) full-time advanced practice registered nurse or physician assistant;

2. One (1) physician who:

a. Except in extraordinary circumstances as documented in the center's records, shall be present no less than once in every two (2) week period to provide medical direction, medical care services, consultation, and supervision; and

b. Shall be available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral. If a center is staffed with a full-time physician who provides medical care services on-site, the requirement for at least one (1) full-time advanced practice registered nurse or physician assistant shall be waived; and

3. Core staff of appropriately licensed or certified health professionals as necessary to carry out services provided.

(b) Medical Director. A medical director responsible for oversight of a center's primary care services shall:

1. Be a licensed physician;

2. Be responsible for all physical health aspects of the center;

3. Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311; and

4. If the medical director responsible for the physical health aspects of the center is not a board certified or board eligible psychiatrist licensed in Kentucky, coordinate care and treatment decisions with the center's psychiatrist for all primary care services delivered to the center's clients.

(c) Physicians. A physician employed by or under contract with the center to perform services as described in paragraph (a)2 of this subsection shall be:

1. Qualified to practice general medicine, including as a general practitioner, family practitioner, obstetrician – gynecologist, pediatrician, or internist; and

2. A member of the medical staff or hold courtesy staff privileges at one (1) or more hospitals with which the center has a formal transfer agreement.

(d) In-service training.

1. All center personnel who provide primary care services shall participate in ongoing in-service training programs relating to their respective job activities.

2. The training programs shall include:

a. Thorough job orientation for new personnel;

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

c. On-the-job training, if necessary.

(5)(a) The confidentiality and retention of client records shall be maintained in accordance with Section 3(4) of this administrative regulation.

(b) The center shall maintain a health record for each patient. The health record shall include:

1. The patient's medical and social history, including data obtained from other providers;

2. A description of each primary care visit or contact, including the condition or reason necessitating the visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, including the reason for the referral, to whom the patient was referred, and any information obtained from the referral source.

(c) Transfer of records. The center 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, transfer health records or an abstract if requested.

(6) Linkage agreements.

(a) The center shall have linkages through written agreements with providers of other levels of care that may be medically indicated to supplement the services available in the center. These linkages shall include:

1. Hospitals; and

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for:

1. Appropriate referral and acceptance of patients from the center;

2. Appropriate coordination of discharge planning with center staff; and

3. The discharge summary for each patient referred to be requested by the center.

(c) The written transfer agreements shall include designation of responsibility for:

1. Transfer of information;

2. Provision of transportation;

3. Sharing of services, equipment, and personnel;

4. Provision of total care or portions thereof in relation to center and agency capability; and

5. Patient record confidentiality pursuant to all applicable federal and state law.

(d) A linkage agreement shall not be required to transfer health records to any other treating health care facility or provider.

(7) Quality assurance program. The center shall have an ongoing, written quality assurance program established in accordance with Section 5(6)(a) of this administrative regulation.

Section 8[5]. Crisis Stabilization. (1) Emergency services provided in a crisis stabilization unit shall include the following:

(a) A mental status evaluation and physical health questionnaire of the client upon admission;

(b) A treatment planning process;

(c) Procedure for crisis intervention; and

(d) Discharge and aftercare planning processes.

(2) A program shall have a written policy concerning the operation of a crisis stabilization unit including:

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

a. Every four (4) clients during normal waking hours; and

b. Every six (6) clients during normal sleeping hours;

2. Administrative oversight of the program shall be provided by a staff member who shall be:

a. A person licensed or certified to provide mental health services independent of clinical supervision;

b. A qualified mental health professional as defined in KRS 202A.011(12); or

c. A person qualified to be program director under Section 4(1)(b)(3)(5)(a) of this administrative regulation.

3. The center shall provide a training program for direct care staff pertaining to the care of a client in a crisis stabilization unit.

(b) Criteria to assure that each client in a crisis stabilization program shall be:

1. In either one (1) of two (2) separate programs, child or adult, separated by physical location. A children's program may serve a resident up to age twenty-one (21) if it is more developmentally appropriate for that resident;
2. In need of short-term behavior management and at risk of placement in a higher level of care;
3. Able to take care of his own personal needs, if an adult;
4. Medically able to participate in services; and
5. Served in the least restrictive environment available in the community.

(c) Referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the crisis stabilization unit or for problems identified during the admission assessment.

(d) Rights of a crisis stabilization client, to include:

1. A description of the client's rights and the means by which these rights are protected and exercised.
2. At the point of admission, the program shall provide the statement of rights and responsibilities to the:
 - a. Client; and
 - b. In addition to the client, client's[his] parents, [if he is a child, his] guardian, or other legal representative if the client is a minor or incapacitated [with a clearly written and readable statement of rights and responsibilities].
3. The statement shall:
 - a. Be written in language that is understandable;
 - b. Be read to the client or if the client is a minor, client's[and his] parents, [if he is a child, his] guardian, or other legal representative if requested or if either cannot read; and
 - c. [shall] Cover the following:
 - (i) [a.] The right to treatment, regardless of race, religion, or ethnicity;
 - (ii) [b.] The right to recognition and respect of personal dignity in the provision of all treatment and care;
 - (iii) [c.] The right to be provided treatment and care in the least restrictive environment possible;
 - (iv) [d.] The right to an individualized plan of care;
 - (v) [e.] The right of the client, including the client's[and his] parents or guardian if the client is a minor, [if he is a child, or his legal representative,] to participate in treatment planning;
 - (vi) [f.] The nature of care, procedures, and treatment provided[that he shall receive];
 - (vii) [g.] The right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used; and
 - (viii) [h.] The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.
4. [3.] The statement of rights and responsibilities [of clients shall be written in language which is understandable to the client, and his parents, if he is a child, his guardian or other legal representative, and] shall be posted in appropriate areas of the facility.
5. [4.] The written policies and procedures [policy and procedure] concerning client [the clients'] rights shall assure and protect the client's [client] personal privacy within the constraints of his or her plan of care, including ~~These rights to privacy shall include:~~
 - a. Visitation by family or significant others in a suitable area of the facility; and
 - b. Telephone communications with family or significant others

at a reasonable frequency.

~~6.[5.] If a privacy right is limited, a full explanation shall be given to the client or the client's parent or guardian if the client is a minor [and his parents, if he is a child, or his guardian or other legal representative, shall receive a full explanation]. A limitation to a privacy right shall be documented in the client's record.~~

~~7. Information shall be provided to [6.] the client, or the client's parent or guardian if the client is a minor, regarding [and his parents, if he is a child, his guardian, or other legal representative, shall be informed of] the use and disposition of a product of special observation and audio visual techniques, which may include the following [such as]:~~

- a. One (1) way vision mirror;
- b. Audio recording;
- c. Video tape recording;
- d. Television;
- e. Movie; or
- f. Photograph.

~~8.a.[7.] Written policy and procedure developed in consultation with professional and direct-care staff shall provide for behavior management of a child client, including the use of a time-out room.~~

~~b.[The policy and procedure for use of a time-out room shall be approved by the Department for Mental Health and Mental Retardation.] Behavior management techniques shall be explained fully to each client and the client's parent [his parents], or [his] guardian, or other legal representative if the client is a child or otherwise incapacitated.~~

~~9.[8.] The facility shall prohibit cruel and unusual behavioral management measures, including corporal punishment, the use of a seclusion room, and mechanical restraint [as defined in 902 KAR 20:320].~~

~~10.[9.] Written policy shall prohibit a client from administering a disciplinary measure upon another client and shall prohibit a person other than professional or direct-care staff from administering a disciplinary measure to a child client.~~

~~(e) If therapeutic holds are used [The use of therapeutic holds] as a safe behavioral management technique, the facility shall have a [The] policy that shall describe:~~

1. Criteria for appropriate use of therapeutic holds;
2. Documentation requirements; and
3. The requirement for completion of a training course approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities [of Mental Health and Mental Retardation,] prior to using therapeutic holds.

~~(f) The requirement that a licensed psychiatrist shall be available to evaluate, provide treatment and participate in treatment planning on a regular basis.~~

~~(g) The procedure for proper management of pharmaceuticals, consistent with the requirements of Section 4(6) of this administrative regulation.~~

~~(h) Except for a program accredited by the Joint Commission [for Accreditation of Health Organizations] or the Commission on Accreditation of Rehabilitation Facilities, general procedures that address the following:~~

1. Procedures to be followed by staff in the event of a medical emergency of a client;
2. Proper nutrition;
3. Emergency preparedness;
4. Security; and
5. School attendance for children.

~~(3) Facility requirements for a crisis stabilization unit.~~

~~(a) A living unit shall be located within a single building and shall include:~~

1. Bedrooms.
 - a. More than four (4) clients shall not sleep in a bedroom.
 - b. A bedroom shall be equipped with a bed for each client.
 - c. A bed shall:
 - (i) Be at least thirty-six (36) inches wide and at least five (5) feet in length;
 - (ii) [and shall] Be long and wide enough to accommodate the client's size;
 - (iii) [d. A bed shall] Have a mattress cover, two (2) sheets, a pillow, and bed covering as is required to keep the client

comfortable;

(iv) ~~[- e. A bed shall]~~ Be equipped with a support mechanism and a clean mattress; and

(v) ~~[- f. A bed shall]~~ Be placed so that a client shall not experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.

d. ~~[- g.]~~ There shall be separate sleeping quarters for males and females.

e. ~~[- h.]~~ A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the licensure agency and the Department of Housing, Buildings and Construction.

2. Bathrooms.

a. For every eight (8) residents, each living unit shall have at least one (1):

(i) Wash basin with hot and cold water;

(ii) ~~[- one (1)]~~ Flush toilet; ~~[-]~~ and

(iii) ~~[- one (1)]~~ Bath or shower with hot and cold water ~~[for every eight (8) resident clients]~~.

b. If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.

3. Living area.

a. The living area shall provide comfortable seating for all clients housed within the living unit.

b. Each living unit shall be equipped with a:

(i) Working sink; and

(ii) ~~[-]~~ Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

c. A living unit shall house a maximum of sixteen (16) ~~[twelve (12)]~~ clients.

Section 9[6]. Facility Specifications. (1) A facility housing a community mental health center or a crisis stabilization unit shall be a general purpose building of safe and substantial construction and shall be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation. The following shall apply if relevant and as adopted by the respective agency authority:

(a) Requirements for fire safety pursuant to 815 KAR 10:060; and

(b) Requirements for making a building or facility accessible to and usable by an individual with disabilities, pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(3) A facility shall be currently approved by the Department of Housing, Buildings and Construction in accordance with 815 KAR 10:060, before relicensure is granted by the licensure agency.

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes (phone (502) 564-2888, stephanie.brammer@ky.gov) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for the licensure of community mental health centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for the licensure of community mental health centers which provide behavioral health services to treat, support, and encourage individuals with mental health disorder, substance use disorder, or a co-occurring disorder to achieve and maintain the highest possible level of health and self-sufficiency. This

administrative regulation also sets forth standards for community mental health centers which elect to provide primary care services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations that establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements necessary for the operation of community mental health centers.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates 902 KAR 20:091 to set forth standards for community mental health centers which elect to provide primary care services pursuant to KRS 210.410 and KRS 205.6313. This amendment also aligns the list of behavioral health services that may be provided by community mental health centers with the list of Medicaid coverable behavioral health services established by 907 KAR 1:044, Section (4), updates confidentiality requirements for compliance with HIPAA and applicable federal regulations, clarifies the credentials required of a center's executive director, clarifies the background check requirements for center employees, and makes technical changes to help ensure compliance with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update 902 KAR 20:091 for compliance with KRS 210.410 and 205.6313, as well as expand the list of behavioral health services which may be provided in community mental health centers. In addition, this amendment is being filed concurrently with the following Kentucky Medicaid administrative regulations: 907 KAR 1:045E, Reimbursement provisions and requirements regarding community mental health center services, and 907 KAR 1:046E, Community mental health center primary care services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 210.410 and 205.6313 by including standards for community mental health centers which elect to provide primary care services, and conforms to KRS 222.211 which allows community mental health centers to be utilized for the delivery of substance abuse treatment services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by allowing community mental health centers to provide primary care services, which may also include therapeutic services (physical, occupational, and speech therapy).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are fourteen (14) community mental health centers 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: Under this amendment, community mental health centers may provide primary care services and any of the behavioral health services identified in the expanded list of services allowable in community mental health care centers. Additionally, the centers must comply with the background check requirements established via this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Undeterminable; however, community mental health centers may obtain background checks on staff for twenty (20) dollars per check. At least one center is currently securing background checks under the Cabinet's state and FBI fingerprint

check program established by 906 KAR 1:190.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Community mental health centers will be able to increase revenue by providing primary care services in addition to behavioral health services. Moreover, this amendment will help increase patient access to primary care services in addition to a wide array of behavioral health services.

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

(a) Initially: There is no additional cost to the Office of Inspector General for implementing this administrative regulation.

(b) On a continuing basis: There is no additional cost to the Office of Inspector General for implementing 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: The source of funding used for the implementation and enforcement of this administrative regulation will be from agency funds and state general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be 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? There are fourteen (14) community mental health centers in the state.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function. KRS 210.410 requires community mental health centers to provide mental health programs and programs for individuals with an intellectual disability as well as allows the centers to provide primary care services. KRS 222.211(1) allows the cabinet to utilize community mental health centers and other existing facilities and services to assure the provision of prevention, intervention, and treatment services for juveniles and adults to address the problems of tobacco addiction and alcohol and other drug abuse within individuals, families, and communities.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost to the Office of Inspector General for implementing this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to the Office of Inspector General for implementing this administrative regulation during 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:

STATEMENT OF EMERGENCY 902 KAR 55:015E

As part of Kentucky's ongoing efforts to address the state's unintentional drug overdose epidemic, this emergency administrative regulation designates the synthetic opioid, 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide (also known as U-47700) as a Schedule I controlled substance. U-47700 is nearly eight times more potent than morphine. According to the Drug Enforcement Administration, at least 15 confirmed fatalities resulting from the use of U-47700 occurred nationwide in 2015 and 2016. Kentucky's Office of Drug Control Policy reports that U-47700 is responsible for at least one overdose death in the state. By filing this administrative regulation as an emergency, Kentucky joins other states, including Florida, Virginia, Ohio, Georgia, and Wyoming, in making U-47700 illegal due to the drug's significant risk to public health. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to avoid an imminent threat to public health and safety. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. 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 Office of Inspector General Division of Audits and Investigations (Emergency Amendment)

902 KAR 55:015E, Schedule I substances.

RELATES TO: KRS 218A.010-218A.050, 21 C.F.R. 1308.11

STATUTORY AUTHORITY: KRS 194A.050, 218A.020, 218A.250

EFFECTIVE: November 15, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of the individual citizens of the commonwealth, to operate programs and fulfill the cabinet's responsibilities, or to implement federal law. KRS 218A.250 requires the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 218A. KRS 218A.020 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations in order to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation establishes Schedule I drugs. This administrative regulation differs from the federal regulation, 21 C.F.R. 1308.11, because it designates substances that are substantially similar to synthetic cannabinoids as Schedule I controlled substances.

Section 1. Opiates. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphacetylmethadol (except Levo-alphacetylmethadol LAAM);

(2) Acetyl-alpha-methylfentanyl, N-1-(1-methyl-2-phenethyl)-4-piperidyl-N-phenylacetamide;

(3) Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl)

ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(4) Alpha-methylthiofentanyl, N-1-methyl-2-(2-thienyl) ethyl-4-piperidinyl-N- phenylpropanamide;

(5) Benzylfentanyl, N-1-benzyl-4-piperidyl-N-phenylpropanamide;

(6) Beta-hydroxyfentanyl, N-1-(2-hydroxy-2-phenethyl)-4-piperidinyl-N-phenylpropanamide;

(7) Beta-hydroxy-3-methylfentanyl, N-1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide;

(8) Difenoxin;

(9) 3-Methylfentanyl, N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide;

(10) 3-methylthiofentanyl N-3-methyl-1-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide;

(11) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);

(12) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide;

(13) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);

(14) Thienylfentanyl, N-1-(2-thienyl) methyl-4-piperidyl-N-phenyl-propanamide;

(15) Thiofentanyl N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinylpropan-amide;[and]

(16) Tilidine; and

(17) U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide).

Section 2. Opium Derivatives. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:

(1) Drotebanol; and

(2) Etorphine (except hydrochloride salt).

Section 3. Hallucinogenic Substances. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers if the existence of these salts: isomers, including the optical position and geometric isomers; and salts of isomers is possible within the specific chemical designation:

(1) alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine,3-(2-aminobutyl)indole);

(2) 4-bromo-2, 5-dimethoxy-amphetamine (4-bromo-2,5-DMA,4-bromo-2,5-dimethoxy-alpha-methylphenethylamine);

(3) 2, 5-dimethoxyamphetamine (2,5-DMA);

(4) 2, 5-dimethoxy-4-ethylamphetamine (DOET);

(5) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, PCE);

(6) 3, 4-methylenedioxymethamphetamine (MDMA);

(7) 4-methoxyamphetamine (PMA, 4-methoxy-alphamethylphen-ethylamine, paramethoxyamphetamine);

(8) 3, 4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);

(9) N-hydroxy-3, 4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-hydroxy MDA);

(10) Parahexyl (Synhexyl, 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo b,d pyran);

(11) Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

(12) Thiophene analog of phencyclidine (1-(1-(2-thienyl)cyclohexyl)piperidine, TCP, TCPy);

(13) 1-1-(2-thienyl) cyclohexylpyrrolidine (TCPy);

(14) 2-(2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5H-NBOMe);

(15) 2-(4-iodo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5I-NBOMe);

(16) 2-(4-bromo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5B-NBOMe); and

(17) 2-(4-chloro-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5C-NBOMe).

Section 4. Depressants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone; and

(2) Methaqualone.

Section 5. Stimulants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (aminoxaphen, 2-amino-5-phenyl-2-oxazoline, 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (2-amino-1-phenyl-1-propanone, alpha-aminopro-piophenone, 2-aminopropiophenone, and norephedrone);

(3) (±) cis-4-methylaminorex ((±) cis-4,5-dihydro-4methyl-5-phenyl-2-oxazolamine);

(4) N,N-dimethylamphetamine (N,N-alpha-trimethylbenzeneetha-namine, N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers;

(5) N-ethylamphetamine;

(6) Fenethylamine;

(7) Methcathinone (2-(methylamino)-propiofenone, alpha (methylamino)-propiofenone, alpha (methylamino)-propiofenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophe-none, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463 and UR1431), its salts, optical isomers and salts of optical isomers;

(8) Paramethoxymethamphetamine (PMMA); and

(9) Paramethoxyamphetamine (PMA).

Section 6. Synthetic Cannabinoids. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any substance, compound, mixture, or preparation which contains any quantity of any synthetic cannabinoid and is not an FDA approved drug, including the following:

(1) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144);

(2) (1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (XLR-11);

(3) 1-(5-fluoropentyl)-1H-indazol-3-yl(naphthalen-1-yl)methanone (THJ-2201);

(4) 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone (THJ-018);

(5) (1-(5-fluoropentyl)-1H-benzoimidazol-2-yl)(naphthalen-1-yl)methanone (AM2201-benzimidazole analog, FUBIMINA);

(6) Indole-3-carboxylate esters: Any compound containing a 1H-indole-3-carboxylate ester structure with the ester oxygen bearing a naphthyl, quinolinyl, isoquinolinyl, or adamantyl group and substitution at the one (1) position of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not further substituted on the naphthyl, quinolinyl, isoquinolinyl, adamantyl, or benzyl groups to any extent. Examples of this structural class include PB-22 and 5F-PB-22; and

(7) Indazole-3-carboxamides: Any compound containing a 1H-indazole-3-carboxamide structure with substitution at the nitrogen of the carboxamide by a naphthyl, quinolinyl, isoquinolinyl, adamantyl, or 1-amino-1-oxoalkan-2-yl group and substitution at the one (1) position of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indazole ring to any extent and whether or not further substituted on the naphthyl, quinolinyl, isoquinolinyl, adamantyl, 1-amino-oxoalkan-2-yl, or benzyl groups to any extent. Examples of this structural class include AB-FUBINACA and AB-CHMINACA.

Section 7. Control of Substances Scheduled under Federal Law. If a substance not identified in Section 1 through Section 6 of this administrative regulation is temporarily scheduled or designated as a Schedule I controlled substance under the federal Controlled Substances Act, the substance shall be considered to be controlled at the state level as a Schedule I controlled substance.

ROBERT S. SILVERTHORN, JR., Inspector General

VIKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 9, 2016

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes (phone (502) 564-2888, stephanie.brammer@ky.gov) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky's list of Schedule I controlled substances.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 218A.020 which authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in the schedules set forth in KRS Chapter 218A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation designates Schedule I controlled substances at the state level.

(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 designating Schedule I controlled substances at the state level.

(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 designates U-47700 (3,4-dichloro-N-[2-(dimethylamino) cyclohexyl]-N-methyl-benzamide) as a Schedule I controlled substance in Kentucky. This amendment also adds a new Section 7 to clarify that any drug temporarily scheduled or designated at the federal level as a Schedule I controlled substance shall also be considered to be controlled at the state level as a Schedule I controlled substance.

(b) The necessity of the amendment to this administrative regulation: U-47700 is a synthetic opioid that is nearly eight times more potent than morphine. According to the Drug Enforcement Administration, at least 15 confirmed fatalities resulting from the use of U-47700 occurred nationwide in 2015 and 2016. In addition, *U.S. News and World Report* indicated in a June 6, 2016 article entitled "U-47700 Has States on Edge" that at least 50 deaths nationwide have been linked to U-47700. Kentucky's Office of Drug Control Policy reports that U-47700 is responsible for at least one overdose death in the state. By filing this administrative regulation as an emergency and identical ordinary regulation, Kentucky joins other states, including Florida, Virginia, Ohio, Georgia, and Wyoming, in making U-47700 illegal at the state level due to the

drug's significant risk to public health. This amendment is further necessary to align Kentucky's Schedule I controlled substances with the federal schedule.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 218A.040 authorizes the Cabinet for Health and Family Services to place a substance in Schedule I if the Cabinet finds that the substance has high potential for abuse, has no accepted medical use in treatment in the United States, or lacks accepted safety for use in treatment under medical supervision. U-47700 is a synthetic opioid that has been found to meet this criteria and has further been linked to fatal overdoses. Therefore, this amendment conforms to the content of KRS 218A.040.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by designating U-47700 as a Schedule I controlled substance in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact state and local law enforcement agencies and the Department of Corrections.

(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: Kentucky's state and local law enforcement agencies will be able to charge individuals found to be in possession of, or trafficking in the synthetic opioid U-47700 or any other new drug placed into Schedule I by the DEA.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will impact the Department of Corrections (DOC) due to costs associated with incarceration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This action is necessary to stop the spread of U-47700 and avoid an imminent hazard to public safety.

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

(a) Initially: The Cabinet will not incur additional costs to implement the changes made by this amendment. However, there may be additional incarcerations related to the changes made by this administrative regulation. The expense of housing inmates may vary widely by jail. Each additional inmate will increase facility costs by an estimated average of \$31.34 per day.

(b) On a continuing basis: The Cabinet will not incur additional costs on a continuing basis to implement the changes made by this amendment. However, there may be additional incarcerations related to the changes made by this administrative regulation. The expense of housing inmates may vary widely by jail. Each additional inmate will increase facility costs by an estimated average of \$31.34 per day.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local governments will expend funds to arrest, prosecute, and incarcerate convicted defendants for trafficking or possessing U-47700 or any new drug placed into Schedule I by the DEA. However, this administrative regulation will accomplish a ban on U-47700 immediately before it gains a foothold in Kentucky. U-47700 is responsible for at least one fatal overdose in the state. Although the DEA has confirmed at least 15 fatalities resulting from the use of U-47700 nationwide in 2015 and 2016, *U.S. News and World Report* indicated in a June 6, 2016 article entitled "U-47700 Has States on Edge" that at least 50 deaths nationwide have been linked to U-47700.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

(c) How much will it cost to administer this program for the first year? There may be additional incarcerations related to the changes made by this administrative regulation. While the expense of housing inmates may vary widely by jail, each additional inmate will increase facility costs by an estimated average of \$31.34 per day.

(d) How much will it cost to administer this program for subsequent years? There may be additional incarcerations related to the changes made by this administrative regulation. While the expense of housing inmates may vary widely by jail, each additional inmate will increase facility costs by an estimated average of \$31.34 per day.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

21 C.F.R. Section 1308.11 establishes the federal listing of Schedule I controlled substances.

2. State compliance standards. KRS 218A.020 authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in the schedules set forth in KRS Chapter 218A.

3. Minimum or uniform standards contained in the federal mandate. The federal schedules of controlled substances are established in 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? On September 7, 2016, the DEA issued a Notice of Intent to temporarily schedule the synthetic opioid, 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700), into schedule I pursuant to the temporary scheduling

provisions of the Controlled Substances Act. The action was based on a finding by the DEA that the placement of U-47700 into schedule I of the Controlled Substances Act was necessary to avoid an imminent hazard to the public safety. A final order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to schedule I controlled substances under the Controlled Substances Act on the manufacture, distribution, possession, importation, exportation, research, and conduct of, instructional activities of this synthetic opioid. The DEA's announcement may be downloaded from the following link: https://www.deadiversion.usdoj.gov/fed_regs/rules/2016/fr0907.htm This administrative regulation does not impose a more stringent standard than the federal mandate as the DEA's temporary placement of U-47700 into Schedule I has the effect of making this drug illegal at the federal level.

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

STATEMENT OF EMERGENCY
907 KAR 1:045E

This emergency administrative regulation is being promulgated to establish a new reimbursement methodology for community mental health center services. This action must be taken on an emergency basis to comply with a federal mandate (Centers for Medicare and Medicaid Services) and to prevent the loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Emergency Amendment)

907 KAR 1:045E. Reimbursement provisions and requirements regarding community mental health center services.

RELATES TO: KRS 205.520(3), 210.370

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, 42 C.F.R. 447.325, 42 U.S.C. 1396a-d

EFFECTIVE: November 1, 2016

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. This administrative regulation establishes the reimbursement provisions and requirements regarding community mental health center services provided to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. Definitions. (1) "Community board for mental health or individuals with an intellectual disability" means a board established pursuant to KRS 210.380.

(2) "Community mental health center" or "CMHC" means a facility that[which] meets the community mental health center requirements established in 902 KAR 20:091.

(3) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(4)[(2)] "Department" means the Department for Medicaid Services or its designee.

(5)[(3)] "Enrollee" means a recipient who is enrolled with a

managed care organization.

(6)[(4)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(7) "Federal indirect rate" means the rate approved by the United States Department for Health and Human Services (HHS) for grantee institutions to be used to calculate indirect costs as a percentage of direct costs.

(8) "Federal Register" means the official journal of the United States federal government that publishes government agency rules and public notices.

(9) "Healthcare Common Procedure Coding System code" means a billing code:

(a) Recognized by Medicare; and

(b) Monitored by the Centers for Medicare and Medicaid Services.

(10) "Injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not excluded as a non-covered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(11) "Interim reimbursement" means a reimbursement:

(a) In effect for a temporary period of time; and

(b) That does not represent final reimbursement for services provided during the period of time.

(12)[(6)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(13) "Medicaid allowable costs" means the costs:

(a) Associated with the Medicaid-covered services covered pursuant to 907 KAR 1:046 and 907 KAR 1:044:

1. Rendered to recipients who are not enrollees; and

2. Not rendered as a 1915(c) home and community based waiver services provider; and

(b) Determined to be allowable costs by the department.

(14) "Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association that:

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many specialties.

(15) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16) "Medicare Economic Index" means a measure of inflation:

(a) Associated with the costs of physicians' practices; and

(b) Published in the Federal Register.

(17) "Outreach services" means provider programs:

(a) Specifically designed to:

1. Engage recipients for the purposes of supporting Medicaid or Children's Health Insurance Program (CHIP) enrollment efforts;

2. Assist recipients with finding healthcare or coverage options; and

3. Promote preventive services for recipients; and

(b) That are directly assigned or allocated to a cost report line that is not cost settled by the department.

(18) "Payment plan request" means a request to pay an amount owed to the department over a period of time approved by the department.

(19) "Primary care services" means services covered as established in 907 KAR 1:046.

(20)[(6)] "Provider" is defined by KRS 205.8451(7).

(21) "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

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

(23) "State fiscal year" means the period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year.

Section 2. General Reimbursement Provisions. (1) The department shall reimburse a participating in-state community mental health center under this administrative regulation for services:

(a) If the services are:

1. Covered pursuant to:

a. 907 KAR 1:044; or

b. 907 KAR 1:046;

2. Not provided by the CMHC acting as a 1915(c) home and community based waiver services provider, as those services are reimbursed based on the home and community based waiver;

3. Provided to recipients who are not enrolled with a managed care organization; and

4. Medically necessary; and

(b) Based on the community mental health center's Medicaid allowable costs.

(2) The department's reimbursement shall include reimbursing:

(a) On an interim basis during the course of a cost report period; and

(b) A final reimbursement for the state fiscal year that results from a reconciliation of the interim reimbursement amount paid to the CMHC compared to the CMHC's Medicaid allowable cost by cost center for the state fiscal year.

Section 3. Interim Reimbursement for Primary Care Services and Injectable Drugs.

(1) The department's interim reimbursement to a CMHC for primary care services shall depend upon the type of primary care service.

(2)(a)1. The department's interim reimbursement for physician services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Physician Fee Schedule for the given service.

2. If no reimbursement for a given physician service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

(b)1. The department's interim reimbursement for laboratory services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Laboratory Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule for the given service.

2. If no reimbursement for a given laboratory service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

(c)1. The department's interim reimbursement for radiological services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Physician Fee Schedule for the given service.

2. If no reimbursement for a given radiological service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

(d)1. The department's interim reimbursement for occupational therapy service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

2. If no reimbursement for a given occupational therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

(e)1. The department's interim reimbursement for physical therapy service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

2. If no reimbursement for a given physical therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

(f)1. The department's interim reimbursement for speech-language pathology service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

2. If no reimbursement for a given speech-language pathology service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

(3) The department's interim reimbursement for the cost of injectable drugs administered in a CMHC shall be the reimbursement methodology established in 907 KAR 3:010 for injectable drugs.

Section 4. Interim Reimbursement for Behavioral Health Services through June 30, 2018. (1)(a) To establish interim rates for behavioral health services effective for dates of service through June 30, 2018, the department shall use the CMHC rates paid effective July 1, 2015.

(b) To establish interim rates for behavioral health services effective for dates of service July 1, 2018, and each subsequent July 1, the department shall use a CMHC's most recently submitted cost report that meets the requirements established in paragraph (c) of this subsection.

(c) The cost report shall comply with all requirements established in Section 5(1) of this administrative regulation.

(2) The department shall:

(a) Review the cost report referenced in subsection (1) of this section; and

(b) Establish interim rates for Medicaid-covered behavioral health services:

1. To be effective July 1, 2018;

2. Based on Medicaid allowable costs as determined by the department through its review;

3. Intended to result in a reimbursement for Medicaid-covered behavioral health services:

a. Provided to recipients who are not enrollees; and

b. That equals the department's estimate of behavioral health services' costs for the CMHC for the period; and

4. That shall be updated effective July 1, 2019, and each July 1 thereafter, based on the most recently received cost report referenced in subsection (1) of this section.

(3) Interim rates for behavioral health services effective July 1 each calendar year shall have been trended and indexed from the midpoint of the cost report period to the midpoint of the rate year using the Medicare Economic Index.

(4) To illustrate the timeline referenced in subsection (2)(b) of this section, a cost report submitted by a CMHC to the department on December 31, 2017, shall be used by the department to establish behavioral health services' interim rates effective July 1, 2018.

(5)(a) A behavioral health services interim rate shall not be subject to retroactive adjustment except as specified in this section.

(b) The department shall adjust a behavioral health services interim rate during the state fiscal year if the rate that was established appears likely to result in a substantial cost settlement that could be avoided by adjusting the rate.

(c)1. If the cost report from a CMHC has not been audited or desk-reviewed by the department prior to establishing interim rates for the next state fiscal year, the department shall use the cost

report under the condition that interim rates shall be subject to adjustment as established in subparagraph 2. of this paragraph.

2. A behavioral health services interim rate based on a cost report that has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

3. An unaudited cost report shall be subject to an adjustment to the audited amount after the auditing has occurred.

(d) Upon receipt of the cost report filed December 31, 2017, the department shall review the cost report to determine if the interim rates established in accordance with subsection (1)(a) of this section need to be revised to more closely reflect the costs of services for the interim period.

Section 5. Final Reimbursement Beginning with the State Fiscal Year that Begins July 1, 2018. (1)(a) For the state fiscal year spanning July 1, 2017, through June 30, 2018, and for subsequent state fiscal years, by December 31 following the end of the state fiscal year, a CMHC shall submit a cost report to the department:

1. In a format that has been approved by the Centers for Medicare and Medicaid Services;

2. That has been audited by an independent auditing entity; and

3. That states all of the:

a. CMHC's Medicaid allowable direct costs for:

(i) Medicaid-covered services rendered to eligible recipients during the cost report period; and

(ii) Medicaid-covered injectable drugs rendered to eligible recipients during the cost report period;

b. CMHC's costs associated with:

(i) Medicaid-covered services rendered to enrollees during the cost report period; and

(ii) Medicaid-covered injectable drugs rendered to enrollees during the cost report period;

c. Costs of the community board for mental health or individuals with an intellectual disability under which the CMHC operates for the cost report period; and

d. CMHC's costs associated with services rendered to individuals:

(i) That were reimbursed by an insurer or party other than the department or a managed care organization; and

(ii) During the cost report period.

(b) To illustrate the timeline referenced in paragraph (a) of this subsection, an independently audited cost report stating costs associated with services and injectable drugs provided during the state fiscal year spanning July 1, 2017, through June 30, 2018, shall be submitted to the department by December 31, 2018.

(2) By October 1 following the department's receipt of a CMHC's completed cost report submitted to the department by the prior December 31, the department shall:

(a) Review the cost report referenced in subsection (1) of this section; and

(b) Compare the Medicaid allowable costs to the department's interim reimbursement for Medicaid-covered services and injectable drugs rendered during the same state fiscal year.

(3)(a) After the department compares a CMHC's interim reimbursement with the CMHC's Medicaid allowable costs for the period, if the department determines that the interim reimbursement:

1. Was less than the CMHC's Medicaid allowable costs for the period, the department shall send a payment to the CMHC equal to the difference between the CMHC's total interim reimbursement and the CMHC's Medicaid allowable costs; or

2. Exceeded the CMHC's Medicaid allowable costs for the period, the:

a. Department shall send written notification to the CMHC requesting the amount of the overpayment; and

b. CMHC shall, within thirty (30) days of receiving the department's written notice, send a:

(i) Payment to the department equal to the excessive amount; or

(ii) Payment plan request to the department.

(b) A CMHC shall not implement a payment plan unless the department has approved the payment plan in writing.

(c) If a CMHC fails to comply with the requirements established in paragraph (a)2 of this subsection, the department shall:

1. Suspend payment to the CMHC; and
2. Recoup the amount owed by the CMHC to the department.

Section 6. Final Reimbursement for the Cost Report Period Spanning November 1, 2016, through June 30, 2017. The provisions established in Section 5 of this administrative regulation shall apply to final reimbursement for the period beginning November 1, 2016, through June 30, 2017, except that the cost report period shall begin November 1, 2016, and end June 30, 2017.

Section 7. New Services. (1) Reimbursement regarding a projection of the cost of a new Medicaid-covered service or expansion shall be made on a prospective basis in that the costs of the new service or expansion shall be considered when actually incurred as an allowable cost.

(2)(a) A CMHC may request an adjustment to an interim rate after reaching the mid-year point of the new service or expansion.

(b) An adjustment shall be based on actual costs incurred.

Section 8. Auditing and Accounting Records. (1)(a) The department shall perform a desk review of each cost report to determine whether an audit is necessary and, if so, the scope of the audit.

(b) If the department determines that an audit is not necessary, the cost report shall be settled without an audit.

(c) A desk review or audit shall be used to verify costs to be used in setting the interim behavioral health services rate, to adjust interim behavioral health services rates that have been set based on unaudited data, or for final settlement to cost.

(2)(a) A CMHC shall maintain and make available any records and data necessary to justify and document:

1. Costs to the CMHC;
2. Services provided by the CMHC;
3. The cost of injectable drugs provided, if any, by the CMHC;
4. Cost allocations utilized including overhead statistics and supportive documentation;
5. Any amount reported on the cost report; and
6. Chart of accounts.

(b) The department shall have unlimited on-site access to all of a CMHC's fiscal and service records for the purpose of:

1. Accounting;
2. Auditing;
3. Medical review;
4. Utilization control; or
5. Program planning.

(3) A CMHC shall maintain an acceptable accounting system to account for the:

- (a) Cost of total services provided;
- (b) Charges for total services rendered; and
- (c) Charges for covered services rendered to eligible recipients.

(4) An overpayment discovered as a result of an audit or desk review shall be settled through recoupment or withholding.

Section 9. Allowable and Non-allowable Costs. (1) The following shall be allowable costs:

(a) Services' or drugs' costs associated with the services or drugs;

(b) Depreciation as follows:

1. A straight line method shall be used;

2. The edition of the American Hospital Association's useful life guidelines currently used by the Centers for Medicare and Medicaid Services' Medicare program shall be used;

3. The maximum amount for expensing an item in a single cost report shall be \$5,000; and

4. Only the depreciation of assets actually being used to provide services shall be recognized;

(c) Interest costs;

(d) Costs incurred for research purposes, which shall be allowable to the extent that they are related to usual patient

services and are not covered by separate research funding;

(e) Costs of motor vehicles used by management personnel up to \$25,000;

(f) Costs for training or educational purposes for licensed professional staff outside of Kentucky excluding transportation costs to travel to the training or education;

(g) Costs associated with any necessary legal expense incurred in the normal administration of the CMHC;

(h) The cost of administrative staff salaries, which shall be limited to the average salary for the given position as established for the geographic area on www.salary.com;

(i) The cost of practitioner salaries, which shall be limited to the median salary for the southern region as reported in the Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report, if available.

1. A per visit amount using MGMA median visits shall be utilized.

2. The most recently available MGMA publication that relates to the cost report period shall be used;

(j) Indirect costs, which shall be:

1. Calculated utilizing the approved federal indirect rate, if the provider has an approved federal indirect rate.

a. A provider shall include in indirect costs on line 1 of the cost report the same category of costs identified as indirect within the approved federal indirect rate supporting documentation.

b. Direct costs shall be those costs identified as direct within the approved federal indirect rate.

c. The Federal indirect rate shall be applied to the same category of expenses identified as direct during the Federal rate determination; or

2. If the provider does not have a federal indirect rate, those costs of an organization that are not specifically identified with a particular project, service, program, or activity but nevertheless are necessary to the general operation of the organization and the conduct of the activities it performs. The actual allowable cost of indirect services as reported on the cost report shall be allocated to direct cost centers based on accumulated cost if a Federal indirect rate is not available; and

(k) Services provided in leased or donated space outside the walls of the facility.

(2) To be allowable, costs shall comply with reasonable cost principles established in 42 C.F.R. 413.

(3) The allowable cost for a service or good purchased by a facility from a related organization shall be in accordance with 42 C.F.R. 413.17.

(4)(a) The following shall not be allowable costs:

1. Bad debt;

2. Charity;

3. Courtesy allowances;

4. Political contributions;

5. Costs associated with an unsuccessful lawsuit against the department or the Cabinet for Health and Family Services;

6. Costs associated with any legal expense incurred related to a judgment granted as a result of an unlawful activity or pursuit;

7. The value of services provided by non-paid workers;

8. Travel or related costs or expenses associated with non-licensed staff attending;

a. A convention;

b. A meeting;

c. An assembly; or

d. A conference;

9. Costs related to lobbying;

10. Costs related to outreach services; or

11. Costs incurred for transporting recipients to services.

(b) Outreach services' costs shall either be directly assigned or allocated to a cost report line that is not cost-settled by the department.

(5) A discount or other allowance received regarding the purchase of a good or service shall be deducted from the cost of the good or service for cost reporting purposes, including in-kind donations.

(6)(a) Maximum allowable costs shall be the maximum amount that may be allowed as reasonable cost for the provision of a

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service or drug.

(b) To be considered allowable, a cost shall:

1. Be necessary and appropriate for providing services; and
2. Not exceed usual and customary charges.

(7) For direct and indirect personnel costs, 100 percent time reporting methods shall be utilized to group/report expenses to each cost category. Detailed documentation shall be available upon request

[as established in this subsection.

(a) The payment rate that was in effect on June 30, 2002, for the community mental health center for community mental health center services shall remain in effect and there shall be no cost settling.

(b) Allowable costs shall not:

1. Exceed customary charges which are reasonable; or
2. Include:

a. The costs associated with political contributions;

b. Travel or related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities);

c. The costs of motor vehicles used by management personnel which exceed \$20,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel); or

d. Legal fees for unsuccessful lawsuits against the cabinet.

(c) Costs (excluding transportation costs) for training or educational purposes outside the state shall be allowable costs.

(2) To be reimbursable, a service shall:

(a) Meet the requirements of 907 KAR 1:044, Section 4(2); and

(b) Be medically necessary].

Section 10. Units of Service[3. Implementation of Payment System]. (1) Interim[(a)] payments for behavioral health services, physician services, physical therapy services, occupational therapy services, speech-language pathology services, laboratory services, or radiological services shall be based on units of service.

(2) A unit for a behavioral health service, a physician service, a physical therapy service, a speech-language pathology service, an occupational therapy service, a laboratory service, or radiological service shall be the amount indicated for the corresponding:

1. CPT code; or

2. Healthcare Common Procedure Coding System code

[(b) One (1) unit for each service shall be defined as follows:

Service	Unit of Service
Individual Outpatient Therapy	15 minutes
Group Outpatient Therapy	15 minutes
Family Outpatient Therapy	15 minutes
Collateral Outpatient Therapy	15 minutes
Psychological Testing	15 minutes
Therapeutic Rehabilitation	15 minutes
Medication Prescribing and Monitoring	15 minutes
Physical Examinations	15 minutes
Screening	15 minutes
Assessment	15 minutes
Crisis Intervention	15 minutes
Service Planning	15 minutes
Screening, Brief Intervention, and Referral to Treatment	15 minutes
Mobile Crisis Services	4 hour
Assertive Community Treatment	Per Diem
Intensive Outpatient Program Services	Per Diem
Residential Crisis Stabilization Services	Per Diem
Residential Services for Substance Use Disorders	Per Diem
Partial Hospitalization	Per Diem
Day Treatment	4 hour
Comprehensive Community Support Services	15 minutes
Peer Support Services	15 minutes

(2) An initial unit of service which lasts less than fifteen (15) minutes may be billed as one (1) unit.

(3) Except for an initial unit of a service, a service that is:

(a) Less than one-half (1/2) of one (1) unit shall be rounded down; or

(b) Equal to or greater than one-half (1/2) of one (1) unit shall be rounded up.

(4) An individual provider shall not exceed four (4) units of service in one (1) hour.

(5) An overpayment discovered as a result of an audit shall be settled through recoupment or withholding.

(6) A community mental health center shall maintain an acceptable accounting system to account for the:

(a) Cost of total services provided;

(b) Charges for total services rendered; and

(c) Charges for covered services rendered eligible recipients.

(7) A community mental health center shall make available to the department all recipient records and fiscal records:

(a) At the end of each fiscal reporting period;

(b) Upon request by the department; and

(c) Subject to reasonable prior notice by the department.

(8) Payments due a community mental health center shall be made at least once a month.

Section 4. Nonallowable Costs. The department shall not reimburse:

(1) Under the provisions of this administrative regulation for a service that is not covered by 907 KAR 1:044; or

(2) For a community mental health center's costs found unreasonable or nonallowable in accordance with the Community Mental Health Center Reimbursement Manual].

Section 11[5]. Reimbursement of Out-of-state Providers. Reimbursement to a participating out-of-state community mental health center shall be the lesser of the:

(1) Charges for the service;

(2) Facility's rate as set by the state Medicaid Program in the other state; or

(3) The state-wide average of payments for in-state community mental health centers[Upper limit for that type of service in effect for Kentucky providers].

Section 12[6]. Appeal Rights. A community mental health center may appeal a Department for Medicaid Services decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 13[7]. Not Applicable to Managed Care Organization. A managed care organization shall not be required to reimburse for community mental health center services in accordance with this administrative regulation.

Section 14[8]. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the Department for Medicaid

Services' (DMS's) reimbursement provisions and requirements regarding community mental health center services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding community mental health center services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assist in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services.

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

(a) How the amendment will change this existing administrative regulation: The amendment introduces a new cost-based reimbursement methodology and establishes reimbursement for primary care services (in concert with a companion administrative regulation – 907 KAR 1:046, Coverage provisions and requirements regarding community mental health center primary care service services.) Via the cost-based model, the Department for Medicaid Services (DMS) will ultimately reimburse for all services (behavioral health as well as primary care services) rendered during a given year based on Medicaid allowable costs after a thorough review of cost data reported by each CMHC to determine such costs for each CMHC. As a given CMHC's costs for a year is reported after the year concludes and DMS must review the cost data before determining the CMHC's total Medicaid allowable costs for the year, DMS reimburses each CMHC on an interim basis during the course of the year. After completing the review and determination of a CMHC's Medicaid allowable costs for a year, DMS will compare its interim reimbursement paid to the CMHC during the course of the year to the CMHC's actual Medicaid allowable costs for the year. If DMS's interim reimbursement to the CMHC exceeded the CMHC's Medicaid allowable costs, the CMHC will send the overpayment amount to DMS. If DMS's interim reimbursement was less than the CMHC's Medicaid allowable costs for the year, DMS will issue a lump sum payment to the CMHC equaling the amount owed. DMS's interim reimbursement for behavioral health services will initially be the reimbursement it currently pays CMHCs for behavioral health services, but after the first full twelve-month cost report has been audited and approved (and going forward) interim behavioral health reimbursement will be rates based on the most recently audited and approved cost report. DMS's interim reimbursement for physician services, laboratory services, and radiological services will be the reimbursement stated on the Kentucky-specific Medicare Physician Fee Schedule for the given service. If no reimbursement exists on the fee schedule for a given service, DMS will reimburse (again, on an interim basis) for the service in the manner that it reimburses for physician's services pursuant to 907 KAR 3:010, Reimbursement for physician's services. DMS's interim reimbursement for occupational therapy, physical therapy, and speech-language pathology services will be the reimbursement stated on the Kentucky-specific Medicare Physician Fee Schedule for the given service. If no reimbursement exists on the fee schedule for a given service, DMS will reimburse (again, on an interim basis) for the service in the manner that it reimburses for physician's services pursuant to 907 KAR 3:010, Reimbursement for physician's services. DMS's interim reimbursement for the cost of injectable drugs administered in a CMHC will be DMS's reimbursement for such pursuant to its physician's services reimbursement administrative regulation (907 KAR 3:010). The reimbursement established in this administrative regulation only applies to services rendered to Medicaid "fee-for-service" recipients. These are Medicaid recipients who are not enrolled with a managed care organization. Managed care organizations are not required to reimburse for CMHC services in accordance with this

administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment establishing a new cost-based reimbursement methodology results from a mandate from the Centers for Medicare and Medicaid Services (CMS). DMS's reimbursement of primary care services is necessary to comply with legislation (HB 527) enacted during the 2014 Regular Session of the General Assembly which was codified into KRS 205.6313.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by revising Medicaid reimbursement for community mental health centers in a manner that complies with a federal mandate and with a state mandate.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by revising Medicaid reimbursement for community mental health centers in a manner that complies with a federal mandate and with a state mandate.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Community mental health centers will be affected by the administrative regulation. There are centers located across Kentucky under the governance of fourteen regional boards.

(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. In order to be reimbursed by the Department for Medicaid Services CMHCs will have to annually submit cost report information to DMS stating all of the CMHCs Medicaid allowable costs, costs associated with care provided to recipients who are enrolled with a managed care organization, costs experienced by the Community Board for Mental Health or Individuals with an Intellectual Disability which oversees the CMHC; and costs associated with services covered by another payor/party. As mandated by the Centers for Medicare and Medicaid Services (CMS) the Medicaid "fee-for-service" costs of the CMHC must be clearly demarcated from the board's costs as well as the costs associated with care to recipients enrolled in an MCO.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). CMHCs will experience administrative costs associated with tracking and reporting costs data (including employing or contracting with personnel capable of accurately tracking and reporting the data).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). CMHCs will benefit by receiving a cost-based reimbursement from DMS for services to Medicaid recipient who are not enrolled with a managed care organization.

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

(a) Initially: Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action. DMS does not anticipate a substantial change in costs associated with implementing the new cost-based reimbursement methodology mandated by CMS, but won't know the full impact until after receiving cost reports from CMHCs in the future. DMS spent an aggregate (state and federal funds combined) of \$9.67 million on CMHC services during the state fiscal year that ended June 30, 2015.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and

enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6313 mandates that the Medicaid Program pay community mental health centers for primary service services at the same rates it pays primary care providers for such services.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the primary care provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313.

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

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

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

(c) How much will it cost to administer this program for the first

year? Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action. DMS does not anticipate a substantial change in costs associated with implementing the new cost-based reimbursement methodology mandated by CMS, but won't know the full impact until after receiving cost reports from CMHCs in the future. DMS spent an aggregate (state and federal funds combined) of \$9.67 million on CMHC services during the state fiscal year that ended June 30, 2015.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 907 KAR 1:047E

This emergency administrative regulation is being promulgated to establish Medicaid Program coverage of primary care services provided by community mental health centers. Primary care services shall include services covered in the Medicaid physician's program including physician services, laboratory services, radiological services, occupational therapy, physical therapy, and speech-language pathology services. Additionally, physician injectable drugs administered in a community mental health center shall be covered under this administrative regulation. This action must be taken on an emergency basis to comply with a federal mandate (Centers for Medicare and Medicaid Services), to prevent the loss of federal funds, and to comply with KRS 205.6313. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Community Alternatives (New Emergency Administrative Regulation)

907 KAR 1:047E. Community mental health center primary care services.

RELATES TO: KRS 205.520, 210.410

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

EFFECTIVE: November 1, 2016

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's coverage provisions and requirements regarding primary care services provided in a community mental health center to Medicaid recipients.

Section 1. Definitions. (1) "CLIA" means the Clinical Laboratory Improvement Amendments, 42 C.F.R. Part 493.

(2) "Community mental health center" or "CMHC" means a facility that meets the community mental health center

requirements established in 902 KAR 20:091.

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

(4) "Enrollee" means a recipient who is enrolled with a managed care organization. (5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not excluded as a non-covered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(7) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(8) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Occupational therapist" is defined by KRS 319A.010(3).

(10) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(11) "Physical therapist" is defined by KRS 327.010(2).

(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.

(13) "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(14) "Recipient" is defined by KRS 205.8451(9).

(15) "Speech-language pathologist" is defined by KRS 334A.020(3).

(16) "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.

Section 2. General Requirements. (1) For the department to reimburse for a primary care service provided by a community mental health center under this administrative regulation, the:

(a) CMHC shall be currently:

1. Enrolled in the Medicaid Program in accordance with 907 KAR 1:672;

2. Participating in the Medicaid Program in accordance with 907 KAR 1:671; and

3. Licensed in accordance with 902 KAR 20:091; and

(b) Service shall:

1. Be medically necessary;

2. Meet the coverage and related requirements established in this administrative regulation; and

3. Be provided by an individual who is currently licensed or certified in accordance with the respective Kentucky licensure or certification Kentucky Revised Statute or administrative regulation to provide the given service.

(2) In accordance with 907 KAR 17:015, Section 3(3), a CMHC that provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A CMHC shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 3. Covered Services and Injectable Drugs. (1)(a) Primary care services provided by a community mental health center and covered under this administrative regulation shall include:

1. Physician services;

2. Laboratory services if the CMHC is certified under CLIA to perform laboratory services;

3. Radiological services;

4. Occupational therapy;

5. Physical therapy; and

6. Speech-language pathology services.

(b) An injectable drug listed on the Physician Injectable Drug List that is administered in a CMHC shall be covered under this administrative regulation.

(2)(a) The coverage of:

1. Physician services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005;

2. Laboratory services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005; or

3. Radiological services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005.

(b) Occupational therapy provided by a community mental health center shall be covered under this administrative regulation if provided by an:

1. Occupational therapist; or

2. Occupational therapy assistant who renders services under supervision in accordance with 201 KAR 28:130.

(c) Physical therapy provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Physical therapist; or

2. Physical therapist assistant who renders services under supervision in accordance with 201 KAR 22:053.

(d) Speech-language pathology services provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Speech-language pathologist; or

2. Speech-language pathology clinical fellow who renders services under the supervision of a speech-language pathologist.

Section 4. Service Limitations. (1) The limitations established in 907 KAR 3:005 regarding:

(a) Physician services shall apply to physician services provided by a community mental health center;

(b) Laboratory services shall apply to laboratory services provided by a community mental health center; and

(c) Radiological services shall apply to radiological services provided by a community mental health center.

(2)(a) Except as established in paragraph (b) of this subsection, the limitations and coverage requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

(b) The provision in 907 KAR 8:040 establishing that the eligible providers of occupational therapy, physical therapy, or speech-language pathology services shall be any of the following shall not apply to a community mental health center:

1. An adult day health care program;

2. A multi-therapy agency;

3. A comprehensive outpatient rehabilitation facility;

4. A mobile health service;

5. A special health clinic; or

6. A rehabilitation agency.

Section 5. Prior Authorization Requirements. (1)(a) Except for the prior authorization requirements regarding occupational therapy, physical therapy, and speech-language pathology services and except as established in paragraph (b) of this subsection, the prior authorization requirements established in 907 KAR 3:005 for physician services, laboratory services, and radiological services shall apply to physician services, laboratory services, and radiological services provided by a CMHC under this administrative regulation.

(b) The prior authorization requirements established in 907 KAR 3:005 shall not apply to services provided to recipients who are enrolled with a managed care organization.

(2) The prior authorization requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and

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speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

Section 6. No Duplication of Service. (1) The department shall not reimburse for a primary care service provided to a recipient by more than one (1) provider of any program in which primary care services are covered during the same time period.

(2) For example, if a recipient is receiving a primary care service from a rural health clinic enrolled with the Medicaid Program, the department shall not reimburse for the same primary care service provided to the same recipient during the same time period by a community mental health center.

Section 7. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record on the date that the individual provided 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 five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) 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 8. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department 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 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A 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 11. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with any claim or health record.

Section 12. Federal Approval and Federal Financial Participation. 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 13. Appeal Rights. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 14. Incorporation by Reference. (1) The "Physician Injectable Drug List", April 1, 2016, is incorporated by reference.

(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, Monday through Friday, 8:00 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>.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov); phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program primary care services provided by community mental health centers (CMHCs). Primary care services covered under this administrative regulation include physician services, laboratory services, radiological services, occupational therapy (OT), physical therapy (PT), and speech-language pathology (SLP) services. Additionally, physician injectable drugs administered at a community mental health center shall be covered under this administrative regulation. Key requirements include that any physician service limit established in the Medicaid program physician services administrative regulation (907 KAR 3:005, Physician services) shall apply to physician services provided by a CMHC; that any laboratory service limit established in 907 KAR 3:005 shall apply to any laboratory service provided by a CMHC; that any radiological service limit established in 907 KAR 3:005 shall apply to any radiological service provided by a CMHC; that any OT limit, PT limit, or SLP service limit established in 907 KAR 8:040, Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities shall apply to OT, PT, or SLP services provided by a community mental health center; that the prior authorization requirements established in 907 KAR 3:005, Physician services shall apply to physician services, laboratory

services, or radiological services provided by a community mental health center; and that the prior authorization requirements regarding OT, PT, and SLP services established in 907 KAR 8:040 shall apply to OT, PT, or SLP services provided by a community mental health center.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program as authorized by KRS 205.6313.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Community mental health centers will be affected by this amendment as will Medicaid recipients who receive services from CMHCs.

(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. CMHCs that wish to provide primary care services to Medicaid recipients will have to do so according to the requirements such as having staff authorized to provide such services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). CMHCs that wish to provide primary care services to Medicaid recipients will benefit by being enabled to receive Medicaid reimbursement for such services.

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

(a) Initially: Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action. Additionally, DMS cannot predict how many individuals who currently receive primary care services from other Medicaid primary care providers (physician's practices, advanced practice registered nurse practices, primary care centers, federally-qualified health care centers, or rural health clinics) – each category of which is reimbursed uniquely - will choose to receive such care from a CMHC.

(b) On a continuing basis: The response to (a) above also applies here.

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

The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply 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 for Medicaid Services (DMS) will be affected by the amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), and KRS 205.6313.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not anticipate additional revenues for state or local government as a result of the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response to question (a) also applies here.

(c) How much will it cost to administer this program for the first year? Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 15:005E

This emergency administrative regulation is being promulgated to expand the Medicaid substance use treatment practitioner base to include licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and registered alcohol and drug peer support specialists. This action must be taken on an emergency basis in accordance with KRS 205.6311(2) to expand the Medicaid provider base to meet the increasing demand for substance use treatment services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. 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 Medicaid Services
Division of Community Alternatives
(Emergency Amendment)

907 KAR 15:005E. Definitions for 907 KAR Chapter 15.

RELATES TO: KRS 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

EFFECTIVE: November 1, 2016

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 15.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.

(2) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(3)[(2)] "Approved behavioral health services provider" means a practitioner who[provider that] is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i)[(h)] A licensed professional clinical counselor;
- (j)[(i)] A licensed marriage and family therapist;
- (k)[(j)] A licensed psychological associate working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

(l) A certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

(m)[(k)] A marriage and family therapy associate working under the supervision of a billing supervisor;

(n)[(l)] A certified social worker working under the supervision of a billing supervisor;

(o)[(m)] A licensed professional counselor associate working under the supervision of a billing supervisor;

(p)[(n)] A licensed professional art therapist;~~[or]~~

(q)[(o)] A licensed professional art therapist associate working under the supervision of a billing supervisor;

(r) A licensed clinical alcohol and drug counselor;

(s) A licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

(t) A certified alcohol and drug counselor working under the supervision of a billing supervisor.

(4)[(3)] "Behavioral health multi-specialty group[practitioner]" means a group of more than one (1) individually licensed behavioral health practitioners of varying practitioner types who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients[An approved behavioral health services provider; or

~~(b) A certified alcohol and drug counselor].~~

(5)[(4)] "Behavioral health practitioner under supervision" means an individual who is:

(a) 1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

2. A licensed professional counselor associate;

3. A licensed clinical alcohol and drug counselor associate;

4. A certified social worker;

5.[4.] A marriage and family therapy associate;

6.[5.] A licensed professional art therapist associate;

7.[6.] A licensed assistant behavior analyst;

8.[7.] A physician assistant;~~[or]~~

9. A certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor; or

10.[8.] A certified alcohol and drug counselor; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(6) "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(7)[(5)] "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to 902 KAR 20:430.

(8)[(6)] "Billing provider" means the individual who, group of individual providers that, or organization that:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(9)[(7)] "Billing supervisor" means an individual who is:

(a) 1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A licensed clinical alcohol and drug counselor;

5. A licensed psychologist;

6.[5.] A licensed clinical social worker;

7.[6.] A licensed professional clinical counselor;

8.[7.] A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning;

10.[8.] A licensed marriage and family therapist;

11.[9.] A licensed professional art therapist; or

12.[10.] A licensed behavior analyst; and

(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.

(8) "Certified alcohol and drug counselor" is defined by KRS 309.080(2)[means an individual who meets the requirements established in KRS 309.083].

(10) "Certified prevention specialist" means an individual who is currently certified as a certified prevention specialist by the Kentucky Certification Board for Prevention Professionals.

(11) "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.

(12) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

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

(14) "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 10:160.

(15)(14) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

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

(17)(14) "Electronic signature" is defined by KRS 369.102(8).

(18)(14) "Enrollee" means a recipient who is enrolled with a managed care organization.

(19)(14) "Face-to-face" means occurring:

(a) In person; or

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

(20)(14) "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(21)(14) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(22)(14) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(23) "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(24) "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(25)(14) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(26)(14) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(27) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(28) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

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

(30)(24) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(31)(22) "Licensed professional art therapist" is defined by KRS 309.130(2).

(32)(23) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(33)(24) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(34)(25) "Licensed professional counselor associate" is defined by KRS 335.500(4).

(35)(26) "Licensed psychological associate" means an individual who:

(a) 1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2. Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) Is a certified psychologist.

(36)(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.

(37)(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.

(38)(29) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by/in 42 C.F.R. 438.2.

(39)(30) "Marriage and family therapy associate" is defined by

KRS 335.300(3).

(40) "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

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

(42)(32) "Peer support specialist" means an individual who meets the peer specialist qualifications established in 908 KAR 2:220.

(33) "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.

(43)(34) "Physician" is defined by KRS 205.510(11).

(44)(35) "Physician assistant" is defined by KRS 311.840(3).

(45)(36) "Provider" is defined by KRS 205.8451(7).

(46)(37) "Provider abuse" is defined by KRS 205.8451(8).

(47) "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

(48)(38) "Provider group" means a group of more than one (1) individually-licensed practitioners who form a business entity to:

(a) Render health services; and

(b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(39) "Recipient" is defined by KRS 205.8451(9).

(49)(40) "Recipient abuse" is defined by KRS 205.8451(10).

(50) "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(51) "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

(52)(44) "Registered nurse" is defined by KRS 314.011(5).

(53)(42) "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

(54)(43) "Section 504 plan" means a plan developed:

(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and

(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

(55)(44) "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions

for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units. Medicaid programs are federally-mandated to cover behavioral health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

(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 adds the following definitions: "certified psychologist", "certified psychologist with autonomous functioning", "chemical dependency treatment center", "Level I psychiatric residential treatment facility", "Level II psychiatric residential treatment facility", "licensed assistant behavior analyst", "licensed behavior analyst, licensed clinical alcohol and drug counselor", "licensed clinical and alcohol and drug counselor associate", "psychiatric hospital", and "recipient's representative". The amendment also adds "certified psychologist with autonomous functioning", "licensed professional clinical counselor", "certified psychologist", "licensed clinical alcohol and drug counselor", "licensed clinical alcohol and drug counselor associate" and "certified alcohol and drug counselor" to the definition of "an approved behavioral health service provider." Further, the amendment adds "certified psychologist with autonomous functioning" to the list of "billing supervisors". Finally, the amendment revises the definitions of "licensed psychological practitioner" and "peer support specialist".

(b) The necessity of the amendment to this administrative regulation: Inserting the new definitions is necessary to update terminology used in recently promulgated administrative regulations subsequent to the adoption of 907 KAR 15:005. The amendments are also necessary to comport with legislation that created two new licensed practitioners - "licensed clinical alcohol drug counselors" and "licensed clinical alcohol drug counselor associates".

(c) How the amendment conforms to the content of the authorizing statutes: The amendments will conform to the content of the authorizing statutes by defining terms utilized in Medicaid program behavioral health administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by defining terms utilized in behavioral health administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following Medicaid-enrolled providers will be affected by this administrative regulation: individual Medicaid- behavioral health providers, behavioral health provider groups and multi-specialty groups, behavioral health services organizations, chemical dependency treatment centers, and residential crisis stabilization units. There are currently over 2,200 such individuals or entities enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by this administrative regulation as it only contains definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to terms being defined.

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

(a) Initially: No cost is necessary to initially implement this administrative regulation.

(b) On a continuing basis: No continuing cost is necessary to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Medicaid independent behavioral health services (including substance use disorder services) and reimbursement.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

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

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

(c) How much will it cost to administer this program for the first year? No cost is necessary to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation:

STATEMENT OF EMERGENCY
907 KAR 15:010E

This emergency administrative regulation is being promulgated to expand the Medicaid substance use treatment practitioner base to include licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and registered alcohol and drug peer support specialists. This regulation must be placed into effect immediately to protect human health by utilizing the Licensed Clinical Alcohol and Drug Counselor in the heroin overdose epidemic facing Kentucky. These licensed professionals are specifically trained and have significant experience treating the substance use population. In addition, Kentucky risks the loss of federal funds for covering these licensed practitioners as Kentucky will have federal approval and authority to reimburse but will not have the underlying state regulation in place to allow reimbursement. This action must be taken on an emergency basis in accordance with KRS 205.6311(2) to expand the Medicaid provider base to meet the increasing demand for substance use treatment services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. 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 Medicaid Services
Division of Community Alternatives
(Emergency Amendment)

907 KAR 15:010E. Coverage provisions and requirements regarding behavioral health services provided by individual behavioral health [independent] providers, behavioral health provider groups, and behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program, [or] practitioners working for or under the supervision of the individual behavioral health [independent] providers, individual behavioral health professionals, and practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall [be]:

- (a) Be medically necessary;
- (b) Meet the coverage requirements established in Section 3 of this administrative regulation;
- (c) Be provided to a recipient by:
 - 1. An individual behavioral health provider who:
 - a. Is enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;
 - b. Except as established in Section 2(1) of this administrative regulation, currently participates in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and
 - c. Is:
 - (i) A physician;
 - (ii) A psychiatrist;

- (iii) An advanced practice registered nurse;
 - (iv) A physician assistant;
 - (v) A licensed psychologist;
 - (vi) A licensed psychological practitioner;
 - (vii) A certified psychologist with autonomous functioning;
 - (viii) A licensed clinical social worker;
 - (ix) A licensed professional clinical counselor;
 - (x) A licensed marriage and family therapist;
 - (xi) A licensed professional art therapist; or
 - (xii) A licensed clinical alcohol and drug counselor;
2. Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is working for:
- a. A behavioral health provider group that is:
 - (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 - (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or
 - b. A behavioral health multi-specialty group that is:
 - (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 - (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
3. A behavioral health practitioner under supervision working for:
- a. An individual behavioral health professional listed in subparagraph 1.c. of this paragraph who is:
 - (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 - (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
 - b. A behavioral health provider group that is:
 - (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 - (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or
 - c. A behavioral health multi-specialty group that is:
 - (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 - (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
4. A certified psychologist working under the supervision of a board-approved licensed psychologist who is:
- a.(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 - (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
 - b. Working for a behavioral health provider group that is:
 - (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 - (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or
 - c. Working for a behavioral health multi-specialty group that is:
 - (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 - (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or
5. An adult peer support specialist, family peer support specialist, youth peer support specialist, or registered alcohol and drug peer support specialist working for:
- a. Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is:
 - (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 - (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid

Program in accordance with 907 KAR 1:671:

b. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671[(b) Provided:

1. To a recipient; and

2. By a:

a. Provider who meets the provider participation requirements established in Section 2 of this administrative regulation; or

b. Practitioner working under the supervision of a provider who meets the provider participation requirements established in Section 2 of this administrative regulation; and

(d) Be[(c)] billed to the department by the:

1. Individual[Billing] provider who provided the service or under whose supervision the service was rendered[provided by an authorized practitioner] in accordance with Section 3 of this administrative regulation;

2. Behavioral health provider group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation; or

3. Behavioral health multi-specialty group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation.

(2)(a) Face-to-face[Direct] contact between a provider or practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present[a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care].

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(4) A service shall be:

(a) Stated in a recipient's[treatment] plan of care; and

(b) Provided in accordance with a recipient's[treatment] plan of care[; and

(c) Provided on a regularly scheduled basis except for a screening, assessment, or crisis intervention].

(5) A provider shall establish a plan of care for each recipient receiving services from the provider.

Section 2. Provider Participation. (1)[To be eligible to provide services under this administrative regulation, a provider shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

(2) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2)[(3)] A provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2) The following services shall be covered under this administrative regulation in accordance with the[corresponding following] requirements established in this section of this administrative regulation:

(a) A screening provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning;

10. A licensed clinical and alcohol drug counselor; or

11. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist; or

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];

(b) An assessment provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];

10. A licensed[professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;
 14. A licensed professional art therapist;
 15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;
 16. A licensed behavior analyst;
 11.[or 17.] A licensed clinical alcohol and drug counselor; or
 12. A behavioral health practitioner under[licensed assistant behavior analyst working under the] supervision[of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service];
 (c) Psychological testing provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;[or]
 3. A licensed psychological associate working under the supervision of a board-approved licensed psychologist who is a[if the licensed psychologist is the] billing supervisor[provider for the service];
 4. A certified psychologist with autonomous functioning; or
 5. A certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;
 (d)[Crisis intervention provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A licensed psychological practitioner;
 9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;
 10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;
 14. A licensed professional art therapist; or
 15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;
 (e)] Service planning provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A licensed psychological practitioner;
 9. A certified psychologist with autonomous functioning;
 10. A licensed[psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];
 10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;
 14. A licensed professional art therapist;
 11.[15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;
 16.] A licensed behavior analyst; or
 12. A behavioral health practitioner[17. A licensed assistant behavior analyst working] under[the] supervision except for a:
 a. Certified alcohol and drug counselor; or
 b. Licensed clinical alcohol and drug counselor associate[of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service];
 (e)[(f)] Individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A licensed psychological practitioner;
 9. A certified psychologist with autonomous functioning[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];
 10. A licensed[professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;
 14. A licensed professional art therapist;
 11.[15.] A licensed[professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];
 16. A licensed behavior analyst;
 12. A licensed clinical alcohol and drug counselor; or
 13. A behavioral health practitioner[17. A licensed assistant behavior analyst working] under[the] supervision[of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service];
 (f)[(g)] Family outpatient therapy provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A licensed psychological practitioner;
 9. A certified psychologist with autonomous functioning[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];
 10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist; or

11.[or—15.] A behavioral health practitioner[licensed professional art therapist associate working] under[the] supervision except for a licensed assistant behavior analyst[of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];

(g)[(h)] Group outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;

16. A licensed behavior analyst; or

17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service;

(i) Collateral outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;

16. A licensed behavior analyst; or

17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service;

(j) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];

10. A licensed professional[counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist;

11. A licensed clinical alcohol and drug counselor; or

12. A behavioral health practitioner[or 15. A licensed professional art therapist associate working] under[the] supervision except for[of] a licensed assistant behavior analyst[licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];

(h)[(k)] Day treatment provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];

10. A licensed professional[counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist;

11. A licensed behavior analyst;

12. A behavioral health practitioner[or
15. A licensed professional art therapist associate working]
 under[the] supervision[of a licensed professional art therapist if the
 licensed professional art therapist is the billing provider for the
 service];

13. An adult peer support specialist, family peer support
specialist, or youth peer support specialist working under the
supervision of an approved behavioral health services provider; or

14. A registered alcohol and drug peer support specialist
working under the supervision of an approved behavioral health
services provider; or

(j)[(f)] Comprehensive community support services provided
 by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;

9. A certified psychologist with autonomous
functioning[licensed psychological associate working under the
supervision of a licensed psychologist if the licensed psychologist
is the billing provider for the service];

10. A licensed professional[counselor associate working under the
supervision of a licensed professional clinical counselor if the
licensed professional clinical counselor is the billing provider for the
service];

11. A certified social worker working under the supervision of a
licensed clinical social worker if the licensed clinical social worker
is the billing provider for the service];

12. A marriage and family therapy associate working under the
supervision of a licensed marriage and family therapist if the
licensed marriage and family therapist is the billing provider for the
service];

13. A physician assistant working under the supervision of a
physician if the physician is the billing provider for the service];

14. A licensed professional art therapist;

11.[15. A licensed professional art therapist associate working
under the supervision of a licensed professional art therapist if the
licensed professional art therapist is the billing provider for the
service];

16.] A licensed behavior analyst;

12.[or

17.] A behavioral health practitioner[licensed assistant
behavior analyst working] under[the] supervision except for[of] a;
a. Certified alcohol and drug counselor[licensed behavior
analyst if the licensed behavior analyst is the billing provider for the
service]; or

b. Licensed clinical alcohol and drug counselor associate; or

13. A community support associate;

(j)[(m)] Peer support, except as established in subsection (3)(a)
of this section, provided by:

1. An adult[A] peer support specialist working under the
supervision of an approved behavioral health service provider;[or]

2. A youth peer support specialist working under the
supervision of an approved behavioral health service provider;

3. A family peer support specialist working under the
supervision of an approved behavioral health services provider; or

4. A registered alcohol and drug peer support specialist
working under the supervision of an approved behavioral health
services provider;

(k)[(n)] Parent or family peer support provided by a family peer
support specialist working under the supervision of an approved
behavioral health service provider;

(o)] Intensive outpatient program services, except as
established in subsection (3)(b) of this section, provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9.[A licensed psychological associate working under the
supervision of a licensed psychologist if the licensed psychologist
is the billing provider for the service];

10. A licensed professional counselor associate working under the
supervision of a licensed professional clinical counselor if the
licensed professional clinical counselor is the billing provider for the
service];

11. A certified social worker working under the supervision of a
licensed clinical social worker if the licensed clinical social worker
is the billing provider for the service];

12. A marriage and family therapy associate working under the
supervision of a licensed marriage and family therapist if the
licensed marriage and family therapist is the billing provider for the
service];

13.] A behavioral health practitioner[physician assistant
working] under[the] supervision[of a physician if the physician is
the billing provider for the service]; or

10.[14.] A licensed professional art therapist;[or

15. A licensed professional art therapist associate;] or

(j)[(p)] Therapeutic rehabilitation program services provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;

9. A certified psychologist with autonomous
functioning[licensed psychological associate working under the
supervision of a licensed psychologist if the licensed psychologist
is the billing provider for the service];

10. A licensed professional[counselor associate working under the
supervision of a licensed professional clinical counselor if the
licensed professional clinical counselor is the billing provider for the
service];

11. A certified social worker working under the supervision of a
licensed clinical social worker if the licensed clinical social worker
is the billing provider for the service];

12. A marriage and family therapy associate working under the
supervision of a licensed marriage and family therapist if the
licensed marriage and family therapist is the billing provider for the
service];

13. A physician assistant working under the supervision of a
physician if the physician is the billing provider for the service

14. A licensed professional art therapist;

11.[or

15.] A behavioral health practitioner[licensed professional art
therapist associate working] under[the] supervision except for[of] a;

a. Certified alcohol and drug counselor;

b. Licensed clinical alcohol and drug counselor associate; or

c. Licensed assistant behavior analyst; or

12. An adult peer support specialist, family peer support
specialist, or youth peer support specialist working under the
supervision of an approved behavioral health services
provider[licensed professional art therapist if the licensed
professional art therapist is the billing provider for the service].

(3)(a) Peer support shall only be covered if provided by a
behavioral health:

1. Provider group; or

2. Multi-specialty group.

(b) Intensive outpatient program services shall only be covered
if provided by a behavioral health:

1. Provider group; or

2. Multi-specialty group.

(4)(a) A screening shall:

1. Determine[Be the determination of] the likelihood that an
individual has a mental health disorder, substance use disorder, or
co-occurring disorders;

2. Not establish the presence or specific type of disorder; and

3. Establish the need for an in-depth assessment.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

- a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
- b. Determine the individual's readiness for change;
- c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
- d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall:

1. Include:

a.[1.] A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b.[2.] Interpretation and a written report of testing results; and

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

- a. The recipient; or
- b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

- a. On-site at the provider's office;
- b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient;

4. May include:

a. Further service prevention planning including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

and

5. Shall be followed by a referral to noncrisis services if applicable.

(e) 1. Service planning shall[involve]:

a. Involve assisting a recipient in creating an individualized plan for services needed for maximum reduction of a mental health disorder[an intellectual disability];[and]

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the recipient;[and]

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being[wellbeing] of the recipient[individual]; and[or]

b. Recipient's recovery from a substance related disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified[~~treatment~~] plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

(g) 1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the recipient[individual]; and[or]

(ii) Recipient's recovery from a substance use disorder, mental health disorder, or co-occurring related disorders; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per individual unless additional time is medically necessary.

(h) 1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and well-being[wellbeing] of the recipient[individual]; and[or]

(ii) Recipient's recovery from a substance related disorder, mental health disorder, or co-occurring mental health and substance use disorders;

c.[b.] Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified[~~treatment~~] plan of care;

d.[e.] Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f.[d.] Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g.[e.] Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h.[f.] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(i) 1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's[~~treatment~~] plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age[; and

c. Not exceed three (3) hours per day per individual unless

additional time is medically necessary].

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(j) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

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

2. Consist of:

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

b. Engaging a recipient[,] who demonstrates risky substance use behavior[,] in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to:

(i) Therapy; or

(ii) Other] additional mental health disorder, substance use disorder, or co-occurring disorders services[to address substance use] if the recipient is determined to need other additional services to address the recipient's substance use.

(k) 1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. A mental health disorder,[An emotional disability or neurobiological or] substance use disorder, or co-occurring mental health and substance use disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment[services] shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services[(substance use disorder, mental health, or co-occurring mental health and substance use disorder)];

b. Have unified policies and procedures that:

(i) Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and

(ii) Have been approved by the recipient's local education authority and the day treatment provider;

e.] Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills[skill] training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c.[d.] Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individual educational plan if the recipient has an individual educational plan;

(iv) Under the supervision of an approved behavioral health services provider; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a provider shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(l) 1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training[, cueing, or supervision] as identified in the recipient's[treatment] plan of care; and

c. Consist of using a variety of psychiatric rehabilitation techniques to[include]:

(i) Improve[Reminding a recipient to take medications and monitoring symptoms and side effects of medications;

(ii) Teaching parenting skills;

(iii) Teaching community resource access and utilization;

(iv) Teaching] emotional regulation skills;

(ii) Improve[(v) Teaching] crisis coping skills;

(iii) Develop and enhance[(vi) Teaching how to shop;

(vii) Teaching about transportation;

(viii) Teaching financial management;

(ix) Developing and enhancing] interpersonal skills;

(iv) Improve[or

(x) Improving] daily living skills; and

(v) Improve self-monitoring of symptoms and side effects.

2. To provide comprehensive community support services, a provider shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services in accordance with subsection (2)(i)[(2)(m)] of this section and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

(m) 1. Peer support services shall:

a. Be[social and] emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220[is employed by a provider group] and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders[disorder] to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders[disorder] in order to bring about a desired social or personal change;

(ii) A parent who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(iii) A family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change; or

(iv) A family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. [Be provided by a self-identified consumer who has been trained and certified in accordance with 908 KAR 2:220 or 908 KAR 2:240;

e.] Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;[and]

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's[treatment] plan of care; and

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services a provider shall:

a. Have demonstrated:

- (i) The capacity to provide~~[the core elements of]~~ peer support services for the behavioral health population being served including the age range of the population being served; and
- (ii) Experience in serving individuals with behavioral health disorders;

b. Employ:

- (i) Adult peer support specialists, family peer support specialists, or youth peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; or
- (ii) Registered alcohol and drug peer support specialists; and

c. Use an approved behavioral health services provider to supervise adult peer support specialists, family peer support specialists, or youth peer support specialists.

(n) 1. ~~[Parent or family peer support services shall:~~

- a. ~~Be emotional support that is provided by a parent or family member, who is employed by a provider group, of a child who has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder to a parent or family member with a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;~~
- b. ~~Be an evidence-based practice;~~
- c. ~~Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;~~
- d. ~~Be provided by a self-identified parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services who has been trained and certified in accordance with 908 KAR 2:230;~~
- e. ~~Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and~~
- f. ~~Be identified in each recipient's treatment plan.~~

2. ~~To provide parent or family peer support services a provider shall:~~

- a. ~~Have demonstrated the capacity to provide the core elements of parent or family peer support services for the behavioral health population being served including the age range of the population being served;~~
- b. ~~Employ family peer support specialists who are qualified to provide family peer support services in accordance with 908 KAR 2:230; and~~
- c. ~~Use an approved behavioral health services provider to supervise family peer support specialists.~~

(o) 1. ~~Intensive outpatient program services shall:~~

- a. ~~Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health or substance use disorder;~~
- b. ~~Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;~~
- c. ~~Be provided at least three (3) hours per day at least three (3) days per week; and~~
- d. ~~Include:~~
 - (i) ~~Individual outpatient therapy;~~
 - (ii) ~~Group outpatient therapy;~~
 - (iii) ~~Family outpatient therapy unless contraindicated;~~
 - (iv) ~~Crisis intervention; or~~
 - (v) ~~Psycho-education.~~

2. ~~During psycho-education the recipient or recipient's family member shall be:~~

- a. ~~Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and~~
- b. ~~Taught how to cope with the recipient's diagnosis or condition in a successful manner.~~

3. ~~An intensive outpatient program services treatment plan shall:~~

- a. ~~Be individualized; and~~

- b. ~~Focus on stabilization and transition to a lesser level of care.~~

4. ~~To provide intensive outpatient program services, a provider shall:~~

- a. ~~Be employed by a provider group; and~~
- b. ~~Have:~~
 - (i) ~~Access to a board-certified or board-eligible psychiatrist for consultation;~~
 - (ii) ~~Access to a psychiatrist, other physician, or advanced practice registered nurse for medication management;~~
 - (iii) ~~Adequate staffing to ensure a minimum recipient-to-staff ratio of fifteen (15) recipients to one (1) staff person;~~
 - (iv) ~~The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;~~
 - (v) ~~The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;~~
 - (vi) ~~The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;~~
 - (vii) ~~Demonstrated experience in serving individuals with behavioral health disorders;~~
 - (viii) ~~The administrative capacity to ensure quality of services;~~
 - (ix) ~~A financial management system that provides documentation of services and costs; and~~
 - (x) ~~The capacity to document and maintain individual case records.~~

5. ~~Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of ten (10) to one (1).~~

(o) 1. [(p) 1.-A] Therapeutic rehabilitation program services shall be:

- a. A rehabilitative service for an:
 - (i) Adult with a ~~severe~~[serious] mental illness; or
 - (ii) Individual under the age of twenty-one (21) years who has a ~~severe~~[serious] emotional disability; and
- b. Designed to maximize the reduction of a ~~mental health disorder~~[an intellectual disability] and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the[person-centered service] plan of care.

3. A therapeutic rehabilitation program shall:

- a. Be delivered using a variety of psychiatric rehabilitation techniques;
- b. Focus on:
 - (i) Improving daily living skills;
 - (ii) Self-monitoring of symptoms and side effects;
 - (iii) Emotional regulation skills;
 - (iv) Crisis coping ~~skills~~[skill]; and
 - (v) Interpersonal skills; and
- c. Be delivered individually or in a group.

~~[(4)(a) The following requirements shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health disorder and substance use disorder:~~

- ~~1. The licensing requirements established in 908 KAR 1:370;~~
- ~~2. The physical plant requirements established in 908 KAR 1:370;~~
- ~~3. The organization and administration requirements established in 908 KAR 1:370;~~
- ~~4. The personnel policy requirements established in 908 KAR 1:370;~~
- ~~5. The quality assurance requirements established in 908 KAR 1:370;~~
- ~~6. The clinical staff requirements established in 908 KAR 1:370;~~
- ~~7. The program operational requirements established in 908 KAR 1:370; and~~
- ~~8. The outpatient program requirements established in 908 KAR 1:370.~~

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.]

(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinic impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

~~[(8)(a) The term "billing provider" used in this administrative regulation shall include:~~

- ~~1. The individual provider that is referenced; or~~
- ~~2. A provider group that includes the individual provider that is referenced.~~

~~(b) As an example of paragraph (a) of this subsection, a licensed psychologist who is a billing provider shall include:~~

- ~~1. The licensed psychologist as an individual provider; or~~
- ~~2. A provider group of licensed psychologists that includes the licensed psychologist.~~

~~(c) The services established in this administrative regulation shall be provided by a provider enrolled in the Medicaid Program as:~~

- ~~1. An individual provider; or~~
- ~~2. A provider group.]~~

Section 4. Additional Limits and Noncovered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:
 - a. A nursing facility; or
 - b. An intermediate care facility for individuals with an intellectual disability;
2. An inmate of a federal, local, or state:
 - a. Jail;
 - b. Detention center; or
 - c. Prison;
3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the ~~independent~~ provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

- (f) Travel time;
- (g) A field trip;
- (h) A recreational activity;
- (i) A social activity; or
- (j) A physical exercise activity group.

(2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except regarding collateral outpatient therapy as specified in Section 3(4)(i)[3(3)(k)] of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(3)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Crisis intervention;
2. A screening; or
3. An assessment.

(4) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(5) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

- (a) Violate the clinical supervision rules or policies of the

respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an individual[independent] behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization[local health department].

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) An individual[A] provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain a current health record for each recipient.

(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of[on] the date that the individual provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance information;
- f. If applicable, the referral source's name[source] and address[of referral source];
- g. Primary care physician's name[physician] and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis; and
- i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name[provider];

k. The name of the informant and any other information deemed necessary by the ~~independent~~ provider to comply with the requirements of:

- (i) This administrative regulation;
 - (ii) The provider's licensure board, if applicable;
 - (iii) State law; or
 - (iv) Federal law;
2. Documentation of the:

- a. Screening;
- b. Assessment;
- c. Disposition if a disposition was performed; and
- d. Six (6) month review of a recipient's[treatment] plan of care each time a six (6) month review occurs;[and]

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;
2. Furnished upon request to the:
 - a. Cabinet for Health and Family Services[upon request]; or
 - b. For an enrollee, managed care organization in which the recipient is enrolled or has been[upon request if the recipient is] enrolled in the past[with a managed care organization];
3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or
b. Personnel of the managed care organization in which the recipient is enrolled if applicable~~[the recipient is enrolled with a managed care organization]~~;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health practitioner's~~[provider's]~~ notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Behavioral health practitioner's~~[Therapist's]~~ intervention;

c. Changes in the~~[treatment]~~ plan of care if changes are made; and

d. Need for continued treatment if deemed necessary~~[continued treatment is needed]~~.

(b)1. Any edit to notes shall:

a. Clearly display the changes;

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days of each service visit.

2. If services are provided by a behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervision professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the behavioral health practitioner who performed the screening~~[provider]~~ shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7)(a) A recipient's~~[treatment]~~ plan of care shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's~~[treatment]~~ plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative~~[provider]~~.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering behavioral health practitioner~~[provider]~~ and include the practitioner's professional title (for example, licensed clinical social worker)~~[of the provider]~~.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not coverable under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events

during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's~~[treatment]~~ plan of care;

2. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, within ten (10) business days of the transfer or referral, transfer~~[if the recipient gives the provider written consent to do so, forward a copy or summary of]~~ the recipient's health record in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290ee-3; and

b. 42 C.F.R. Part 2~~[to the health care facility or other provider who is receiving the recipient within ten (10) business days of the transfer or referral]~~.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring provider shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290ee-3; and

b. 42 C.F.R. Part 2.

(12)(a) If an individual behavioral health~~[a]~~ provider's, a behavioral health provider group's, or a behavioral health multi-specialty group's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, or a licensure suspension~~[, or death of the provider]~~, the health records of the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall:

1. Remain the property of the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b)1. If an individual behavioral health~~[A]~~ provider dies, the health records maintained by the individual behavioral health provider shall remain the property of the individual behavioral health provider.

2. An individual behavioral health provider shall have a written plan addressing how to maintain health records in the event of the provider's death in a manner that complies with the retention requirements established in subsection (13) of this section.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, an individual behavioral health~~[a]~~ provider, a behavioral health provider group, or a behavioral health specialty group shall maintain a health record regarding a recipient for at least six (6)~~[five (5)]~~ years from the date of the service or until any audit dispute or issue is resolved beyond six (6)~~[five (5)]~~ years.

(b) After a recipient's death or discharge from services, an individual behavioral health provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient

reaches the age of majority under state law.

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

(14)(a) An individual behavioral health[A] provider, a behavioral health provider group, or a behavioral health multi-specialty group shall comply with 45 C.F.R. Chapter 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:

- a. The department;[or]
- b. Federal government; or

c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, an individual behavioral health[a] provider, a behavioral health provider group, or a behavioral health multi-specialty group shall provide to an authorized representative of the department,[or] federal government, or managed care organization if applicable, information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service;
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or the managed care organization, if applicable.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) An individual behavioral health[A] provider, a behavioral provider group, or a behavioral health multi-specialty group shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If an individual behavioral health[a] provider, a behavioral health provider group, or a behavioral health multi-specialty group receives any duplicate payment or overpayment from the department, regardless of reason, the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group accepts the payment:

1. The payment shall be considered payment in full;
2. A[No] bill for the same service shall not be given to the recipient; and
3. [No] Payment from the recipient for the same service shall not be accepted by the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group.

(b)1. An individual behavioral health[A] provider, behavioral health provider group, or behavioral health multi-specialty group may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.
2. If a recipient makes payment for a service in accordance

with subparagraph 1 of this paragraph, the:

a. Individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group regarding the service.

(4)(a) An individual behavioral health[A] provider, behavioral health provider group, or behavioral health multi-specialty group shall attest[attests] by the individual behavioral health provider's signature or signature of an individual on behalf of a behavioral health provider group or behavioral health multi-specialty group that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee;
5. United States General Accounting Office or its designee;

(c) If an individual behavioral health[a] provider, behavioral health provider group, or behavioral health multi-specialty group receives a request from the department to provide a claim,[or] related information,[or] related documentation, or record for auditing purposes, the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by an individual behavioral health[a] provider, behavioral health provider group, or behavioral health multi-specialty group shall result in the suspension or termination of the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group from Medicaid Program participation.

(5)(a) If an individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the individual behavioral health provider's, behavioral health provider group's, or behavioral health multi-specialty group's Medicaid provider number or any other entity or individual including a non-Medicaid provider, the recipient shall not be charged or billed for the service.

(b) The department shall terminate from Medicaid Program participation an individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group that:

1. Charges or bills a recipient for a Medicaid-covered service; or
2. Participates in an arrangement in which an entity or individual bills a recipient for a Medicaid-covered service rendered by the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group.

Section 8. Third Party Liability. An individual behavioral health[A] provider, behavioral health provider group, or behavioral health multi-specialty group shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An individual behavioral health[A] provider, behavioral health provider group, or behavioral health multi-specialty group 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 responsibility in allowing the use of the electronic signature; and

- (c) Provide the department, immediately upon request, with:

1. A copy of the individual behavioral health provider's, behavioral health provider group's, or behavioral health multi-specialty group's electronic signature policy;

2. The signed consent form; and

3. The original filed signature[~~immediately upon request~~].

Section 10. Auditing Authority. The department shall have the authority to audit any:

- (1) Claim;

- (2) Medical record; or

- (3) Documentation associated with any claim or medical record.

Section 11. 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 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 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: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

- (1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

- (b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the requirements for Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups. These providers are a critical component of Medicaid Program substance use disorder and mental health disorder treatment.

- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use

disorder treatment from individual behavioral health professional practices.

(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 authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

(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 expands the Medicaid behavioral health practitioner base to include licensed clinical alcohol and drug counselors (LCADCs), licensed clinical and alcohol drug counselor associates (LCADCAs) working under supervision), and certified alcohol and drug counselors (CADCs) working under supervision; adds registered alcohol and drug peer support specialists to individuals authorized to provider services; clarifies that the administrative regulation applies to individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups; contains miscellaneous other clarifications; and consolidates requirements where possible.

(b) The necessity of the amendment to this administrative regulation: Adding LCADCs and LCADCAs to the authorized practitioners is necessary to comply with a charge in KRS 205.6311 to "expand the behavioral health network to allow providers to provide services within their licensure category; also to respond to 2015 legislation that created these new practitioner types; similarly, adding registered alcohol and drug peer support specialists is necessary in response to 2015 legislation (codified into KRS 309.080-089); consolidating requirements is necessary to shorten the administrative regulation by reducing duplicative language; miscellaneous clarifications are necessary for clarity and to synchronize requirements with related behavioral health administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) that were created by 2015 legislation (codified into KRS 309.080-089) in order to enhance Medicaid recipient access to behavioral health services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments assists in the effective administration of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) that were created by 2015 legislation (codified into KRS 309.080-089) in order to enhance Medicaid recipient access to behavioral health services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed professional art therapists, licensed behavior analysts, and licensed clinical alcohol and drug counselors (who wish to enroll in the Medicaid Program as independent providers/group practices) will be affected by this administrative regulation. Behavioral health providers groups and behavioral health multi-specialty groups will also be affected by this administrative regulation. Licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed professional art therapy associates, licensed assistant behavior analysts, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, and registered alcohol and drug peer support specialists who wish to provide behavioral health services while working for one (1) of the aforementioned independent providers or groups will also be affected by this administrative regulation. Medicaid recipients who qualify for behavioral health services will be affected by this administrative regulation. There are approximately 2,170 individual behavioral health providers, behavioral health provider groups, and

behavioral health multi-specialty groups enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment expands the authorized behavioral health professional base to include licensed clinical and alcohol drug counselors (LCADCs), licensed clinical alcohol and drug counselor associates (LCADCAs) working under supervision, certified alcohol and drug counselors (CADCs), and registered alcohol and drug peer support specialists working under supervision. LCADCs who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization. LCADCAs, CADCs, and registered alcohol and drug peer support specialists who wish to provide services will need to find an individual provider under whose supervision they would work.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Individual behavioral health providers, behavioral health provider groups, or behavioral health multi-specialty groups who wish to provide behavioral health services to Medicaid recipients per this administrative regulation could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the amendment LCADCs will be able to enroll in the Medicaid Program and be reimbursed for services provided to Medicaid recipients. LCADCAs, CADCs, and registered alcohol and drug peer support specialists who work under supervision will be able to provide services to Medicaid recipients (but not be directly reimbursed by the Medicaid program as they are not authorized by Kentucky law to practice independently.)

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

(a) Initially: DMS does not anticipate a substantial increase in costs as a result of adding licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and registered alcohol and drug peer support specialists to the array of Medicaid-recognized behavioral health professionals.

(b) On a continuing basis: The response to question (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C.

1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. . . to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to 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.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(30)(A).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate how many individual LCADCs will enroll

in the Medicaid Program nor the utilization of these services versus the realm of currently authorized providers (other individual behavioral health providers, provider groups, community mental health centers, federally-qualified health centers, rural health clinics, primary care centers, or physician offices.)

(d) How much will it cost to administer this program for subsequent years? The response to question (a) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 907 KAR 15:015E

This emergency administrative regulation is being promulgated to expand the Medicaid substance use treatment practitioner base to include licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and registered alcohol and drug peer support specialists. This regulation must be placed into effect immediately to protect human health by utilizing the Licensed Clinical Alcohol and Drug Counselor in the heroin overdose epidemic facing Kentucky. These licensed professionals are specifically trained and have significant experience treating the substance use population. In addition, Kentucky risks the loss of federal funds for covering these licensed practitioners as Kentucky will have federal approval and authority to reimburse but will not have the underlying state regulation in place to allow reimbursement. This action must be taken on an emergency basis in accordance with KRS 205.6311(2) to expand the Medicaid provider base to meet the increasing demand for substance use treatment services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. 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 Medicaid Services Division of Community Alternatives (Emergency Amendment)

907 KAR 15:015E. Reimbursement provisions and requirements for behavioral health services provided by individual behavioral health independent providers, behavioral health provider groups, or behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), 42 U.S.C. 1396a(a)(30)(A)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

EFFECTIVE: November 1, 2016

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program as Medicaid providers, behavioral health provider groups, behavioral health multi-specialty groups, and by, or behavioral health service practitioners working for or under supervision for individual of the independent behavioral health service providers, behavioral health provider groups, or behavioral health multi-

specialty groups, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) ~~Medically necessary;~~

(2) ~~Provided:~~

(a) ~~To a recipient; and~~

(b) ~~By a:~~

1. ~~Provider who meets the provider participation requirements established in 907 KAR 15:010; or~~

2. ~~Practitioner working under the supervision of a provider who meets the provider participation requirements established in 907 KAR 15:010;~~

(3) ~~A service covered in accordance with 907 KAR 15:010; and~~

(2) ~~(4) Billed to the department by an individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group recognized as a Medicaid Program provider the billing provider who provided the service or under whose supervision the service was provided by an authorized practitioner in accordance with 907 KAR 15:010.~~

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length unless a different unit of service exists for the service in the corresponding:

1. Current procedural terminology code; or

2. Healthcare common procedure coding system code; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code if an amount is identified in the current procedural terminology code; or

2. Healthcare common procedure coding system code if an amount is identified in the healthcare common procedure coding system code.

(2) The rate per unit for a screening shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6. ~~or 5.~~ Licensed professional art therapist; or

7. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor ~~licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service~~;

2. Licensed professional counselor associate working under the supervision of a billing supervisor ~~licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service~~;

3. Licensed psychological associate working under the supervision of a billing supervisor ~~licensed psychologist if the licensed psychologist is the billing provider for the service~~;

4. Certified social worker working under the supervision of a billing supervisor ~~licensed clinical social worker if the licensed clinical social worker is the billing provider for the service~~;

5. Physician assistant working for a physician if the physician is the billing provider for the service; ~~or~~

6. Licensed professional art therapist associate working under the supervision of a billing supervisor;

7. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

8. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

9. Certified alcohol and drug counselor working under the supervision of a billing supervisor[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~].

(3) The rate per unit for an assessment shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
- 6.~~[5.]~~ Licensed professional art therapist;
- 7.~~[or 6.]~~ Licensed behavior analyst; or
8. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor[~~licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service~~];

2. Licensed professional counselor associate working under the supervision of a billing supervisor[~~licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service~~];

3. Licensed psychological associate working under the supervision of a billing supervisor[~~licensed psychologist if the licensed psychologist is the billing provider for the service~~];

4. Certified social worker working under the supervision of a billing supervisor[~~licensed clinical social worker if the licensed clinical social worker is the billing provider for the service~~];

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~];~~[or]~~

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor;

8. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

9. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

10. Certified alcohol and drug counselor working under the supervision of a billing supervisor[~~licensed behavior analyst if the licensed behavior analyst is the billing provider for the service~~].

(4) The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;

(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed psychological practitioner; or
2. Certified psychologist with autonomous functioning; or

(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service; or

2. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor if the board-approved licensed psychologist is the billing provider for the service.

(5)~~[The rate per unit for screening, brief intervention, and referral to treatment shall be as established on the Non-Medicare Services Fee Schedule.~~

(6) ~~The rate per unit for crisis intervention shall be:~~

(a) ~~Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

1. Physician; or
2. Psychiatrist;

(b) ~~63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) ~~Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist; or
5. Licensed professional art therapist; or

(d) ~~Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

1. ~~Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

2. ~~Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

3. ~~Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

4. ~~Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

5. ~~Physician assistant working for a physician if the physician is the billing provider for the service; or~~

6. ~~Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service.~~

(7) ~~The rate per unit for service planning shall be as established on the Non-Medicare Services Fee Schedule.~~

(8) The rate per unit for individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
- 6.~~[5.]~~ Licensed professional art therapist;
- 7.~~[or 6.]~~ Licensed behavior analyst; or

8. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor[~~licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service~~];

2. Licensed professional counselor associate working under the supervision of a billing supervisor[~~licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service~~];

3. Licensed psychological associate working under the supervision of a billing supervisor[~~licensed psychologist if the licensed psychologist is the billing provider for the service~~];

4. Certified social worker working under the supervision of a billing supervisor[~~licensed clinical social worker if the licensed clinical social worker is the billing provider for the service~~];

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~];~~[or]~~

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor;

8. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor if the board-approved licensed psychologist is the billing provider;

9. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

10. Certified alcohol and drug counselor working under the supervision of a billing supervisor[~~licensed behavior analyst if the licensed behavior analyst is the billing provider for the service~~].

~~(6) [(9)]~~ The rate per unit for family outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6.~~[or 5.]~~ Licensed professional art therapist; or

7. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor[~~licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service~~];

2. Licensed professional counselor associate working under the supervision of a billing supervisor[~~licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service~~];

3. Licensed psychological associate working under the supervision of a billing supervisor[~~licensed psychologist if the licensed psychologist is the billing provider for the service~~];

4. Certified social worker working under the supervision of a billing supervisor[~~licensed clinical social worker if the licensed clinical social worker is the billing provider for the service~~];

5. Physician assistant working for a physician if the physician is the billing provider for the service;~~[or]~~

6. Licensed professional art therapist associate working under

the supervision of a billing supervisor;

7. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

8. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

9. Certified alcohol and drug counselor working under the supervision of a billing supervisor[~~licensed professional art therapist if the licensed professional art therapist is the billing provider for the service~~].

(7) Reimbursement for the following services shall be as established on the DMS Non-Medicare Behavioral Health Services Fee Schedule:

(a) Screening, brief intervention, and referral to treatment (SBIRT);

(b) Service planning;

(c) Day treatment;

(d) Comprehensive community support services;

(e) Peer support services;

(f) Intensive outpatient program services; or

(g) Therapeutic rehabilitation program services.

~~(8) [(10)]~~ The rate per unit for group outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist;

5. Licensed professional art therapist; or

6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or

7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.

(11) The rate per unit for collateral outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;
(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist;
5. Licensed professional art therapist; or
6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or

7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.

(12) The rate per unit for day treatment shall be as established on the Non-Medicare Services Fee Schedule.

(13) The rate per unit for comprehensive community support services shall be as established on the Non-Medicare Services Fee Schedule.

(14) The rate per unit for peer support services shall be as established on the Non-Medicare Services Fee Schedule.

(15) The rate per unit for parent or family peer support services shall be as established on the Non-Medicare Services Fee Schedule.

(16) The rate per unit for an intensive outpatient program shall be as established on the Non-Medicare Services Fee Schedule.

(17) The rate per unit for a therapeutic rehabilitation program shall be as established on the Non-Medicare Services Fee Schedule.

(18)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or

2. Final version, the department shall use the final version.

(9)(149) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3.[No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a community mental health center.

Section 4.] Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

- (1) 907 KAR 15:010; and
- (2) This administrative regulation.

Section 4[5]. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5[6]. Incorporation by Reference. (1) "Non-Medicare Services Fee Schedule", May 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 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>.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health professionals enrolled in the Medicaid Program.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the reimbursement provisions for Medicaid Program behavioral health services provided by individual behavioral health professionals. These providers are a critical component of Medicaid Program substance use disorder and mental health disorder treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers.

(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 authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers.

(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 expands the Medicaid behavioral health practitioner base to include licensed clinical alcohol and drug counselors (LCADCs), licensed clinical and alcohol drug counselor associates (LCADCAs) working under supervision), and certified alcohol and drug counselors (CADCs) working under supervision; adds registered alcohol and drug peer support specialists to individuals authorized to provide services; contains miscellaneous clarifications; and consolidates requirements where possible.

(b) The necessity of the amendment to this administrative

regulation: Adding LCADCs and LCADCAAs to the authorized practitioners is necessary in response to 2015 legislation that created these new practitioner types; similarly, adding registered alcohol and drug peer support specialists is necessary in response to 2015 legislation (codified into KRS 309.080-089); consolidating requirements is necessary to shorten the administrative regulation by reducing duplicative language; miscellaneous clarifications are necessary for clarity and to synchronize requirements with related behavioral health administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adding practitioners (LCADCs, LCADCAAs, and registered alcohol and drug peer support specialists) there were created by 2015 legislation (codified into KRS 309.080-089).

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments assists in the effective administration of the authorizing statutes by adding practitioners (LCADCs, LCADCAAs, and registered alcohol and drug peer support specialists) there were created by 2015 legislation (codified into KRS 309.080-089).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Licensed clinical alcohol and drug counselors (who wish to enroll in the Medicaid Program as independent providers/group practices) will be affected by this administrative regulation as will licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, and registered alcohol and drug peer support specialists who wish to provide behavioral health services while working for one (1) an independent, individual behavioral health provider. Additionally, independent behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups will be affected by the administrative regulation. There are approximately 2,170 of such individuals and groups enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment expands the authorized behavioral health professional base to include licensed clinical and alcohol drug counselors (LCADCs), licensed clinical alcohol and drug counselor associates (LCADCAAs) working under supervision, certified alcohol and drug counselors (CADCs), and registered alcohol and drug peer support specialists working under supervision. LCADCs who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization. LCADCAAs, CADCs, and registered alcohol and drug peer support specialists who wish to provide services will need to find an individual provider or provider group for whom/which to work.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Individual behavioral health providers, behavioral health provider groups, or behavioral health multi-specialty groups that wish to provide behavioral health services to Medicaid recipients per this administrative regulation could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the amendment LCADCs will be able to enroll in the Medicaid Program and be reimbursed for services provided to Medicaid recipients. LCADCAAs, CADCs, and registered alcohol and drug peer support specialists who work under supervision will be able to provide services to Medicaid recipients (but not be directly reimbursed by

the Medicaid program as they are not authorized by Kentucky law to practice independently.)

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

(a) Initially: DMS does not anticipate a substantial increase in costs as a result of adding licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and registered alcohol and drug peer support specialists to the array of Medicaid-recognized behavioral health professionals.

(b) On a continuing basis: The response to question (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Reimbursements are tiered to the level of the provider/practitioner based on the provider/practitioner's education and experience. Tiering is not applied as the requirements apply to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. ... to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to 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.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate how many individual LCADCs will enroll in the Medicaid Program nor the utilization of these services versus the realm of currently authorized providers (other individual behavioral health providers, provider groups, community mental health centers, federally-qualified health centers, rural health clinics, primary care centers, or physician offices.)

(d) How much will it cost to administer this program for subsequent years? The response to question (a) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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, November 7, 2016)

103 KAR 28:041. Repeal of 103 KAR 28:040.

RELATES TO: KRS 139.010~~[139.050, 139.100]~~

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: 103 KAR 28:040, Redemption of premium or trading stamps, is no longer effective as retailers no longer allow the exchange of premium or trading stamps for cash, or allow premium or trading stamps to be traded for merchandise~~[KRS 139.050 and 139.100, which were the authorizing statutes for 103 KAR 28:040, Redemption of premium or trading stamps, were repealed by 2008 Ky. Acts ch. 95, sec. 20, effective August 1, 2008]~~. Therefore, this administrative regulation repeals 103 KAR 28:040.

Section 1. 103 KAR 28:040, Redemption of premium or trading stamps, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 22, 2016

FILED WITH LRC: August 22, 2016 at noon

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, November 7, 2016)

103 KAR 41:021. Repeal of 103 KAR 41:020.

RELATES TO: KRS 131.130, 131.140~~[138.130, 138.207]~~

STATUTORY AUTHORITY: KRS 131.130, 138.195~~[138.130, 138.207]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 138.207, which was the authorizing statute for 103 KAR 41:020, Tax free cigarettes, was repealed by 2005 Ky. Acts ch. 168, sec. 157, effective June 1, 2005. Therefore, this administrative regulation repeals 103 KAR 41:020.

Section 1. 103 KAR 41:020, Tax-free cigarettes, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 22, 2016

FILED WITH LRC: August 22, 2016 at noon

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, November 7, 2016)

103 KAR 44:131. Repeal of 103 KAR 44:130.

RELATES TO: KRS 138.450, 138.460~~[131.130]~~, 138.4602~~[138.4603]~~

STATUTORY AUTHORITY: KRS 131.130~~[138.4602]~~

~~138.4603]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 138.4602, which was the authorizing statute for 103 KAR 44:130, New motor vehicle trade-in allowance, was amended~~[repealed]~~ by 2013 Ky. Acts ch. 119, sec. 10, effective June 25, 2013 to sunset the language related to the new motor vehicle tax credit cap effective July 1, 2014, and the process by which the county clerks were notified that the cap had been reached. Therefore, this administrative regulation repeals 103 KAR 44:130.

Section 1. 103 KAR 44:130, New motor vehicle trade-in allowance, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: August 22, 2016

FILED WITH LRC: August 22, 2016 at noon

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

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, November 7, 2016)

200 KAR 5:355. Public-private partnership delivery method.

RELATES TO: KRS 45A.030, 45A.077, 45A.085, 45A.090, 45A.180, 45A.183, 45A.190, 45A.435, 45A.550-45A.554, 61.878, 65.025, 65.028

STATUTORY AUTHORITY: KRS 45A.035, 45A.077, 45A.085, 45A.180, 45A.183, 65.028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.077 and 65.028 require~~[requires]~~ the secretary to promulgate administrative regulations setting forth the criteria to be used in determining when a public-private partnership is to be used for a particular project. KRS 45A.085 authorizes the secretary to promulgate administrative regulations concerning contracts awarded by competitive negotiation. KRS 45A.180 requires the secretary to promulgate administrative regulations for the implementation of as many recognized alternative methods of management of construction contracting as are determined to be feasible. This administrative regulation establishes guidelines pursuant to KRS 45A.077 and~~[KRS]~~ 65.028~~[45A.030]~~ relating to public-private partnerships for entities requesting to utilize this procurement delivery method.

Section 1. Definitions. (1) "Cabinet" means the Finance and Administration Cabinet.

(2) "Capital project" is defined by KRS 45.750(1)(f), except that for purposes of this administrative regulation, capital project shall include all projects regardless of the size or scope of same.

(3) "Contract" is defined by KRS 45A.030(8).

(4) "General fund revenues" means the total combined revenue receipts of the local government or local governments that are a party to the public-private partnership agreement from the imposition of ad valorem taxes, occupational license taxes, insurance premium taxes, and franchise fees.

(5) "Governmental body" is defined by KRS 45A.030(17).

(6)~~[(5)]~~ "Kentucky Local Government Public-Private Partnership Board" is established and defined by KRS 65.028(11).

(7)(6)] "Local government" is defined by KRS 65.028(1)(c)~~[65.025(1)(b)]~~.

(8)(7)] "Private partner" is defined by KRS 45A.030(21) and KRS 65.025(1)(g).

(9)(8)] "Public-private partnership" is defined by KRS 45A.030(23).

(9) "Purchasing officer" is defined by KRS 45A.030(26).]

(10) "Total contractual value" means the cumulative amount to be paid or reasonably estimated to be paid over the entire term of the public-private partnership agreement between the local government or local governments and the private partner or private partners in consideration of the performance of the private partner or partners.

(11) "Using agency" is defined by KRS 45A.030(30).

Section 2. Use of a Public-Private Partnership. (1) A public-private partnership may be utilized for construction or financing of a capital project or the procurement of services if the head of a governmental body or a local government issues a written determination that due to the nature or circumstances of a capital project or services, a public-private partnership is the most advantageous method of awarding and administering a capital project or other contract.

(2) In determining if[whether] the use of a public-private partnership is the most advantageous method of awarding and administering a capital project or other contract, the head of a governmental body or local government, or a person authorized in writing as his or her designee, shall undertake an analysis of the proposed capital project or other contract to determine if[whether] a public-private partnership is the procurement method most advantageous to the governmental body or local government that incorporates the following components established in this subsection[section].[:]

(a) Qualitative considerations. The using agency or local government shall evaluate the potential public-private partnership utilizing the following criteria:

1. The ability of the using agency or local government to allocate and control risks, responsibilities, and rewards between itself and a private partner in a way that ultimately benefits the using agency or local government and the citizens it serves;

2. The timeliness of completion and efficiency of delivery of a capital project or other contract via a public-private partnership as compared with other project delivery methods;

3. A determination that the tangible and intangible benefits to be gained by using a public-private partnership equals or exceeds the cost of developing and maintaining a public-private partnership;

4. The ability and expertise of the using agency or local government to measure and monitor performance and operational controls;

5. The ability of the using agency or local government to capture and utilize incentives, efficiencies, and expertise derived from the involvement of a private partner;

6. If[Whether] the capital project or other contract is likely to[would] be developed or entered into in the absence of private sector involvement;

7. If[Whether] the public interest is best served through the use of a public-private partnership; and

8. The urgency of need for the capital project or services by the governmental body or local government.

(b) Quantitative Analysis. The using agency or local government shall conduct a quantitative analysis of using a public-private partnership for a given capital project or other contract. The analysis shall include:

1. Net present value of the cost of the capital project or other contract over its entire useful life, including, if applicable:

a. Financing, planning, design, and construction costs;

b. Operation and management costs;

c. Any payments the using agency or local government is[may be] required to make to the private partner; and

d. Maintenance costs;

2. The allocation of risks and contingencies between the using agency or local government and the private partner;

3. Operating cash flows reasonably expected to provide a

return on investment to a private partner;

4. The net present value of payment the using agency or local government is likely to[would] receive from the private partner or third parties over the life of the capital project or other contract; and

5. The anticipated value of the capital project or other contract deliverables at the end of the term of the public-private partnership, if any.

(c) Privatization Analysis. Before award of a contract for a public-private partnership, the using agency and the cabinet shall satisfy all of the requirements of KRS 45A.550-45A.554 and 200 KAR 5:340[the administrative regulations promulgated thereunder] related to privatization of existing governmental services, if applicable.

(d) Local Government Public-Private Partnerships Subject to Review by the Kentucky Local Government Public-Private Partnership Board. If the total contractual value of a proposed public-private partnership between a local government and a private partner equals or exceeds thirty (30) percent of the general fund revenues received by the local government in the immediately preceding fiscal year, the local government shall submit the proposed public-private partnership agreement[contract] to the cabinet and the Department for Local Government for evaluation and presentation to the Kentucky Local Government Public-Private Partnership Board in accordance with KRS 65.028(12) or 65.028(16).

Section 3. Submission of Unsolicited Proposals. (1) Persons, businesses, or other entities may submit unsolicited proposals for a capital project or other contract utilizing a public-private partnership to a governmental body with a copy to the Secretary of the Finance and Administration Cabinet.

(2) Persons, businesses, or other entities wishing to submit an unsolicited proposal for a public-private partnership with a local government shall submit the proposals to the local government with a copy to the Department for Local Government. If the total contractual value of the proposed public-private partnership equals or exceeds thirty (30) percent of the general fund revenues received by the local government in the immediately preceding fiscal year, the Department for Local Government with the assistance of the cabinet shall evaluate each proposal and present same to the Kentucky Local Government Public-Private Partnership Board in accordance with KRS 65.028(12) or 65.028(16).

(3) Proposals submitted pursuant to subsection (1) of this section shall be considered in the manner prescribed in KRS 45A.077(12) and evaluated pursuant to the criteria set forth in Section 2 of this administrative regulation.

(4) Proposals submitted pursuant to subsection (2) of this section shall be considered in the manner prescribed in KRS 65.028(17) and evaluated pursuant to the criteria set forth in Section 2 of this administrative regulation.

(5) A valid unsolicited proposal shall:

(a) Be independently originated and developed by the person or persons, business or businesses, or other entities submitting the proposal;

(b) Be prepared without government supervision, endorsement, direction or direct government involvement; and

(c) Include sufficient detail to permit a determination that government support would be worthwhile and that the proposal could benefit the using agency or local government's constituency.

(6) All unsolicited proposals shall be submitted in a sealed envelope marked "unsolicited proposal." If an unsolicited proposal contains trade secrets, financial records, or other information that would be exempt from public disclosure pursuant to KRS 61.878 or other applicable law, persons, businesses, or other entities submitting unsolicited proposals shall:

(a) Include a cover letter with the proposal, notifying the governmental body or local government that exempt information is contained in the proposal;

(b) Mark all portions of the proposal that contain exempt information as "confidential" or "proprietary"; and

(c) Submit a second copy of the proposal from which the trade secrets, financial records, or other information that would be exempt from public disclosure pursuant to KRS 61.878 or other applicable law have been redacted.

(7)(6) Except for each portion of an unsolicited proposal that contains trade secrets, financial records, or other information that would be exempt from public disclosure pursuant to KRS 61.878 or other applicable law, all unsolicited proposals shall be available for public inspection after the latter of:

(a) The date of the written notification sent by a governmental body or local government that it has rejected the unsolicited proposal;

(b) Sixty (60) days after the end of the notice period provided under KRS 45A.077(12)(b)2. or KRS 65.028(17)(b)2.; or

(c) The date of the award of~~After~~ a contract by a~~has been awarded if the~~ governmental body or local government following~~elects to undertake~~ an open, competitive procurement process conducted pursuant to KRS 45A.077(12)(c) or KRS 65.028(17)(c).

Section 4. Other considerations. (1) The using agency and the cabinet or local government may ascribe~~shall retain discretion in determining the~~ relative weight~~to ascribe~~ to~~each of~~ the criteria established~~set forth~~ in Section 2 of this administrative regulation, giving due consideration to the size and nature of the capital project or other contract as well as the previous experience of the using agency or local government, if any, in utilizing public-private partnerships under similar circumstances.

(2) All requests for proposals involving the use of a public-private partnership shall comply with KRS 45A.077(4) or 65.028(7) as applicable.

(3) All performance and payment bonding requirements set forth in KRS 45A.190, 45A.435, and any other statute or local ordinance, shall remain in effect for capital projects and other contracts using the public-private partnership project delivery method.

Section 5. Professional Assistance. The using agency and the cabinet are authorized to retain any professional services deemed necessary by the using agency or the cabinet to enable an adequate review and evaluation of a public-private partnership proposal, including those involving local government that shall be approved by the Kentucky Local Government Public-Private Partnership Board in accordance with KRS 65.028(12) or 65.028(16), if the necessary expertise to perform the review or evaluation within the using agency or the cabinet is inadequate or unavailable. The cost of any professional service, including the cost of any study performed, shall be borne by the private partner if possible. If it is deemed necessary by the using agency or local government for the governmental body to bear a portion of the cost of the professional services needed to assist with the evaluation set forth in this administrative regulation, then the cost may~~shall~~ be paid by the using agency or local government.

MARK D. BUNNING, Deputy Secretary

For WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

CONTACT PERSON: Judy Piazza, Executive Director, Office of Legislative & Inter-governmental Affairs, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 782-5701, fax (502) 564-9557, email Judith.Piazza@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(As Amended at ARRS, November 7, 2016)**

201 KAR 1:065. Individual license renewal and fee.

RELATES TO: KRS 325.330~~325.230~~[325.330]

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(7)(b).

(d) NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations for the administration of KRS Chapter 325. KRS 325.330(7)(b) requires the board to promulgate administrative regulations establishing license renewal procedures for certified public accountants. This administrative regulation establishes the procedures and fees for a certified public accountant to renew his or her~~their~~[a] license.

Section 1. Except as provided in 201 KAR 1:140, Sections 2 and 3~~Section 2 of this administrative regulation~~, a certified public accountant seeking to renew his or her license shall:

(1) Utilize the online License Renewal System offered by the board at www.cpa.ky.gov; and

(2) Pay a non-refundable renewal fee in the amount of \$100; and

(3) Pay the fees charged by Kentucky.gov or its successor to utilize the online process.

Section 2. [A certified public accountant who fails to renew his or her license by the August 1 deadline shall renew the license on or before September 1 by:

(1) Utilizing the online License Renewal System offered by the board at www.cpa.ky.gov;

(2) Paying the non-refundable \$100 renewal fee; and

(3) Paying a non-refundable \$100 late fee If a certified public accountant is unable to utilize the online procedure, he or she shall:

(1) Submit a written request to obtain a paper copy of the License Renewal Form to the Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202;

(2) Complete and submit the application to the board; and

(3) Submit a check or money order made payable to the Kentucky State Board of Accountancy in the amount of \$100];

Section 3.] A certified public accountant who was convicted, pled guilty, entered a plea of no contest, an Alford plea, or a plea that resulted in a court suspending the imposition of a criminal penalty to any state or federal felony or misdemeanor charge within the two (2) year period prior to renewing his or her~~their~~ license shall submit:

(1) A License Renewal Form;

(2) A copy of the judgment or sentence of conviction;

(3) A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within one (1) month from the date the renewal form is submitted or a similar document from the state agency where the conviction was entered;

(4) A letter of explanation;

(5) The non-refundable \$100 renewal fee by check or money order made payable to the Kentucky State Board of Accountancy; and

(6) A non-refundable \$100 late fee if the form is received in the board office after August 1~~July 31~~].

Section 3~~4~~. The board shall notify a licensee that his or her license is due to expire in accordance with the renewal dates established in KRS 325.330(7)(a).

Section 4. A certified public accountant who failed to complete the continuing professional education hours as required by 201 KAR 1:100, Section 2, shall not use the online license renewal process. Instead, the certified public accountant shall comply with the license reinstatement requirements found in 201 KAR 1:140, Section 3.

Section 5~~4~~. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "License Renewal System", September 2016~~January 2014~~]; and

(b) "License Renewal Form", September 2016~~January 2014~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

LORI WARDEN, President

APPROVED BY AGENCY: September 13, 2016

FILED WITH LRC: September 15, 2016 at 10 a.m.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email dick.carroll@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky State Board of Accountancy
(Amendment)**

201 KAR 1:100. Continuing professional education requirements.

RELATES TO KRS ~~325.330/325.230~~ 325.330

STATUTORY AUTHORITY: KRS ~~[325.230(2);~~ 325.240(2), 325.330(4)(a), (7)(b)1.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations for the administration of KRS Chapter 325. KRS 325.330(4) and (7)(b)1. ~~require~~ the board to promulgate administrative regulations to establish the ~~established~~ continuing professional education requirements for certified public accountants. This administrative regulation establishes the continuing professional education requirements a certified public accountant shall satisfy to renew a license.

Section 1. ~~Definitions~~ [Definition]. (1) "Continuing professional education hour" or "CPE hour" means a fifty (50) minute period excluding meals, breaks and business sessions.

(2) "Worked" means hours devoted by a licensee that are documented as billable and non-billable hours to a public accounting firm or client. ~~Each unit of credit for a university or college course shall equal the following continuing professional education hours:~~

- (1) ~~One (1) semester hour equals fifteen (15) CPE hours; and~~
- (2) ~~One (1) quarter hour equals ten (10) CPE hours].~~

Section 2. Requirements for Continuing Professional Education Credit. (1) Each licensee who worked 3,000 hours or more in a public accounting firm ~~licensed~~ [registered] with the board during the two (2) calendar years prior to the renewal date of his or her license shall ~~complete~~ [report to the board successful completion of] eighty (80) CPE hours [of continuing professional education]. The eighty (80) hours shall be ~~completed~~ [earned] during the preceding two (2) calendar years. All other licensees shall ~~complete~~ [obtain] sixty (60) CPE hours.

(2) ~~Effective with license renewal for July 1, 2010 and subsequent years,~~ Each licensee shall ~~complete~~ [report to the board successful completion of] two (2) CPE hours [of continuing professional education] in professional ethics. These two (2) hours shall be included as part of the eighty (80) or sixty (60) CPE hours a licensee is required to complete to renew his or her license.

(3)(a) A certified public accountant who, for the ~~majority of the~~ two (2) calendar years prior to renewal of his or her license, did not operate or work in an office in this state shall satisfy the requirements of this section by complying with the continuing professional education requirements for renewal of his or her license:

1. In the state in which the licensee's principal office is located; or

2. In the state in which the office is located where the licensee worked a majority of the time.

(b) If the state designated by paragraph (a) of this subsection does not have continuing professional education requirements for renewal of a license, the licensee shall comply with all continuing

professional education requirements for renewal of a license in this state.

Section 3. Each licensee who held a license for less than a full two (2) calendar year period shall obtain two (2) CPE hours [of continuing professional education] for each full month a license was held not to exceed the total number of required hours for the reporting period. The two (2) hours in professional ethics shall not be required to be part of the CPE hours completed in this time period.

Section 4. Waivers from Continuing Professional Education. (1) ~~The request for a reduction in or waiver of the continuing professional education requirements shall be submitted on a form prepared by the board.~~

(2) A reduction or waiver may be granted by the board if the licensee:

(a) Establishes that he or she is temporarily physically or psychologically unable to complete the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements [Waiver] form with each request and a written statement:

1. ~~a statement~~ From a licensed physician or other appropriate licensed health care provider that substantiates the physical or psychological claim of the licensee; and

2. That describes the licensee's working status during the time the licensee was [they were] unable to complete the continuing education, the licensee's [their] current working status, and if the licensee plans [they plan] to return to work;

(b) Has encountered a temporary [an] extreme [a severe personal] hardship, which was so severe that [made] it was extremely difficult or impossible to meet the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements [Waiver] form and a written statement with each request:

1. That describes in detail the facts associated with the extreme hardship; and

2. Documentation to substantiate the extreme hardship [The hardship shall be described in writing on the waiver form. The board may request the licensee to substantiate with documentation the hardship described on the waiver form]; or

(c) Is completely retired from practice and is fifty-five (55) years of age or older. To be considered completely retired, the licensee shall not perform accounting services in the practice of public accounting (which includes the preparation of tax returns), education, government or industry except for management of personal assets or investments.

(2) [(3)] The board shall advise a licensee in writing whether the request is approved or denied.

(3) [(4)] A licensee granted a waiver shall reaffirm the basis of the waiver when the license is next renewed by completing the:

(a) License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form; or

(b) License Renewal - CPE Retirement Waiver form.

(4) [(5)] A licensee completing the License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form shall submit with the form updated medical documentation to support that the basis of the waiver continues to limit the licensee's ability to meet the CPE requirements.

(5) If the circumstances which form the basis of the waiver change, the licensee shall notify the board within thirty (30) days from the date of the change and resume compliance with the continuing professional education requirements from the date of the change.

(6) [(5)] If the waiver request is granted, the licensee shall pay the license renewal fee listed in 201 KAR 1:065 on or before August 1.

Section 5. Courses that [Exemption from Continuing Professional Education. (1) A licensee who at the time of renewal is sixty-five (65) years of age or older and has been licensed continuously for twenty-five (25) years or more shall be exempt from the continuing education requirements.

(2) This exemption shall end after the renewal of licenses in 2009.

~~Section 6. Programs which~~ Qualify. (1) The overriding consideration in determining whether a specific ~~course~~[program] qualifies as acceptable continuing professional education shall be whether it is a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant in this state.

(2) Continuing professional education ~~courses~~[programs] may qualify only if:

(a) An outline of the ~~course~~[program] is prepared in advance and preserved;

(b) The ~~course~~[program] is at least one (1) ~~CPE~~[continuing professional education] hour in length. Credit shall be awarded for a course less than fifty (50) minutes in length if it is part of a continuing professional education program where at least one (1) fifty (50) minute course is also being offered;

(c) The ~~course~~[program] is conducted by a qualified instructor. A qualified instructor or discussion leader shall be anyone whose background training, education or experience makes it appropriate for him or her to lead a discussion on the subject matter of the particular ~~course~~[program];

(d) A record of registration or attendance is maintained;~~and~~

(e) A course completion document is given to each attendee;
~~and~~

(f) The course topic is an acceptable field of study.

(3) Acceptable fields of study[subject matter].

(a) The following ~~fields of study~~[general subject matters] shall be considered acceptable if the ~~courses~~[programs] satisfy all of the criteria established in subsections (1), (2), and (5) of this section[Sections 1, 2, 3, and 5 of] ~~[by]~~[this administrative regulation].

1. Accounting and ~~finance~~[auditing];

2. ~~Auditing~~[Taxation];

3. ~~Taxation~~[Management services];

4. ~~Business management services~~[Information technology];

5. ~~Information technology~~[Communication arts];

6. ~~Business communications~~[Mathematics];

7. Statistics;

8. Ethics;

9. Economics;

10. Business law;

11. ~~Securities~~[Finance];

12. Marketing; ~~and~~

13. Specialized areas of industry that contribute directly to the professional competence of a licensee;~~and~~

14. Administrative procedures associated with the offering and performance of attest services.

(b) ~~Areas other than those listed in paragraph (a) of this subsection may be acceptable if the licensee can demonstrate that they contribute directly to his or her professional competence as a certified public accountant.~~ The responsibility for substantiating that a particular ~~course~~[program] is acceptable and meets the requirements of this administrative regulation shall be the obligation of the licensee.

(4) Acceptable[group] programs. The following[group] programs qualify for credit if they meet the standards specified in subsections (1), (2), (3), and (6) of this section[Sections 1, 2, 3, and 6 of this administrative regulation].

(a) Professional education and development programs of national, state and local accounting organizations;

(b) University or college courses.

1. Credit and not for credit courses completed at or through a university or college that is accredited by one (1) of the (6) six regional accrediting associations listed in 201 KAR 1:190, Section 4;

2. Documentation to verify completion of a course shall be issued by the appropriate representative of the university or college.

3. Each unit of credit for a university or college course shall be equal to the following CPE hours:

a. One (1) semester hour equals fifteen (15) CPE hours; and

b. One (1) quarter hour equals ten (10) CPE hours[both credit and noncredit courses]; and

(c) Formal in-firm education programs. Portions of a program devoted to firm administrative, financial, and operating matters shall not qualify.

(5) Formal individual study courses, Web casts, and online learning courses.

(a) The amount of credit allowed for any individual study course shall be recommended by the course sponsor.

(b) A licensee claiming credit for an individual study course shall obtain evidence of satisfactory completion of the course from the course sponsor.

(c) Credit shall be assigned to the reporting period in which the provider indicates the course was completed.

(6) Service as lecturer, discussion leader, or speaker.

(a) Instructors, discussion leaders, and speakers may claim continuing professional education credit for both preparation and presentation time.

(b) Credit may be claimed for actual preparation time up to two (2) times the class contact hours.

(c) Credit as an instructor, discussion leader, or speaker may be claimed if the presentation is one which would meet the requirements of this section ~~[5]~~[6] ~~of this administrative regulation~~.

(d) Credit shall not be granted for repetitious presentations of ~~courses~~[group programs] unless it can be demonstrated that the ~~course~~[program] content was substantially changed and the change required significant additional study or research.

(e) Maximum credit for preparation and ~~teaching~~[teachings] shall not exceed sixty (60) percent of the renewal period requirement.

(7) Published articles and books.

(a) A licensee[Licensees] may be awarded credit for ~~[Credit may be awarded for published] articles or books~~[if] the licensee writes[they write] it.

1. The subject matter of the article or book contributes[contribute] directly to the professional competence of the licensee; ~~and~~

2. Prior to publication, the licensee submits a final draft of the article or book to the board to review and determine the amount of credit to be awarded.

(b) Credit for preparation of the article or book shall not exceed ~~[publications may be given on a self-declaration basis up to]~~ twenty-five (25) percent of the total ~~CPE~~[education] hours required.

(c) ~~[In exceptional circumstances, a licensee may request additional credit by submitting the article or book to the board with an explanation of the circumstances which he or she believes justifies a greater amount of credit.~~

(d) ~~The board shall make the final determination of~~[determine] the amount of credit to be granted.

(8) Certifications and licenses. Licensees who receive a certification or license from a nationally organized business organization or a federal governmental entity following successful completion of an exam in one (1) of the fields of study listed in subsection (3) of this section shall receive credit only for the length of time assigned by the organization or governmental entity to complete the examination.

Section 6. Programs that deal with the following subject areas shall not be considered acceptable continuing education:

(1) Personal growth or development;

(2) Self-realization;

(3) Spirituality;

(4) Personal health or fitness;

(5) Sports and recreation;

(6) Foreign languages or cultures; and

(7) Any other subjects that do not contribute directly to the professional competence of the licensee.

Section 7. Reporting and Controls. (1) Each licensee shall obtain the appropriate documentation to establish that he or she completed the continuing professional education requirements.

(2) This documentation shall be retained by each licensee for a

period of five (5) years.

(3) The board shall conduct annually a random audit to verify a certain percentage of licensees completed the amount of continuing professional education hours required to renew his or her license. A licensee who misrepresented that he or she[they] completed the sixty (60) or eighty (80) CPE hours at the time the licensee renewed his or her license shall not be eligible for a retirement, medical, or extreme personal hardship waiver after being selected to participate in an audit.

(4) Course completion evidence shall consist of a document prepared by the course sponsor indicating the licensee completed a formal program of learning. A document shall include the:

- (a) Names[Name] of the licensee and program sponsor;
- (b) Title and field of study[description of course content];
- (c) Dates attended; and

(d) Number of CPE[continuing professional education] hours awarded.

(5) A licensee who completed continuing professional education courses that complied with the requirements of this administrative regulation and were presented by or on behalf of his or her employer may submit to the board a list of the courses completed if the list contains the:

- (a) Information described in subsection (4) of this section; and
- (b) Signature of the person at the licensee's place of employment who verifies the accuracy of the information for a third party.

Section 8. Continuing Professional Education Sponsors. (1) Sponsors shall not be required to be preapproved by[register with] the board.

(2) Detailed records of each program shall be kept by the sponsor and[which] shall include:

- (a) The date of the program presentation;
- (b) The name of each instructor or discussion leader;
- (c) A listing of licensees attending each program presentation; and
- (d) A written agenda[outline] of the program presentation.

(3) Records shall be kept by the sponsor for a period of five (5) years following the date each program is presented.

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

- (a) "Initial Request for Waiver of CPE Requirements", September 2016[2009];
- (b) "License Renewal-CPE Waiver Due to Medical or Extreme[ef] Personal Hardship", September 2016[2009]; and
- (c) "License Renewal-CPE Retirement Waiver", September 2016[2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

LORI WARDEN, CPA, President

APPROVED BY AGENCY: September 14, 2016

FILED WITH LRC: September 15, 2016 at 10 a.m.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email dick.carroll@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Pharmacy
(As Amended at ARRS, November 7, 2016)**

201 KAR 2:045. Technicians.

RELATES TO: KRS 315.010(12), (20), (26)(18), (25)],
315.020(4)(b), 315.191(1)(a), (g), (l)
STATUTORY AUTHORITY: KRS 315.010(20)(18), (25)],
315.020(4)(b), 315.191(1)(a), (g), (l)
NECESSITY, FUNCTION, AND CONFORMITY: KRS

315.191(1)(a) authorizes the board to promulgate administrative regulations governing pharmacy technicians. KRS 315.020(4)(b) authorizes the board to establish the scope of practice for pharmacy technicians. KRS 315.010(20) and 315.191(1)(l) authorize the board to promulgate administrative regulations establishing when a pharmacy technician can practice under the general, rather than immediate, supervision of a pharmacist[KRS 315.010(18) authorizes the board to permit a pharmacy technician to work under the general supervision of a pharmacist. KRS 315.191(1)(l) authorizes the board to promulgate administrative regulations establishing the qualifications a pharmacy technician is required to obtain prior to practicing under the general supervision of a pharmacist]. This administrative regulation establishes the qualifications required for a pharmacy technician to practice under the general supervision of a pharmacist, and establishes the scope of practice for a pharmacy technician.

Section 1. A person shall be recognized by the board as a certified pharmacy technician, if:

(1)(a) The person[He] has successfully completed the Pharmacy Technician Certification Exam (PTCE)[National Certification Examination] administered by the Pharmacy Technician Certification Board (PTCB) or the Examination for the Certification of Pharmacy Technicians (ExCPT) by the National Healthcareer Association (NHA)[Institute for the Certification of Pharmacy Technicians (ICPT)]; and

(b) The certificate issued by the PTCB or NHA[Pharmacy Technician Certification Board or the ICPT] is current; or

(2) The person[He] has successfully completed the Nuclear Pharmacy Technician Training Program at the University of Tennessee.

Section 2. A certified pharmacy technician[, subject to the supervision, as defined by KRS 315.010(25), of a pharmacist] may perform the following functions under the general supervision of a pharmacist:

(1) Certify for delivery unit dose mobile transport systems that have been refilled by another technician;

(2) Within a nuclear pharmacy, receive diagnostic orders; and

(3)(a) Initiate or receive a telephonic communication from a practitioner or practitioner's agent concerning refill authorization, after the certified pharmacy technician[he] clearly identifies himself or herself as a certified pharmacy technician; and

(b) If a practitioner or practitioner's agent communicates information that does not relate to the refill authorization:

- 1. A technician shall immediately inform the pharmacist; and
- 2. The pharmacist shall receive the communication.

Section 3. (1) A technician who has not been certified by PTCB or NHA[the Pharmacy Technician Certification Board or the ICPT] may perform the functions specified by Section 2 of this administrative regulation under the immediate supervision of a pharmacist.

(2) A function performed by a certified pharmacy technician or pharmacy technician shall be performed subject to the review of the pharmacist who directed the technician to perform the function.

(3) A pharmacist who directs a certified pharmacy technician or pharmacy technician to perform a function shall be responsible for the technician and the performance of the function.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: September 7, 2016

FILED WITH LRC: September 8, 2016 at noon

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

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GENERAL GOVERNMENT CABINET
Board of Pharmacy
(As Amended at ARRS, November 7, 2016)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.191, 315.402[, ~~315.518(1)~~, ~~315.520(4)~~]

STATUTORY AUTHORITY: KRS 218A.205(3)(g), ~~[315.191(1)]~~, 315.035(1), (2), (4), 315.036(1), 315.050(5), 315.060, 315.110(1), 315.120(4), 315.191(1)(i), 315.402(1)[, ~~315.518(1)~~, ~~315.520(4)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes[provides] reasonable fees for the board[this agency] to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates, and the issuance and renewal of licenses and permits:

- (1) Application for a licensee for pharmacist examination - \$150;
- (2) Application and initial license for a pharmacist license by license transfer - \$250;
- (3) Certifying the grades of a licentiate of Kentucky to the licensing agency of another state - ten (10) dollars;
- (4) Annual renewal of a pharmacist license - seventy (70) dollars;
- (5) Delinquent renewal penalty for a pharmacist license - seventy (70) dollars;
- (6) Annual renewal of an inactive pharmacist license - ten (10) dollars;
- (7) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars;
- (8) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars;
- (9) Application for a permit to operate a pharmacy - \$100;
- (10) Renewal of a permit to operate a pharmacy - \$100;
- (11) Delinquent renewal penalty for a permit to operate a pharmacy - seventy-five (75) dollars;
- (12) Change of location or change of ownership of a pharmacy or manufacturer permit - seventy-five (75) dollars;
- (13) Application for a permit to operate as a manufacturer - \$100;
- (14) Renewal of a permit to operate as a manufacturer - \$100;
- (15) Delinquent renewal penalty for a permit to operate as a manufacturer - \$100;
- (16) Change of location or change of ownership of a wholesale distributor license - seventy-five (75) dollars;
- (17) Application for a license to operate as a wholesale distributor - \$100;
- (18) Renewal of a license to operate as a wholesale distributor - \$100;
- (19) Delinquent renewal penalty for a license to operate as a wholesale distributor - \$100; and
- (20) Query to the National Practitioner Data Bank of the United States Department of Health and Human Services – twenty-five (25) dollars[;]
- ~~(21) Application for a license to operate as a home medical equipment supplier - \$200;~~
- ~~(22) Renewal for a license to operate as a home medical equipment supplier - \$200; and~~
- ~~(23) Delinquent renewal penalty for a license to operate as a home medical equipment supplier - \$150].~~

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: September 7, 2016

FILED WITH LRC: September 8, 2016 at noon

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

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PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(As Amended at ARRS, November 7, 2016)

201 KAR 27:008. License requirements and fees[and applications for boxing, kickboxing, mixed martial arts event, and elimination event officials].

RELATES TO: KRS 229.021, 229.051, 229.071[229.071(3)], 229.081, 229.091, 229.171, Chapter 311, 15 U.S.C. 6305, EO 2016-270(4)]

STATUTORY AUTHORITY: KRS 229.021, 229.071, 229.081, 229.091, 229.171, 229.180, 15 U.S.C. 6305[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission. KRS 229.021, 229.071, and 229.081 require that a person shall not engage in certain activities regulated by the authority[commission] without a license. KRS 229.071(4), 229.081, and 229.091 authorize the authority[commission] the power to establish license fees[gives the authority the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling shows to be held or conducted in the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.081 requires certain participants in professional shows to be licensed in accordance with eligibility requirements established by administrative regulation. KRS 229.071(2) authorizes the authority to grant annual licenses to applicants for participation in professional shows if the authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.071(3) grants the authority the power to establish annual license fees for licensed individuals]. KRS 229.091(1) requires[states] that every licensee shall be[is] subject to administrative regulations promulgated by the authority[commission][authority]. 15 U.S.C. 6305 requires the commission to issue an identification card to each professional boxer who is a resident of the commonwealth. This administrative regulation establishes license requirements and fees for persons who conduct activities regulated by the commission[certain participants in professional shows in the Commonwealth].

Section 1. General Provisions. (1) A person shall not participate in a boxing, kickboxing, professional mixed martial arts, amateur mixed martial arts, wrestling, or an elimination event show or exhibition unless the person is licensed by the commission.

(2) Each license shall be separate. A person shall not use a license in one (1) capacity or sport to serve in a different capacity or sport, except:

(a)[that a person licensed as] A manager may act as a second; and

(b) A contestant may act as a second.

(3)[The burden of proof shall be on the applicant to establish that the applicant is qualified to receive the license.

(4)(a) A promoter license shall be valid for one (1) year from the date of issuance.

(b) All other licenses shall be valid from January 1 through December 31.

(4)(5) Information provided on or with a license application shall be complete and correct. Any false statement of a material matter shall be grounds for:

(a) Denial of a license; or

(b) If the license has been issued, suspension, probation, or revocation of the license.

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(5)(6) Each licensee shall be subject to the conditions and agreements established in the application.

(7) The commission may require an applicant to appear before the commission to answer questions or provide documents in conjunction with an application for a license if:

(a) The person has not been licensed by the commission within the previous five (5) years;

(b) The person has a history of violations in any jurisdiction;

(c) The applicant has not fully completed the required application; or

(d) The applicant's written submissions have not met the applicant's burden of proof to prove his or her qualifications for a license.

(6)(8) A licensee shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 and shall be subject to any event-related orders given by the commission **or[and]** an inspector.

Section 2. Licenses, Applications, and Fees. (1) The applicant shall complete the appropriate application as established in the table in subsection (2) of this section. The application shall be signed by the applicant under penalty of perjury.

(2) The following applications and non-refundable annual fees shall be required before any person may be licensed:

(a) Boxing and kickboxing licenses:

Boxing and Kickboxing License Type	License Application Required	License Fee
Boxer	Contestant Application	\$25[30]
Kickboxer	Contestant Application	\$25[30]
Manager	Non-Contestant Application	\$25
Trainer	Non-Contestant Application	\$25
Second	Non-Contestant Application	\$25
Referee	Non-Contestant Application	\$25
Judge	Non-Contestant Application	\$25
Timekeeper	Non-Contestant Application	\$25

(b) Mixed martial arts licenses:

Mixed Martial Arts License Type	License Application Required	License Fee
Professional mixed martial artist	Contestant Application	\$25[30]
Amateur mixed martial artist	Contestant Application	\$25[30]
Manager	Non-Contestant Application	\$25
Trainer	Non-Contestant Application	\$25
Second	Non-Contestant Application	\$25
Referee	Non-Contestant Application	\$25
Judge	Non-Contestant Application	\$25
Timekeeper	Non-Contestant Application	\$25

(c) Wrestling licenses:

Wrestling License Type	License Application Required	License Fee
Wrestler	Contestant Application	\$25[30]
Referee	Non-Contestant Application	\$25
Wrestling event staff	Non-Contestant Application	\$25

(d) Elimination event license:

Elimination Event	License Application	License Fee
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License Type	Required	
Elimination Event Contestant	Contestant Application	\$10

(e) Promoter license:

Promoter License Type	License Application Required	License Fee
Promoter	Promoter Application	\$300

(f) Medical Provider licenses:

Medical Provider License Type	License Application Required	License Fee
Physician	Medical Provider Application	\$25[30]
Healthcare Professional	Medical Provider Application	\$25

Section 3. Health Physical and Application Timing Requirements. (1) The following applicants for licensure shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than ninety (90) days before the licensing application is submitted:

(a) Boxer;

(b) Kickboxer;

(c) Professional mixed martial artist;

(d) Amateur mixed martial artist;

(e) Boxing and kickboxing referee; and

(f) Mixed martial arts referee.

(2) An applicant for licensure as a wrestler or wrestling referee shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than (90) days before the licensing application is submitted if the applicant:

(a) Has not held a wrestler license in the past two (2) years;

(b) Is forty-five (45) years of age or older; or

(c) Has had an in-patient surgical procedure or overnight hospital stay in the past one (1) year.

(3) An applicant who is subject to subsection (1) or subsection (2) of this section shall submit his or her license application to the commission no less than fifteen (15) calendar days prior to the applicant's first event.

Section 4. Determination of Ability to Obtain a License as a Contestant. (1) An applicant for a license as a boxer, kickboxer, or professional mixed martial artist shall demonstrate that **the applicant has the ability to:**

(a)[~~The applicant has the ability to~~] Be competitive in the sport; and

(b)[~~The applicant has the ability to~~] Compete without the risk of serious physical injury.

(2) An applicant for a license as a wrestler or an amateur mixed martial artist shall demonstrate that the applicant has the ability to compete without the risk of serious physical injury.

(3)(a) Individual consideration from the medical advisory panel shall be required if an applicant for licensure as a boxer, kickboxer, professional mixed martial artist, or amateur mixed martial artist:

1. Is thirty-five (35) or more years old;

2. Has accrued six (6) consecutive losses;

3. Has lost more than twenty-five (25) fights in his or her career;

4. Has fought in 350 or more career rounds;

5. Has lost more than five (5) bouts by knockout in his or her career; or

6. Has been inactive for more than thirty (30) months.

(b) The medical advisory panel may order further medical testing if the medical evidence before it is inconclusive or incomplete.

(c) The medical advisory panel shall report its recommendation to the commission within forty-five (45) days of being referred an application.

Section 5. Medical Provider License. (1) An applicant for a physician license shall be a physician licensed pursuant to KRS Chapter 311.

(2) A person licensed or seeking licensure as a physician or

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healthcare professional shall maintain an active license in his or her field of practice and certification to administer cardiopulmonary resuscitation.

Section 6. **Promoter License. An applicant for licensure as a promoter shall obtain a \$5,000 Surety bond. To obtain a surety the applicant shall complete and have notarized the Promoter Bond Form.**

Section 7. Change from Amateur Status to Professional Status. (1) The commission shall consider the applicant's previous fighting experience in deciding whether or not to permit a person licensed as an amateur to become a professional. This consideration shall include the:

- (a) Number of **sanctioned** bouts the applicant has competed in;
 - (b) Number of **sanctioned** rounds the applicant has competed in;
 - (c) Date of the applicant's bouts;
 - (d) Applicant's performance in previous bouts, including the applicant's win-loss record; and
 - (e) Level of competition the applicant has competed against.
- (2) A person shall not be licensed as a professional unless the person has fought in a minimum of three (3) bouts.

(3) A licensee who seeks to change his or her status from amateur to professional shall submit his or her license application to the commission no less than fifteen (15) calendar days prior to the applicant's first professional event.

Section **8[7]**. Boxer's Federal Identification Card. (1) To obtain a boxer's federal identification card, an applicant shall complete and submit to the commission a Boxer's Federal Identification Card Application.

(2) The fee for a boxer's federal identification card shall be ten (10) dollars, which shall be submitted with the Boxer's Federal Identification Card Application.

(3) The boxer's federal identification card shall be valid for four (4) years from the date issued.

Section **9[8]**. Change of address. A licensee shall provide his or her new address to the commission within thirty (30) days of a change in address. **[A licensee who fails to comply with the provisions of this section is subject to disciplinary action.]**

Section **10[9]**. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Contestant Application", **October 2016**;
- (b) "Non-Contestant Application", **October 2016**;
- (c) "Promoter Application", **October 2016**;
- (d) "Medical Provider Application", **October 2016**;
- (e) "Physical Report", **October 2016**;
- (f) "Promoter Bond Form", **October 2016**; and
- (g) "Boxer's Federal Identification Card Application", **October 2016**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at **656 Chamberlin Avenue, Suite B[911 Leewood Dr.]**, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at <http://kbwa.ky.gov/Pages/Appsforms.aspx> [The authority shall license any person who participates as an official in a professional match. A license shall expire on December 31 of the year in which it is issued.

Section 2. (1) An applicant for a license as an official in a boxing, kickboxing, or elimination event show shall complete and submit to the authority the form "Application for License as a Boxing Official", (2/06).

(2) An applicant for a license as an official in a mixed martial arts show shall complete and submit to the authority the form "Application for License as a Mixed Martial Arts Official", (2/06).

Section 3. A license fee of twenty (20) dollars shall be required

from any person applying for a license to act as an official in boxing, kickboxing, mixed martial arts, and elimination event shows in any of the following capacities:

- (1) Judge;
- (2) Manager;
- (3) Physician;
- (4) Referee;
- (5) Timekeeper;
- (6) Trainer; and
- (7) Second.

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

- (a) "Application for License as a Boxing Official", (5/06); and
- (b) "Application for License as a Mixed Martial Arts Official", (5/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email: Barry.Dunn@ky.gov.

**PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(As Amended at ARRS, November 7, 2016)**

201 KAR 27:011. General requirements for boxing and kickboxing shows.

RELATES TO: KRS 229.021, 229.031, 229.071, 229.081, 229.091, 229.101, 229.131, 229.155, 229.171, 15 U.S.C. 6304, 6305(a), (b), **EO 2016-270**

STATUTORY AUTHORITY: KRS 229.021, 229.071, 229.091(1), 229.171[(4)], 229.180[(4)], 15 U.S.C. 6304

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. **Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission** [the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary or expedient for the performance of its regulatory function. KRS 229.021 and 229.071(2) and (3) authorize the authority to grant annual licenses to applicants for participation in professional matches if the authority determines that the financial responsibility, experience, character, and general fitness of the applicant indicate that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to administrative regulations promulgated by the authority. 15 U.S.C. 6304 requires a promoter to provide medical insurance for injuries sustained in a match]. This administrative regulation establishes the [general] requirements for boxing and kickboxing shows, and for participants in boxing and kickboxing shows.

Section 1. Show Date. (1) A promoter shall request a show date by completing and submitting to the commission the Show Notice Form.

(2) The Show Notice Form shall be submitted **to the commission** for approval no less than thirty (30) calendar days

before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at <http://ins.kbwa.ky.gov/ecal.asp>; or

(b) Providing written notice that the event is approved.

(4) An advertisement shall not include the name or image of any contestant who does not hold a valid license issued by the commission.

Section 2. Program and Changes. (1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission. Repeated and unexcused absences **[of cancellation] may be issued a violation[result in discipline].**

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date. Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. The commission's determination shall be based upon the contestants' previous fighting experience, including:

(a) The number of bouts the contestants have competed in;

(b) The number of rounds the contestants have competed in;

(c) The date of the contestants' bouts;

(d) The contestants' performance in previous bouts, including the **contestants'[applicant's] win-loss record;**

(e) The level of competition the contestants have faced; and

(f) The contestants' medical histories.

Section 3. Compensation. (1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector **payment[a certified check or money order made payable]** to each ring official. The schedule of compensation for a ring official **shall be[is]** at least as follows:

(a) Judge: seventy-five (75) dollars each;

(b) Timekeeper: seventy-five (75) dollars;

(c) Physician: \$350;

(d) Referee: \$100 each; and

(e) Bout assistant: seventy-five (75) dollars each.

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight. (1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show.

(a) A contestant shall produce one (1) form of picture identification at the weigh-in.

(b) The inspector and the promoter or a representative of the promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4)(a) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results to the commission at least twenty-four (24) hours prior to the event.

(a) The results of these tests shall be no more than 180 days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician within eight (8) hours of the show. Prior to undergoing the physical, a contestant shall submit a completed Pre-Fight Medical Questionnaire under penalty of perjury.

(7) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall **comply with instructions[be subject to orders]** given by the inspector.

Section 5. The Ring. (1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the commission. Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission without inspector approval.

(2) An event held outdoors if the heat index is at or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire ring.

(3)(a) A ring shall have a canvas mat or similar material, unless the event is held outdoors in which case only canvas shall be used.

(b) A bout may be held in a mixed martial arts cage if the bout is in conjunction with a mixed martial arts event.

(4) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring. A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for contestants to enter the ring.

(5)[The] Ring specifications shall be as established in this subsection.[follows:]

(a) A bout shall be held in a four (4) sided roped ring.[with the following specifications:]

1. The floor of the ring inside the ropes shall not be less than sixteen (16) feet square.[:]

2. The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot.[:]

3. The floor of the ring shall be elevated not more than six (6) feet above the arena floor.[: and]

4. The ring shall have steps to enter the ring on two (2) sides.

(b) The ring shall be formed of ropes.[with the following specifications:]

1. There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

a. Twenty-four (24) inches;

b. Thirty-six (36) inches; and

c. Forty-eight (48) inches.

2. A fourth rope may be used if the inspector finds that it will not pose a health or safety concern.

3. The ropes shall be at least one (1) inch in diameter.

4. The ropes shall be wrapped in a clean, soft material and drawn taut.

5. The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.

6. The ropes shall be supported by ring posts that shall be:

a. Made of metal or other strong material;

b. Not less than three (3) inches in diameter; and

c. At least eighteen (18) inches from the ropes.

(c) The ring floor shall be padded or cushioned with a clean, soft material that:

1. Is at least one (1) inch thick and uses slow recovery foam matting;

2. Extends over the edge of the platform;

3. Is covered with a single canvas stretched tightly; and

4. Is, at the commencement of the event, clean, sanitary, dry, and free from:

a. Grit;

b. Dirt;

c. Resin; and

d. Any other foreign object or substance.

(d) A ring rope shall be attached to a ring post by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 6. Equipment. (1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the ring and ring equipment, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;

2. A clean bucket;

3. Towels; and

4. Rubber gloves;

(d) A complete set of numbered round-cards, if needed;

(e) Gloves for each boxer or kickboxer; and

(f) A scale used for weigh-in, which shall be approved as accurate in advance by the inspector.

Section 7. Contestant Equipment and Attire. (1) A contestant shall be clean and neatly attired in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

(3) A contestant shall wear shoes during a bout. The shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

(4) A contestant shall wear a properly fitted:

(a) Groin protector; and

(b) Double-arch mouthpiece.

(5) ~~If a contestant has long hair, the hair shall be~~**long hair** secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) **If cosmetics are used**, a contestant shall use a minimum of cosmetics.

(7) Boxing gloves shall meet the requirements established in this subsection.

(a) Contestants shall wear boxing gloves that shall be of the same weight for each contestant and:

1. Dry, clean, and sanitary;

2. Furnished by the promoter;

3. Of equal weight, not to exceed twelve (12) ounces **per glove**;

4. A minimum of eight (8) ounces **per glove** for a contestant weighing no more than 154 pounds;

5. A minimum of ten (10) ounces **per glove** for a contestant weighing over 154 pounds; and

6. Thumbless or thumb-attached.

(b) Gloves shall be new for main events and for bouts and exhibitions scheduled for ten (10) or more rounds.

(c) Gloves shall be approved **or denied in accordance with this administrative regulation** by the commission prior to a bout.

(d) Gloves for all main events shall be dry and free from defects and shall be put on in the ring or locker room while supervised by the inspector.

(e) Breaking, roughing, or twisting of gloves shall not be permitted.

(f) The laces on gloves shall be tied on the back of the wrist and taped.

(g) Kickboxing contestants shall wear padded kickboxing boots. The padding shall be sufficient to protect the kickboxer and his or her competitor.

(8) Bandages shall meet the requirements established in this subsection.

(a) For boxing and kickboxing, only soft cotton or linen bandages shall be used for the protection of the boxer or kickboxer's hands.

(b) Bandages shall not be more than two (2) inches in width and twelve (12) yards in length for each hand.

(c) If adhesive tape is used:

1. Medical adhesive tape not more than one (1) inch in width shall be used to hold bandages in place; ~~and~~

2. Adhesive tape shall not be lapped more than one-eighth (1/8) of one (1) inch; ~~and~~

3. Adhesive tape not to exceed one (1) layer shall be crossed over the back of the hand for its protection; ~~and~~ ~~and~~

4. Three (3) strips of adhesive tape, lapping not to exceed one-eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

(d) Hand wraps shall be applied in the dressing room in the presence of an inspector or ring official. The inspector or ring official shall sign the hand wrap and the tape around the strings of the gloves.

Section 8. Weight Classes. (1) The class weights permitted in boxing and kickboxing bouts shall be as follows:

CLASS	WEIGHT
Flyweight	Up to 112 lbs.
Bantamweight	Up to 118 lbs.
Jr. Featherweight	Up to 122 lbs.
Featherweight	Up to 126 lbs.
Jr. Lightweight	Up to 130 lbs.
Lightweight	Up to 135 lbs.
Jr. Welterweight	Up to 140 lbs.
Welterweight	Up to 147 lbs.
Jr. Middleweight	Up to 154 lbs.
Middleweight	Up to 160 lbs.
Light Heavyweight	Up to 175 lbs.
Cruiserweight	Up to 195 lbs.
Heavyweight	Over 195 lbs.

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector **for medical purposes**. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length. (1) Bouts and rounds shall:

(a) Be three (3) minutes in duration; and

(b) Have a one (1) minute rest period between rounds.

(2) A bout shall consist of no less than four (4) and no more than twelve (12) rounds. A championship bout shall be twelve (12) rounds in length.

(3) A contestant who has not fought within the last twelve (12) months shall not be scheduled to box or kickbox more than ten (10) rounds without commission approval.

Section 10. Judging and Scoring. (1) Scoring shall be as established in this subsection. ~~[follows:]~~

(a) Each round shall be accounted for on the scorecard, using the ten (10) point system. Scoring shall be expressed in ratio of merit and demerit.

(b) Score cards shall be:

1. Signed;

2. Handed to the referee in the ring; and

3. Filed by the referee with the inspector.

(c) The decision shall then be announced from the ring.

(2) Decisions shall be rendered as **established in this subsection**. ~~[follows:]~~

(a) If a bout lasts the scheduled limit, the winner of the bout shall be decided by ~~a majority vote of the judges~~;

1. ~~A majority vote of the judges~~ ~~[A majority vote of the judges]~~ if three (3) judges are employed to judge the bout; or

2. ~~A majority vote of the judges~~ ~~[A majority vote of the judges]~~ and the referee, if two (2) judges are employed to judge the bout.

(b) Decisions shall be based primarily on boxing or kickboxing effectiveness, with points awarded for display of the following attributes, and points deducted for an opposite showing:

1. Clean, forceful hitting;

2. Aggressiveness;

3. Defensive work; and

4. Ring generalship.

(c) The requirements governing knockdowns shall be as established in this paragraph. ~~[follows:]~~

1. If a contestant is knocked to the floor by the contestant's opponent, or falls from weakness or other causes, the contestant's opponent shall:

- a. Immediately retire to the farthest neutral corner of the ring; and
- b. Remain there until the referee completes the count or signals a resumption of action.

2. The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm while the contestant is down.

3. The referee shall pick up the count from the timekeeper.

4. If a contestant fails to rise to his or her feet before the count of ten (10), the referee shall declare **the contestant[him]** the loser by waving both arms to indicate a knockout.

5. If a contestant who is down rises to his or her feet during the count, the referee may step between the contestants long enough to assure that the contestant just arisen is in condition to continue the bout.

6. If a contestant who is down arises before the count of ten (10) is reached, and again goes down from weakness or the effects of a previous blow without being struck again, the referee shall resume the count where he or she left off.

7. A standing eight (8) count shall be used by the referee.

8. If a contestant is knocked down three (3) times during a round, the bout shall be stopped. The contestant scoring the knockdowns shall be the winner by a technical knockout.

9. If a round ends before a contestant who was knocked down rises, the count shall continue, and if the contestant fails to arise before the count of ten (10), the referee shall declare the contestant knocked out.

(3) A contestant shall be considered down if:

(a) Any part of the contestant's body other than his or her feet is on the ring floor;

(b) The contestant is hanging helplessly over the ropes and in the judgment of the referee, is unable to stand; or

(c) The contestant is rising from the down position.

(4) Failure to resume a bout.

(a) If a contestant fails to resume the bout for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count the contestant out the same as if the contestant were down in that round.

(b) If a contestant who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his or her feet before the expiration of ten (10) seconds, the referee shall count **the contestant[him]** out as if **the contestant[he]** were down.

Section 11. Fouls. (1) The following shall be considered fouls:

(a) Hitting below the belt;

(b) Hitting an opponent who is down or who is getting up after having been down;

(c) Holding an opponent and deliberately maintaining a clinch;

(d) Holding an opponent with one (1) hand and hitting with the other;

(e) Butting with the head or shoulder or using the knee;

(f) Hitting with the inside, or butt, of the hand, the wrist, or the elbow, **and all backhand blows except for those backhand blows allowable in kickboxing**;

(g) Hitting, or flicking, with the glove open or thumbing;

(h) Wrestling, or roughing, against the ropes;

(i) Purposely going down without having been hit;

(j) Deliberately striking at the part of an opponent's body over the kidneys;

(k) Using a pivot blow or rabbit punch;

(l) Biting of the opponent;

(m) Using abusive or profane language;

(n) Failing to obey the referee;

(o) Engaging in any unsportsmanlike trick or action that causes injury to another person;**[or]**

(p) Hitting after the bell has sounded at the end of the round;

or
(q) Backhand blows except in kickboxing.

(2)(a) A contestant who commits a foul may be disqualified and the decision awarded to the opponent by the referee.

(b) The referee shall immediately disqualify a contestant who commits a deliberate and willful foul that prevents the opponent from continuing in the bout.

(c) The referee may take one (1) or more points away from a contestant who commits an accidental foul.

(3) A contestant committing a foul may be issued a violation by an inspector.

(4)(a) If a bout is temporarily stopped by the referee due to fouling, the referee, with the aid of the physician, if necessary, shall decide if the contestant who has been fouled is in physical condition to continue the bout.

(b) If in the referee's opinion the contestant's chances have not been seriously jeopardized as a result of the foul, the referee shall order the bout resumed after a reasonable time set by the referee, but not exceeding five (5) minutes.

(5)(a) If a contestant is unable to continue as the result of an accidental foul and the bout is in one (1) of the first three (3) rounds, the bout shall be declared a technical draw.

(b) If an accidental foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the bout to be subsequently stopped, the bout shall be scored on the basis of the judges' scorecards.

(6) If a bout is ended by reason of fouling or failure to give an honest demonstration of skill, as determined by an inspector or referee, the compensation of the offending contestant shall be withheld by the promoter~~(and disposed of as ordered by the commission)~~.

Section 12. Prohibitions. (1) The following shall be prohibited:

(a) Battle royal type events; and

(b) Use of excessive grease or other substance that may handicap an opponent.

(2) A contestant shall not engage **at a show** in boxing or sparring with a member of the opposite sex.

Section 13. Non-Contestant Participants. (1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) All ring officials shall be selected, licensed, and assigned to each show by the commission. For each show, a minimum of the following shall be required:

(a) Three (3) judges;

(b) One (1) timekeeper;

(c) One (1) physician, **except[However,] two (2) physicians** shall be assigned to a bout designated a championship bout by a national sanctioning body recognized by the commission; and

(d) One (1) referee, unless the card has more than thirty (30) rounds, in which case a minimum of two (2) referees shall be required.

Section 14. Judges. (1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining:

(a) Whether or not a foul has been committed;

(b) Whether or not each contestant is competing in earnest; and

(c) Whether or not there is collusion affecting the result of the bout.

Section 15. Timekeeper. (1) The timekeeper shall be seated outside the ring near the bell and shall take the cue **from the referee** to commence or take time out~~[from the referee]~~.

(2) The timekeeper shall be **equipped[provided]** with a whistle and a stop watch. **Prior to the first bout, the inspector**

shall ensure that the whistle and stopwatch function properly[approved by the commission].

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements. (1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician's pre-bout duties shall be established in this subsection.[are as follows:]

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the **[form]** Pre-Fight Examination **form** that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician **[reasonably]** believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition shall be established in this subsection.[are as follows:]

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver to the inspector the form Post-Fight Examination that documents the results of the examination.

Section 17. Announcers. (1) The announcer shall have general supervision over all announcements made to spectators.

(a) The announcer shall announce the name of contestants, their weight, decisions at the end of each bout, and any other matters as are necessary.

(b) **A[No]** person other than the official announcer shall **not**

make an announcement, unless deemed necessary by an inspector:

(2) If a bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a bout.

Section 18. Referees. (1) The referee shall be the chief official of the show, be present in the ring at all times, and have general supervision over each contestant, manager, and second during the entire event.

(2)(a) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent.

(b) The referee shall immediately disqualify a contestant who commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as established in this subsection.[follows:]

(a) The referee shall, before starting a bout, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout.

(b) The referee shall call the contestants together in the ring immediately preceding a bout for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout at any time if the referee has **[reasonable]** grounds to believe either contestant **is**:

1. **[Is]** Unable to protect himself **or herself** from possible injury;

2. **[Is]** Not competing in earnest; or

3. **[Is]** Colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the contestant who was fouled.

(f) The referee shall not touch a contestant during the bout except upon failure of a contestant to obey the referee's orders or to protect a contestant.

(g) The referee shall decide all questions arising during a bout that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

Section 19. Trainers and Seconds. (1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions. (1) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete in unarmed combat again if, after subjecting the boxer or kickboxer to a thorough examination by a physician licensed by the commission, the medical advisory panel determines the action is necessary to protect the health and welfare of the contestant.

(2) A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete

in unarmed combat until the contestant has been evaluated and subsequently cleared for further competition by the medical advisory panel.

(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the prohibition.

(5) A contestant shall serve a mandatory seven (7) day rest period from competition after competing in an event. Day one (1) of the rest period shall commence on the first day following the bout in which the contestant competed.

(6)(a) A female boxer or kickboxer shall submit proof~~[that]~~ she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the bout that shows she is not pregnant; or

2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female boxer or kickboxer shall be prohibited from competing if:

1. She is pregnant; or

2. She fails to comply with this subsection~~[section]~~.

Section 21. Insurance. (1) A promoter shall provide insurance for a contestant for any injuries sustained in the boxing or kickboxing show.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4) The deductible expense under the policy for a contestant shall not exceed \$1,000.

Section 22. Other Provisions. (1) A promoter shall maintain an account with the recognized national database as identified by the commission and submit contestant's names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

(2) All shows shall be video recorded and retained by the promoter for at least for one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

(4) Alcohol shall be prohibited inside the six-foot area alongside the ring.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Show Notice Form", **October 2016**;

(b) "Pre-Fight Medical Questionnaire", **October 2016**;

(c) "Pre-Fight Examination", **October 2016**; and

(d) "Post-Fight Examination", **October 2016**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at **656 Chamberlin Avenue, suite B[911 Leawood Dr.]**, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at <http://kbwa.ky.gov/Pages/Appsforms.aspx>(1) The authority shall license all persons approved to participate as contestants in a boxing or kickboxing show.

(2) A participant shall apply for a license at the show site after a prefight physical.

(3) An application shall only be mailed to the authority if the applicant is over thirty-nine (39) years old and a comprehensive physical is required pursuant to Section 34 of this administrative regulation. An application shall be submitted on-site at the event after the prefight physical if the applicant is thirty-nine (39) years or less.

(4) A license shall expire on December 31 of the year in which

it is issued.

~~Section 2. (1)(a) An applicant for a boxing license shall complete and submit to the authority the form Application for License as a Boxer.~~

~~(b) A copy of the applicant's picture identification or birth certificate shall be submitted with the application.~~

~~(2) The license fee for each participant shall be as follows:~~

~~(a) For boxers and kickboxers: twenty (20) dollars~~

~~(b) For a boxer's federal identification card, pursuant to 15 U.S.C. 6305(a) and (b): ten (10) dollars. This identification is valid for two (2) years from the date issued. To obtain a boxer's federal identification card, an applicant shall complete and submit to the authority the form Boxer's Federal Identification Card Application.~~

~~Section 3. (1) A promoter of a boxing or kickboxing show shall request a show date by completing and submitting to the authority the form Boxing Show Notice Form.~~

~~(2) The form shall be submitted to the authority for approval no less than thirty (30) calendar days before the requested show date.~~

~~(3) There shall not be advertising of the event prior to the approval.~~

~~(4) Upon approval by the authority, all advertisements shall include the promoter's license number.~~

~~Section 4. Before the commencement of the main event of a boxing or kickboxing show or exhibition, a promoter of a show or exhibition shall tender to the inspector or an employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 5 of this administrative regulation.~~

~~Section 5. The schedule for compensation to be paid prior to the commencement of the main event to officials participating in a boxing or kickboxing show shall be as follows:~~

~~(1) Judges for boxing or kickboxing shows: seventy-five (75) dollars each.~~

~~(2) Timekeeper for boxing or kickboxing shows: seventy-five (75) dollars.~~

~~(3) Physician for boxing and kickboxing show:~~

~~(a) \$300: up to ten (10) scheduled bouts;~~

~~(b) \$350: eleven (11) to fifteen (15) scheduled bouts; or~~

~~(c) \$400: over fifteen (15) scheduled bouts.~~

~~(4) Referees for boxing and kickboxing shows: \$100 each.~~

~~Section 6. If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the authority, officials shall be paid one-half (1/2) the compensation required by Section 5 of this administrative regulation.~~

~~Section 7. (1) The proposed card for a show shall be filed with the authority at least five (5) business days prior to the date of the show. Notice of a change in a program or substitution in a show shall be immediately filed with the authority.~~

~~(2) If the authority determines, based on a contestant's fight history, that a proposed bout may not be reasonably competitive, the bout shall be denied.~~

~~Section 8. Each contestant's compensation agreement shall be in writing and submitted to the authority for approval not less than five (5) calendar days prior to the date of the proposed show.~~

~~Section 9. (1) Before the commencement of a show, all changes or substitutions in the card shall be:~~

~~(a) Announced from the ring; and~~

~~(b) Posted in a conspicuous place at the ticket office.~~

~~(2) In the event of a change in the card, a purchaser of a ticket shall be entitled, upon request, to a refund of the purchase price of the tickets, provided the request is made before the commencement of the show.~~

~~Section 10. Within twenty-four (24) hours of the conclusion of a~~

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show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the authority the form, Boxing Event Report.

Section 11. (1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the authority.

(a) Alcohol or smoking shall be prohibited in the areas under the control of the authority.

(b) Authority staff and licensees shall be the only people allowed inside the areas under the control of the authority.

(2) An event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof.

(3) A ring shall have a canvas mat or similar material, unless the event is held outdoors in which case only canvas shall be used. A boxing match may be held in a Mixed Martial Arts cage if the match is in conjunction with a Mixed Martial Arts event.

Section 12. (1) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring.

(2) A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for boxers and kickboxers to enter the ring and the spectator area.

Section 13. The ring specifications shall be as follows:

(1) A bout shall be held in a four (4) sided roped ring with the following specifications:

(a) The floor of the ring inside the ropes shall not be less than sixteen (16) feet square;

(b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;

(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

(d) The ring shall have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

1. Twenty-four (24) inches;

2. Thirty-six (36) inches; and

3. Forty-eight (48) inches.

(b) A fourth rope may be used if it is approved by the inspector or employee of the authority prior to the commencement of the show.

(c) The ropes shall be at least one (1) inch in diameter.

(d) The ropes shall be wrapped in a clean, soft material and drawn taut.

(e) The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.

(3) The ropes shall be supported by ring posts that shall be:

(a) Made of metal or other strong material;

(b) Not less than three (3) inches in diameter; and

(c) At least eighteen (18) inches from the ropes.

(4) The ring floor shall be padded or cushioned with a clean, soft material that:

(a) Is at least one (1) inch in thickness using thick slow recovery foam matting;

(b) Extends over the edge of the platform; and

(c) Is covered with a single canvas stretched tightly. If the event is held outdoors, only canvas shall be used; and

2. Is clean, sanitary, dry, and free from:

a. Grit;

b. Dirt;

c. Resin;

d. Blood; and

e. Any other foreign object or substance.

(5) A ring rope shall be attached to a ring post by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 14. A bell or horn shall be used by the timekeeper to indicate the time.

Section 15. In addition to the ring and ring equipment, the promoter shall supply the items listed in this section, which shall be available for use as needed:

(1) A public address system in good working order;

(2) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;

(3) Items for each contestant's corner, to include:

(a) A stool or chair;

(b) A clean bucket;

(c) Towels; and

(d) Rubber gloves;

(5) A complete set of numbered round cards, if needed;

(6) A clean stretcher and a clean blanket, placed under or adjacent to the ring throughout each bout;

(7) First aid oxygen apparatus or equipment; and

(8) Gloves for each boxer or kickboxer.

Section 16. A scale used for any weigh-in shall be approved in advance by the inspector or employee of the authority.

Section 17. A promoter shall provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted and the locker rooms to ensure adequate protection against disorderly conduct. A disorderly act, assault, or breach of decorum on the part of a licensee at the premises shall be prohibited.

Section 18. (1) Emergency medical personnel and portable medical equipment shall be stationed at ringside during the event.

(2) There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for each contest.

(3) If the ambulance is required to leave the event, boxing and kickboxing shall not be allowed to continue until an ambulance is once again present and medical personnel are at ringside.

Section 19. (1) There shall be at least one (1) physician licensed by the authority at ringside before a bout is allowed to begin.

(2) The physician shall have at ringside medical supplies reasonably anticipated to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing contest.

Section 20. (1) A promoter shall provide health insurance for the boxer or kickboxer for any injuries sustained in the boxing event.

(2) The minimum amount of coverage per boxer or kickboxer shall be \$5,000 benefits.

(a) Payment of a deductible under the policy shall be the responsibility of the contestant not to exceed an expense of \$1,000.

(b) Deductible expenses above \$1,000 shall be the responsibility of the promoter.

(3) A certificate of insurance coverage shall be provided to the authority no less than two (2) business days before the event.

Section 21. All judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:

(1) Three (3) judges;

(2) One (1) timekeeper;

(3) One (1) physician. Two (2) physicians shall be assigned to a bout designated a championship bout by a national sanctioning body recognized by the authority; and

(4) One (1) referee, unless the card has more than thirty (30) rounds, in which case a minimum of two (2) referees shall be required.

Section 22. Decisions shall be rendered as follows:

(1) If a contest lasts the scheduled limit, the winner of the contest shall be decided by:

(a) A majority vote of the judges if three (3) judges are employed to judge the contest; or

(b) A majority vote of the judges and the referee if two (2) judges are employed to judge the contest.

(2) Decisions shall be based primarily on boxing or kickboxing effectiveness, with points awarded for display of the following attributes, and points deducted for an opposite showing:

(a) Clean, forceful hitting;

(b) Aggressiveness;

(c) Defensive work; and

(d) Ring generalship.

Section 23. Scoring shall be as follows:

(1) Each round in boxing or kickboxing shall be accounted for on the scorecard, using the ten (10) point must system. Scoring shall be expressed in ratio of merit and demerit.

(2) Score cards shall be:

(a) Signed;

(b) Handed to the referee in the ring; and

(c) Filed by the referee with the inspector or employee of the authority in attendance.

(3) The decision shall then be announced from the ring.

Section 24. Bouts and rounds shall be as follows:

(1) Boxing or kickboxing rounds shall:

(a) Be of either two (2) or three (3) minutes duration; and

(b) Have not less than a one (1) minute rest period between rounds.

(2) A boxing or kickboxing bout shall consist of no less than four (4) and no more than twelve (12) rounds. A championship bout shall be twelve (12) rounds in length.

Section 25. Boxing gloves shall meet the requirements established in this section:

(1) For boxing, contestants shall wear boxing gloves that shall be of the same weight for each contestant and:

(a) Dry, clean, and sanitary;

(b) Furnished by the promoter;

(c) Of equal weight, not to exceed twelve (12) ounces;

(d) A minimum of eight (8) ounces for a contestant weighing no more than 154 pounds;

(e) A minimum of ten (10) ounces for a contestant weighing over 154 pounds; and

(f) Thumbless or thumb-attached.

(2) For kickboxing, contestants shall wear boxing gloves that shall be of the same weight for each contestant and:

(a) Clean and sanitary;

(b) Furnished by the promoter;

(c) Of equal weight, not to exceed twelve (12) ounces;

(d) A minimum of eight (8) ounce gloves shall be worn by a contestant weighing no more than 154 pounds; and

(e) A minimum of ten (10) ounce gloves shall be worn by a contestant weighing over 154 pounds.

(3) Gloves shall be new for main events and for contests and exhibitions scheduled for ten (10) or more rounds.

(4) Gloves shall be thumbless or thumb-attached gloves approved by the authority pursuant to this section.

(5) Kickboxing contestants shall wear padded kickboxing boots. The padding shall be sufficient to protect the kickboxer and his competitor.

(6) Gloves for all main events shall be dry and free from defects and shall be put on in the ring or locker room and shall be supervised by KBWA staff.

(7) Breaking, roughing, or twisting of gloves shall not be permitted.

(8) The laces on gloves shall be tied on the back of the wrist and taped.

Section 26. Bandages shall meet the requirements established in this section:

(1) For boxing and kickboxing, only soft cotton or linen

bandages shall be used for the protection of the boxer or kickboxer's hands.

(2) Bandages shall not be more than two (2) inches in width and twelve (12) yards in length for each hand.

(3) Adhesive tape:

(a) If used, medical adhesive tape not more than one (1) inch in width shall be used to hold bandages in place.

(b) Adhesive tape shall not be lapped more than one-eighth (1/8) of one (1) inch.

(c) Adhesive tape not to exceed one (1) layer shall be crossed over the back of the hand for its protection.

(d) Three (3) strips of adhesive tape, lapping not to exceed one-eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

(4) Hand wraps shall be applied in the dressing room in the presence of an inspector, official or employee of the authority. The inspector, official, or employee of the authority shall sign the hand wrap and the tape around the strings of the gloves.

Section 27. The requirements governing knockdowns shall be as follows:

(1) If a contestant is knocked to the floor by the contestant's opponent, or falls from weakness or other causes, the contestant's opponent shall:

(a) Immediately retire to the farthest neutral corner of the ring; and

(b) Remain there until the referee completes his count or signals a resumption of action.

(2) The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm while the contestant is down.

(3) The referee shall pick up the count from the timekeeper.

(4) If a contestant fails to rise to his feet before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.

(5) If a contestant who is down rises to his feet during the count, the referee may, if he deems it necessary, step between the contestants long enough to assure that the contestant just arisen is in condition to continue the bout.

(6) If a contestant who is down arises before the count of ten (10) is reached, and again goes down from weakness or the effects of a previous blow without being struck again, the referee shall resume the count where he left off.

(7) A standing eight (8) count shall be used by the referee.

(8) If a contestant is knocked down three (3) times during a round, the contest shall be stopped. The contestant scoring the knockdowns shall be the winner by a technical knockout.

(9) If a round ends before a contestant who was knocked down rises, the count shall continue, and if the contestant fails to arise before the count of ten (10), the referee shall declare him knocked out.

Section 28. Failure to Resume a Bout. (1) If a contestant fails to resume the bout for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count him out the same as if he were down in that round.

(2) If a contestant who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his feet before the expiration of ten (10) seconds, the referee shall count him out as if he were down.

Section 29. A contestant shall be considered "down" if:

(1) Any part of his body other than his feet is on the ring floor;

(2) He is hanging helplessly over the ropes and in the judgment of the referee, he is unable to stand; or

(3) He is rising from the "down" position.

Section 30. (1) The following shall be considered fouls:

(a) Hitting below the belt;

(b) Hitting an opponent who is down or who is getting up after having been down;

(c) Holding an opponent and deliberately maintaining a clinch;

(d) Holding an opponent with one (1) hand and hitting with the other;

(e) Butting with head or shoulder or using the knee;

(f) Hitting with the inside, or butt, of the hand, the wrist, or the elbow, and all backhand blows except for those backhand blows allowable in kickboxing;

(g) Hitting, or flicking, with the glove open or thumbing;

(h) Wrestling, or roughing, against the ropes;

(i) Purposely going down without having been hit;

(j) Deliberately striking at the part of opponent's body over the kidneys;

(k) Use of the pivot blow, or rabbit punch;

(l) Biting of the opponent;

(m) Use of abusive or profane language; or

(n) Failure to obey the referee.

(2)(a) A contestant who commits a foul may be disqualified and the decision awarded to his opponent by the referee.

(b) The referee shall immediately disqualify a contestant who commits a deliberate and willful foul that incapacitates his opponent.

(c) The referee may take one (1) or more points away from a contestant who commits an accidental foul.

(3) A contestant committing a foul may be issued a violation by the inspector or employee of the authority.

(4)(a) If a bout is temporarily stopped by the referee due to accidental fouling, the referee, with the aid of the physician, if necessary, shall decide if the contestant who has been fouled is in physical condition to continue the bout.

(b) If in the referee's opinion the contestant's chances have not been seriously jeopardized as a result of the foul, he shall order the bout resumed after a reasonable time, the time to be set by the referee, but not exceeding five (5) minutes.

(5)(a) If a contestant is unable to continue as the result of an accidental foul and the bout is in one (1) of the first three (3) rounds, the bout shall be declared a technical draw.

(b) If an accidental foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the contest to be subsequently stopped, the contest shall be scored on the basis of the judges' scorecards.

Section 31. The following shall be prohibited:

(1) "Battle royal"; and

(2) Use of excessive grease or other substance that may handicap an opponent.

Section 32. (1) A boxer or kickboxer who has been repeatedly knocked out and severely beaten shall be retired and not permitted to box again if, after subjecting him to a thorough examination by a physician licensed by the authority, the action is necessary to protect the health and welfare of the boxer.

(2) A boxer or kickboxer who has suffered six (6) consecutive defeats by knockout shall not be allowed to box again until he has been investigated by the authority and examined by a physician licensed by the authority.

(3) A boxer or kickboxer whose license is under suspension in another jurisdiction may be allowed to participate in boxing or kickboxing only after review and approval of the case by the inspector or employee of the authority.

(4) A boxer or kickboxer who has been knocked out shall be prohibited from all physical contact for sixty (60) days.

(5) Any boxer or kickboxer who has suffered a technical knockout shall be prohibited from competition for up to thirty (30) days. In determining how many days to prohibit the contestant from competition, the inspector shall consider the nature and severity of the injuries that resulted in the TKO.

(6) A boxer or kickboxer shall receive a mandatory seven (7) day rest period from competition after competing in an event. Day one (1) of the rest period shall commence on the first day following the event.

Section 33. A boxer or kickboxer shall not engage in boxing or sparring with a member of the opposite sex.

Section 34. (1) Unless special permission otherwise is granted by the authority, a boxer or kickboxer:

(a) Under nineteen (19) years of age is permitted to box or kickbox no more than six (6) rounds;

(b) Nineteen (19) years of age is permitted to box or kickbox no more than eight (8) rounds; and

(c) Twenty (20) years of age is permitted to box or kickbox no more than ten (10) rounds.

(2) A contestant who has not fought within the last twelve (12) months shall not be scheduled to box or kickbox more than ten (10) rounds.

(3) A person over the age of thirty-nine (39) shall not box or kickbox without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled board meeting.

Section 35. A contestant shall submit HIV Antibody and Hepatitis B Antigen and Hepatitis C Antibody test results at or before preflight physical. The results of these tests shall be no more than 180 days old. A person with positive test results shall not compete.

Section 36. A contestant shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show and shall be subject to orders given by the inspector or employee of the authority.

Section 37. (1) A contestant shall produce one (1) form of picture identification.

(2) A contestant shall not assume or use the name of another and shall not change his ring name nor be announced by name other than that which appears on his license except upon approval of the inspector or employee of the authority.

(3) A contestant shall attend a pre-fight meeting as directed by a representative of the authority.

(4) A contestant shall check in with the authority not less than one (1) hour prior to the event start time.

(5) A contestant shall remain in the locker room area until it is time to compete.

Section 38. A contestant shall be clean and neatly attired in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

Section 39. A contestant shall not use a belt that contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

Section 40. A contestant shall wear shoes during a bout, and the shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

Section 41. A contestant shall wear a properly fitted:

(1) Groin protector;

(2) Kidney protector, if available; and

(3) Mouthpiece.

Section 42. If a contest is ended by reason of fouling or failure to give an honest exhibition of skill, as determined by the inspector, referee, or an employee of the authority, the compensation of the offending contestant shall be withheld by the promoter and shall be disposed of as ordered by the authority.

Section 43. (1) The authority may request that a contestant submit to a drug screen for controlled substances at the contestant's expense. If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the authority shall suspend or revoke the license of the contestant, impose a fine upon the contestant, or both.

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(2)(a) The administration of or use of any of the following is prohibited in any part of the body, either before or during a contest or exhibition:

1. Alcohol;
2. Stimulant; or

3. Drug or injection that has not been approved by the authority, including the drugs or injections listed in paragraph (b) of this subsection.

(b) The following types of drugs, injections, or stimulants shall be prohibited pursuant to paragraph (a) of this subsection:

1. Afrinol or another product pharmaceutically similar to Afrinol;
2. Co-Tylenol or another product pharmaceutically similar to Co-Tylenol;

3. A product containing an antihistamine and a decongestant;

4. A decongestant other than a decongestant listed in paragraph (c) of this subsection;

5. Over-the-counter drug for colds, coughs, or sinuses other than those drugs listed in paragraph (c) of this subsection. This paragraph includes Ephedrine, Phenylpropanolamine, Mahuang, and derivatives of Mahuang;

6. A drug identified on the most current edition of the Prohibited List published by the World Anti-Doping Agency. The most current edition of the Prohibited List may be obtained, free of charge, at the Internet address www.wada-ama.org.

(d) The following types of drugs or injections shall be approved by the authority:

1. Antacids, such as Maalox;

2. Antibiotics, antifungals, or antivirals that have been prescribed by a physician;

3. Antidiarrheals, such as Imodium, Kaopectate, or Pepto-Bismol;

4. Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1, or Teldrin;

5. Antinauseants, such as Dramamine or Tigan;

6. Antipyretics, such as Tylenol;

7. Antitussives, such as Robitussin, if the antitussive does not contain codeine;

8. Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet, or Zantac;

9. Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent), or Salbutamol (Albuterol, Proventil, or Ventolin);

10. Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide, or Vanceril;

11. Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox, or Vosol;

12. Hemorrhoid products, such as Anusol-HC, Preparation H, or Nupercainal;

13. Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane, or Milk of Magnesia;

14. Nasal products, such as AYR Saline, HuMist Saline, Ocean, or Salinex; and

15. The following decongestants:

a. Afrin;

b. Oxymetazoline HCL Nasal Spray; or

c. Any other decongestant that is pharmaceutically similar to a decongestant listed in clauses a. or b.

(e) An unarmed combatant shall submit to a urinalysis or chemical test before or after a contest or exhibition if the authority or a representative of the authority so directs.

(f) A licensee who violates this section shall be subject to disciplinary action by the authority. In addition, if an unarmed combatant who won or drew a contest or exhibition is found to have violated this section, the authority may change the result of that contest or exhibition to a no decision.

Section 44. (1) The class weights permitted in boxing and kickboxing bouts shall be as follows:

CLASS	WEIGHT
Flyweight	Up to 112 lbs.
Bantamweight	Up to 118 lbs.

Jr. Featherweight	Up to 122 lbs.
Featherweight	Up to 126 lbs.
Jr. Lightweight	Up to 130 lbs.
Lightweight	Up to 135 lbs.
Jr. Welterweight	Up to 140 lbs.
Welterweight	Up to 147 lbs.
Jr. Middleweight	Up to 154 lbs.
Middleweight	Up to 160 lbs.
Light Heavyweight	Up to 175 lbs.
Cruiserweight	Up to 195 lbs.
Heavyweight	Over 195 lbs.

(2) After the weigh-in of a contestant competing in a bout or exhibition:

(a) Change in weight in excess of three (3) pounds shall be prohibited for a contestant who weighed in at 145 pounds or less; and

(b) Change in weight in excess of four (4) pounds shall be prohibited for a contestant who weighed in at over 145 pounds.

Section 45. (1) A contestant in a show held under the jurisdiction of the authority shall weigh in stripped, at a time set by the authority.

(2) The inspector or an employee of the authority and a representative of the promoter conducting the show shall be in attendance to record the official weights.

(3) A contestant shall not fight more than one (1) class above his weight.

Section 46. On the day of the show, the official physician shall make a physical examination of each contestant.

Section 47. If a contestant is unable to participate in a show for which he has a contract, he shall immediately notify the promoter and the authority and file with the authority a physician's certificate verifying the injury or illness or other verified evidence indicating the reasons for his failure to participate.

Section 48. The promoter shall submit written notice to the nearest hospital with an on-call neurosurgeon that a boxing or kickboxing bout is being held. The notice shall include the date, time, and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 49. The following requirements shall apply to all bouts between female contestants:

(1) The maximum number of rounds shall be ten (10);

(2) The length of each round shall be two (2) minutes;

(3) The rest period between rounds shall be one (1) minute;

(4) A contestant shall not wear facial cosmetics during the bout;

(5) A contestant with long hair shall secure her hair with soft and nonabrasive material;

(6) Weight classes shall be those established in Section 44 of this administrative regulation;

(7) A contestant shall wear a properly-fitted:

(a) Breast protector;

(b) Groin protector;

(c) Kidney protector if available, and

(d) Mouthpiece;

(8) The gloves shall be properly fitted and the sizes shall be as follows:

(a) Of equal weight, not to exceed twelve (12) ounces;

(b) A minimum of eight (8) ounce gloves shall be worn by a contestant weighing no more than 154 pounds;

(c) A minimum of ten (10) ounce gloves shall be worn by a contestant weighing over 154 pounds; and

(9) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

(10) A promoter shall provide separate locker rooms for males and females.

Section 50. A promoter shall maintain an account with the recognized national database as identified by the authority and submit contestants names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

Section 51. All shows shall be video recorded and retained by the promoter at least for one (1) year. Upon request of the authority, the promoter shall provide the video recording of a show to the authority.

Section 52. All non-sanctioned activities such as concerts, shall be completed prior to the scheduled start time of the event.

Section 53. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for License as a Boxer", 1/2012;
- (b) "Boxer's Federal Identification Card Application", 1/2012;
- (c) "Boxing Show Notice Form", 1/2012; and
- (d) "Boxing Event Report", 1/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

**PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(As Amended at ARRS, November 7, 2016)**

201 KAR 27:016. General requirements for all mixed martial arts matches, shows, or exhibitions.

RELATES TO: KRS 229.021, 229.031, 229.071[(4)], 229.081, 229.091, 229.101, 229.111, 229.131, 229.171, 229.180, **EO 2016-270[(4)]**

STATUTORY AUTHORITY: KRS 229.021, 229.031, 229.071, 229.081, 229.091[(4)], 229.101, 229.111, 229.131[229.154(4)], 229.171[(4)], 229.180[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the ~~authority[commission]~~ to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. **Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission**[(2) authorizes the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given with the Commonwealth. KRS 229.151(1) grants the Kentucky Boxing and Wrestling Authority regulatory oversight over professional boxing, wrestling, and other professional full-contact competitive bouts within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary or expedient for the performance of its regulatory function. KRS 229.021 and 229.071(2) and (3) authorize the authority to grant annual licenses to applicants for participation in professional matches if the authority determines that the financial responsibility, experience, character, and general fitness of the applicant indicate that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to the

~~administrative regulations promulgated by the authority~~. This administrative regulation establishes the requirements for mixed martial arts shows and for participants in mixed martial arts shows[contests subject to state regulation].

Section 1. Show Date. (1) A promoter shall request a show date by completing and submitting to the commission the Show Notice Form, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(a).

(2) The Show Notice Form shall be submitted for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

- (a) Placing the event on the Calendar of Events available on the commission's Web site at <http://ins.kbwa.ky.gov/ecal.asp>; or
- (b) Providing written notice that the event is approved.

[(4) An advertisement shall not include the name or image of any contestant who does not hold a valid license issued by the commission.]

Section 2. Program and Changes. (1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission.**[The commission may request evidence to show the reasons for the failure to participate.]** Repeated and unexcused absences or cancellation ~~shall~~**[may]** result in a ~~violation~~**[discipline]**.

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date. Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. The commission's determination shall be based upon the contestants' previous fighting experience, including:

- (a) The number of bouts the contestants have competed in;
- (b) The number of rounds the contestants have competed in;
- (c) The date of the contestants' bouts;
- (d) The contestants' performance in previous bouts, including the ~~contestants'~~**[applicant's]** won-loss record;
- (e) The level of competition the contestants have faced; and
- (f) The contestants' medical histories.

Section 3. Compensation. (1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector ~~payment~~**[a certified check or money order made payable]** to each ring official. The schedule of compensation for a ring official ~~shall be~~**[is]** at least as ~~established in this section~~**[follows:]**

~~(a) A~~**[For a professional mixed martial arts show or a mixed professional and amateur mixed martial arts show:**

~~1.] judge shall be paid[;] \$150[each]~~ unless the show card has twelve (12) or fewer bouts, in which case each judge's pay shall be \$100;

~~(b) A~~**[2.]** timekeeper ~~shall be paid[;] \$100~~ unless the show card has twelve (12) or fewer bouts, in which case the timekeeper's pay shall be seventy-five (75) dollars;

~~(c) A~~**[3.]** physician ~~shall be paid[;] \$350;~~

~~(d) A~~**[4.]** referee ~~shall be paid[;] \$150; and~~

~~(e) A~~**[5.]** bout assistant ~~shall be paid[;] seventy-five (75) dollars[; or~~

~~(b) For an amateur mixed martial arts show:~~

1. Judge: fifty (50) dollars;

2. Timekeeper: fifty (50) dollars;

3. Physician: \$350;

4. Referee: seventy-five (75) dollars; and

5. Bout assistant: seventy-five (75) dollars].

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than

two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight. (1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show.

(a) A contestant shall produce to the inspector one (1) form of picture identification at the weigh-in.

(b) The inspector and the promoter or a representative of the promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4)(a) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results to the commission at least twenty-four (24) hours prior to the event.

(a) The results of these tests shall be no more than 180 days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician. Prior to undergoing the physical, a contestant shall submit a completed Pre-Fight Medical Questionnaire, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(b), under penalty of perjury.

(7) A contestant shall not assume or use the name of another and shall not change his or her ring name nor be announced by any name other than that appearing[which appears] on his or her license, except upon approval of the inspector.

(8) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall be subject to instructions[orders] given by the inspector.

Section 5. The Cage. (1) The area between the cage and the first row of spectators on all sides and the locker room shall be under the exclusive control of the commission.

(2) Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission.

(3) There shall be an area of at least six (6) feet between the edge of the cage floor and the first row of spectator seats on all sides of the cage. A partition, barricade, or similar divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the cage; and

(b) Along the sides of the entry lane for contestants to enter the cage and the spectator area.

(4) A bout or exhibition of mixed martial arts shall be held in a fenced area meeting the following requirements established in this subsection.[:]

(a) The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.

(b) The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas or a synthetic material stretched tightly and laced to the platform of the fenced area, unless the event is held outdoors, in which case only canvas shall be used.

(c) The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the contestants.

(d) Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

(e) The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the fenced area or breaking through the fenced area onto the floor of

the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

(f) Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.

(g) The fenced area shall have at least one (1) entrance.

(h) There shall not be a protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to be competing.

(i) Any event held outdoors while the heat index is or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire cage.

(j) A cage shall have a canvas mat or a synthetic material, unless the event is held outdoors, in which case only canvas shall be used.

Section 6. Equipment. (1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the cage and cage equipment, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the cage and the cage floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;

2. A clean bucket;

3. Towels;

4. Rubber gloves; and

(d) A complete set of numbered round-cards, if needed.

(3) A scale used for any weigh-in shall be approved as accurate in advance by the inspector.

Section 7. Contestant Equipment and Attire. (1) A contestant shall be clean and neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that contains a metal substance during a bout. The belt shall not extend above the waistline of the contestant.

(3) A contestant shall not wear shoes or any padding on his or her feet during the bout.

(4) A contestant shall wear a properly fitted:

(a) Groin protector; and

(b) Double-arch mouthpiece.

(5) If a contestant has long hair, the hair shall be[A contestant shall have long hair] secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) If cosmetics are used, a contestant shall use a minimum of cosmetics.

Section 8. Weight Classes. (1)[Except with the approval of the commission.] The classes for contestants competing in bouts or exhibitions of mixed martial arts and the weights for each class shall be as established[are shown] in the following schedule:

CLASS	WEIGHT
Flyweight	Up to 125 lbs.
Bantamweight	Up to 135 lbs.
Featherweight	Up to 145 lbs.
Lightweight	Up to 155 lbs.
Welterweight	Up to 170 lbs.
Middleweight	Up to 185 lbs.
Light Heavyweight	Up to 205 lbs.
Heavyweight	Up to 265 lbs.
Super Heavyweight	Over 265 lbs.

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector for medical purposes. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length. Unless the commission approves an

exception upon finding that the health and safety of the contestants will not be compromised:

(1) A non-championship bout or exhibition of mixed martial arts shall not exceed three (3) rounds in duration;

(2) A championship bout of mixed martial arts shall not exceed five (5) rounds in duration;

(3) The length of a round in a professional bout or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a round shall be one (1) minute in duration; and

(4) The length of a round in an amateur bout or exhibition of mixed martial arts shall be a maximum of three (3) minutes in duration, and a rest period following a round shall be ninety (90) seconds in duration.

Section 10. Judging and Scoring. (1) Each judge of a bout or exhibition of mixed martial arts shall score the bout or exhibition and determine the winner through the use of the following system established in this section.[]

(a) The better contestant of a round shall receive ten (10) points, and the opponent shall receive proportionately less.

(b) If the round is even, each contestant shall receive ten (10) points.

(c) Fraction of points shall not be given.

(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.

(2) After the end of the bout or exhibition, the announcer shall pick up the scores of the judges from the commission's representative.

(3) The majority opinion shall be conclusive and, if there is no majority, the decision shall be a draw.

(4)(a) Once[When] the commission's representative has checked the scores, he or she shall inform the announcer of the decision.

(b) The announcer shall then inform the audience of the decision.

(5) Unjudged exhibitions shall be permitted with the prior approval of the commission.

(6) A bout of mixed martial arts shall[may] end in the following ways:

(a) Submission by:

1. Physical tap out; or

2. Verbal tap out;

(b) Technical knockout by the referee or physician stopping the bout;

(c) Decision via the scorecards, including:

1. Unanimous decision;

2. Split decision;

3. Majority decision; or[and]

4. Draw, including:

a. Unanimous draw;

b. Majority draw; or[and]

c. Split draw;

(d) Technical decision;

(e) Technical draw;

(f) Disqualification;

(g) Forfeit; or

(h) No contest.

Section 11. Fouls. (1) The following acts shall constitute fouls in mixed martial arts:

(a) Butting with the head;

(b) Eye gouging;

(c) Biting;

(d) Hair pulling;

(e) Fishhooking;

(f) Groin attacks;

(g) Putting a finger into any orifice or into any cut or laceration on an opponent;

(h) Small joint manipulation;

(i) Striking to the spine or the back of the head;

(j) Striking downward using the point of the elbow;

(k) Throat strikes including grabbing the trachea;

(l) Clawing, pinching, or twisting the flesh;

(m) Grabbing the clavicle;

(n) Kicking the head of a grounded opponent;

(o) Kneeing the head of a grounded opponent;

(p) Stomping the head of a grounded opponent;

(q) Kicking to the kidney with the heel;

(r) Spiking an opponent to the canvas on his or her head or neck;

(s) Throwing an opponent out of the fenced area;

(t) Holding the shorts of an opponent;

(u) Spitting at an opponent;

(v) Engaging in unsportsmanlike conduct [that causes an injury to an opponent];

(w) Holding the fence;

(x) Using abusive language in the fenced area;

(y) Attacking an opponent on or during the break;

(z) Attacking an opponent who is under the care of the referee;

(aa) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;

(bb) Intentionally disregarding the instructions of the referee;

(cc) Timidity, such as intentionally or consistently dropping the mouthpiece or faking an injury;

(dd) Interference by a contestant's corner staff; and

(ee) The throwing by a contestant's corner staff of objects into the cage during competition.

(2) If a contestant fouls his or her opponent during a bout or exhibition of mixed martial arts, the referee may penalize the contestant by deducting points from his or her score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his or her determination on the severity of the foul and its effect upon the opponent.

(3) If the referee determines that it is necessary to deduct a point or points because of a foul, he or she shall warn the offender of the penalty to be assessed.

(4) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(5) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and shall not be deducted from the score of any subsequent round.

(6)(a) If a bout or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine if the contestant who has been fouled is able to continue.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the bout or exhibition continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the commission's representative of his or her determination that the foul was or was not accidental.

(7) If the referee determines that a bout or exhibition of mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the bout or exhibition shall be declared a no bout if the foul occurs during:

(a) The first two (2) rounds of a bout or exhibition that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a bout or exhibition that is scheduled for more than three (3) rounds.

(8) If an accidental foul renders a contestant unable to continue the bout or exhibition, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a bout or exhibition that is scheduled for three (3) rounds or less; or

(b) The completed third round of a bout or exhibition that is scheduled for more than three (3) rounds [, the outcome shall be determined by scoring the completed rounds].

(9) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout or exhibition stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during

which the referee stops the bout or exhibition.

(10) A contestant committing **an intentional[a]** foul may be issued a violation by an inspector.

Section 12. Prohibitions. The following shall be prohibited:

- (1) Battle royal type events; and
- (2) Use of excessive grease or other substance that may handicap an opponent.

Section 13. Non-Contestant Participants. (1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the commission. The following shall be required:

- (a) Three (3) judges;
- (b) One (1) timekeeper;
- (c) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required; and
- (d) One (1) referee, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) referees shall be required.

Section 14. Judges. (1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining **whether or not**:

- (a) **[Whether or not]** A foul has been committed;
- (b) **[Whether or not]** Each contestant is competing in earnest; and
- (c) **[Whether or not]** There is collusion affecting the result of the bout.

Section 15. Timekeeper. (1) The timekeeper shall be seated outside the ring near the bell and shall take the cue to commence or take time out from the referee.

(2) The timekeeper shall be **equipped[provided]** with a whistle and a stop watch. **Prior to the first bout, the inspector shall ensure that the whistle and stopwatch function properly[approved by the commission].**

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by sounding a horn or striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements. (1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician's pre-bout duties **shall be established in this subsection.[are as follows:]**

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the form Pre-Fight Examination, which is incorporated by reference in 201 KAR

27:011, Section 23(1)(c), that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician **[reasonably]** believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition **shall be as established in this subsection.[are as follows:]**

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout or match.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

- (a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;
- (b) Spine board;
- (c) Cervical collar;
- (d) Oxygen apparatus or equipment; and
- (e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver the form **Post-Fight(Post-Bout)** Examination, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(d) that documents the results of the examination.

Section 17. Announcers. (1) The announcer shall have general supervision over all announcements made to spectators.

(a) The announcer shall announce the name of contestants, their weight, decisions at the end of each match or bout, and any other matters as are necessary.

(b) **A[No]** person other than the official announcer shall **not** make an announcement, unless deemed necessary by an inspector.

(2) If a match or bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a match or bout.

Section 18. Referees. (1) The referee shall be the chief official of the show, be present in the ring at all times, and have general supervision over each contestant, manager, and second during the entire event.

(2) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent. The referee shall immediately disqualify a contestant who commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as **established in this subsection.[follows:]**

(a) The referee shall, before starting a bout or match, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout or match.

(b) The referee shall call the contestants together in the ring immediately preceding a bout or match for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout or match at any time if the referee has reasonable grounds to believe either contestant is:

1. [is] Unable to protect himself or herself from possible injury;

2. [is] Not competing in earnest; or

3. [is] Colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the contestant who was fouled.

(f) The referee shall not touch a contestant during the bout or match except upon failure of a contestant to obey the referee's instructions[orders] or to protect a contestant.

(g) The referee shall decide all questions arising during a bout or match that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

Section 19. Trainers and Seconds. (1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions. (1) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete again if, after subjecting the contestant to a thorough examination by a physician licensed by the commission, the medical advisory panel determines action is necessary to protect the health and welfare of the contestant.

(2) A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete again until the contestant has been evaluated and subsequently cleared for further competition by the medical advisory panel.

(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the prohibition.

(5) A contestant shall receive a mandatory seven (7) day rest period from competition after competing in an event. Day one (1) of the rest period shall commence on the first day following the bout in which the contestant competed.

(6)(a) A female mixed martial artist shall submit proof [that] she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the match that shows she is not pregnant; or

2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female mixed martial artist shall be prohibited from competing if:

1. She is pregnant; or

2. She fails to comply with this subsection[section].

Section 21. Insurance. (1) A promoter shall provide insurance for a contestant for any injuries sustained in the mixed martial arts event.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4)(a) The deductible expense under the policy for a professional mixed martial artist shall not exceed \$1,000.

(b) The deductible expense for an amateur mixed martial artist shall not exceed \$500.

Section 22. Other Provisions. (1) A contestant shall not compete against a member of the opposite gender.

(2) Each show shall be video recorded and retained by the promoter for at least one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) A promoter shall maintain an account with the recognized national database as identified by the commission and shall submit contestants names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

~~(4)[A mixed martial arts promoter, official, or contestant whose license is suspended or revoked due to disciplinary actions shall be prohibited from attending all mixed martial arts events sanctioned by the commission during the term of the suspension or revocation.]~~

~~(5)~~ A bout or exhibition of mixed martial arts shall be conducted pursuant to the official rules for the particular art unless the official rules conflict with KRS Chapter 229 or 201 KAR Chapter 27.

(a) If an official rule conflicts with KRS Chapter 229 or a requirement in 201 KAR Chapter 27, the statute or administrative regulation shall prevail.

(b) The sponsoring organization or promoter shall file a copy of the rules that shall apply at the show with the commission along with the thirty (30) day show notice required in Section 1 of this administrative regulation.

~~(5) [(6)]~~ A contestant shall report to and be under the general supervision of an inspector in attendance at the show and shall be subject to instructions[orders] given by an inspector.

~~(6) [(7) No]~~ More than two (2) fifteen (15) minute intermissions shall not be allowed at any show.

Section 23. Prohibitions and Restrictions. (1) The following shall be prohibited:

(a) Battle royal type events;

(b) Use of excessive grease or other substance that may handicap an opponent; and

(c) Elbow strikes to the head if the bout is an amateur bout.

(2) Knees to the head shall be permitted, but shall only be used and delivered from a standing position.

(3) A professional mixed martial arts contestant found to be competing during an amateur mixed martial arts show shall have his or her license suspended for a period of not less than one (1) year.

(4) A promoter who allows a professional to compete against an amateur shall have his or her license suspended for a period of not less than one (1) year.

(5) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

(6) Alcohol shall be prohibited inside the six (6) foot area alongside the ring. ~~(1) The authority shall license each person approved to participate as a professional contestant in a mixed martial arts contest.~~

(2) An applicant for a mixed martial arts license shall complete and submit to the authority the form, Application for License as a Professional Mixed Martial Arts Contestant.

(3) Applications shall not be mailed to the authority.

(4) The license fee for each participant shall be twenty (20) dollars.

(5) All licenses shall expire on December 31 of the year issued.

Section 2. The schedule for compensation to be paid prior to the commencement of the main event to officials participating in a professional mixed martial arts show shall be as follows:

- (1) Judge for mixed martial arts: \$150. If there are twelve (12) or fewer bouts on a pro/am card, the judge's pay shall be \$100.
- (2) Timekeeper for mixed martial arts: \$100. If there are twelve (12) or fewer bouts on a pro/am card, the timekeeper's pay shall be seventy-five (75) dollars.
- (3) Physician for mixed martial arts:
 - (a) \$300: up to ten (10) schedule bouts;
 - (b) \$350: eleven (11) to fifteen (15) scheduled bouts; or
 - (c) \$400: over fifteen (15) scheduled bouts.
- (4) Referee for mixed martial arts: \$150.

Section 3. Before the commencement of the main event of a mixed martial arts show or exhibition, the promoter of the show or exhibition shall tender to the inspector or an employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 2 of this administrative regulation.

Section 4. If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the authority, officials shall be paid one-half (1/2) the compensation required by Section 2 of this administrative regulation.

Section 5. The promoter shall submit a request for a show date on the MMA Show Notice Form no less than thirty (30) calendar days before the requested date for approval by the authority.

- (1) There shall not be advertising of the event prior to this approval.
- (2) Once the show date has been approved, all advertisements shall include the promoter's license number.

Section 6. The proposed program for a show shall be filed with the authority at least five (5) business days prior to the date of the show. Notice of a change in a program or a substitutions in a show shall be filed immediately with the authority.

Section 7. Each contestant compensation agreement shall be in writing and submitted to the authority for approval not less than five (5) calendar days prior to the date of the proposed show.

Section 8. A contest or exhibition of a mixed martial art shall be conducted pursuant to the official rules for the particular art unless the official rules conflict with KRS Chapter 229 or 201 KAR Chapter 27.

(1) If an official rule conflicts with KRS Chapter 229 or a requirement in 201 KAR Chapter 27, the statute or administrative regulation shall prevail.

(2) The sponsoring organization or promoter shall file a copy of the official rules with the authority along with the thirty (30) day show notice required in Section 5 of this administrative regulation.

Section 9. (1) Before the commencement of a show, all changes or substitutions shall be:

- (a) Announced from the cage; and
- (b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of tickets shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 10. (1) The area between the cage and the first row of spectators on all sides and the locker room shall be under the exclusive control of the authority.

(2) Alcohol or smoking shall not be allowed in the areas under the control of the authority.

(3) Authority staff and licensees shall be the only people allowed inside the areas under the control of the authority.

Section 11. (1) There shall be an area of at least six (6) feet between the edge of the cage floor and the first row of spectator

seats on all sides of the cage.

(2) A partition, barricade, or similar divider shall be placed:

- (a) Between the first row of the spectator seats and the six (6) foot area surrounding the cage; and
- (b) Along the sides of the entry lane for contestants to enter the cage and the spectator area.

Section 12. A contest or exhibition of mixed martial arts shall be held in a fenced area meeting the following requirements:

(1) The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.

(2) The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas or a synthetic material stretched tightly and laced to the platform of the fenced area, unless the event is held outdoors, in which case only canvas shall be used.

(3) The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the contestants.

(4) Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

(5) The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

(6) Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.

(7) The fenced area shall have at least one (1) entrance.

(8) There shall not be a protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to be competing.

(9) Any event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof.

(10) A cage shall have a canvas mat or a synthetic material, unless the event is held outdoors, in which case only canvas shall be used.

Section 13. A bell or horn shall be used by the timekeeper to indicate the time.

Section 14. In addition to the cage and cage equipment, the promoter shall supply the following items, which shall be available for use as needed:

- (1) A public address system in good working order.
- (2) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the cage and the cage floor.
- (3) Items for each contestant's corner, to include:
 - (a) A stool or chair;
 - (b) A clean bucket;
 - (c) Towels; and
 - (d) Rubber gloves.
- (4) A complete set of numbered round cards.
- (5) A clean stretcher and a clean blanket, placed under or adjacent to the cage, throughout each program.
- (6) First aid oxygen apparatus or equipment.

Section 15. A scales used for weigh-in shall be approved in advance by the authority.

Section 16. A promoter shall provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted and the locker room or rooms to ensure that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of a licensee at the premises shall be prohibited.

Section 17. All emergency medical personnel and portable

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medical equipment shall be stationed at cageside during the event.

(1) There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on-site for all contests.

(2) If the ambulance is required to leave the event, a contest shall not continue until an ambulance is once again present and medical personnel are at cageside.

Section 18. (1) There shall be at least one (1) physician licensed by the authority at cageside before a bout shall begin.

(2) The physician shall have at cageside medical supplies necessary to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show.

Section 19. A promoter shall provide insurance for his contestant for any injuries sustained in the mixed martial arts event.

(1) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(2) A certificate of insurance coverage shall be provided to the authority no less than two (2) business days before the event.

(3)(a) Payment of a deductible under the policy shall be the responsibility of the contestant not to exceed an expense of \$1,000.

(b) A deductible expense above \$1,000 shall be the responsibility of the promoter.

Section 20. A promoter shall submit written notice to a local hospital with an on-call neurosurgeon that a mixed martial arts show is being held.

(1) This notice shall include the date, time, and location of the event.

(2) A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 21. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:

(1) Three (3) judges;

(2) One (1) timekeeper;

(3) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required; and

(4) One (1) referee, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) referees shall be required.

Section 22. Unless the authority approves an exception:

(1) A nonchampionship contest or exhibition of mixed martial arts shall not exceed three (3) rounds in duration;

(2) A championship contest of mixed martial arts shall not exceed five (5) rounds in duration; and

(3) A period of unarmed combat in a contest or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts shall be one (1) minute in duration.

Section 23. Weight Classes of Contestants; Weight Loss after Weigh-in.

(1) Except with the approval of the authority, the classes for contestants competing in contests or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule:

CLASS	WEIGHT
Flyweight	Up to 125 lbs.
Bantamweight	Up to 135 lbs.
Featherweight	Up to 145 lbs.
Lightweight	Up to 155 lbs.
Welterweight	Up to 170 lbs.
Middleweight	Up to 185 lbs.

Light Heavyweight	Up to 205 lbs.
Heavyweight	Up to 265 lbs.
Super Heavyweight	Over 265 lbs.

(2) After the weigh-in of a contestant competing in a contest or exhibition of mixed martial arts:

(a) Change in weight in excess of three (3) pounds shall not be permitted for a contestant who weighed in at 145 pounds or less;

(b) Change in weight in excess of four (4) pounds shall not be permitted for a contestant who weighed in at over 145 pounds; and

(3) A change in weight above that established in paragraphs (a) and (b) of this subsection shall not occur later than two (2) hours after the initial weigh-in.

Section 24. The following shall be prohibited:

(1) "Battle royal"; and

(2) Use of excessive grease or another substance that may handicap an opponent.

Section 25. Contestants Repeatedly Knocked Out or Otherwise Defeated. (1) A mixed martial arts contestant who has been repeatedly knocked out or severely beaten shall be retired and not permitted to compete again if, after a thorough examination by a physician, the authority decides the action is necessary in order to protect the health and welfare of the contestant.

(2) A mixed martial arts contestant who has suffered six (6) consecutive defeats by knockout shall not be allowed to compete again until he has been investigated by the authority and examined by a physician.

(3) A mixed martial arts contestant whose license is under suspension in another jurisdiction shall not participate in a contest until review and approval by an inspector or employee of the authority.

(4) A mixed martial arts contestant who has been knocked out shall be prohibited from competition for sixty (60) days.

(5)(a) A mixed martial arts contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days.

(b) In determining how many days to prohibit the contestant from competition, the inspector shall consider the nature and severity of the injuries that resulted in the TKO.

Section 26. A person over the age of thirty-nine (39) shall not participate as a contestant in a mixed martial arts match without a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled board meeting.

Section 27. A contestant shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show and shall be subject to orders given by the inspector or employee of the authority.

Section 28. A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another, and shall not change his ring name nor be announced by a name other than that which appears on his license, except upon approval of the inspector or employee of the authority.

Section 29. A contestant shall submit HIV Antibody and Hepatitis B Antigen and Hepatitis C Antibody test results at or before pre-fight physical.

(1) The results of these tests shall be no more than 180 days old.

(2) A person with positive test results shall not compete.

Section 30. A contestant shall not compete against a member of the opposite sex.

Section 31. (1) A contestant shall not use a belt that contains a metal substance during a bout.

(2) The belt shall not extend above the waistline of the

contestant.

Section 32. Proper Attire for a Mixed Martial Arts Contestant. A mixed martial arts contestant shall:

- (1) Be clean, neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors;
- (2) Not wear shoes or any padding on his feet during the contest;
- (3) Wear a groin protector;
- (4) Wear a kidney protector if available; and
- (5) Wear a mouthpiece.

Section 33. (1) The authority may request that a contestant submit to a drug screen for controlled substances at the contestant's expense.

(2) If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the authority shall:

- (a) Suspend or revoke the license of the contestant;
- (b) Impose a fine upon the contestant; or
- (c) Impose both penalties established in paragraphs (a) and (b) of this subsection.

(3)(a) The administration of or use of any of the following shall be prohibited in any part of the body, before or during a contest or exhibition, to or by any unarmed combatant:

1. Alcohol;
2. Stimulant; or
3. Drug or injection that has not been approved by the authority.

(b) The following types of drugs, injections, or stimulants shall be prohibited before or during a contest or exhibition, to or by an unarmed combatant:

1. Afrinol or a product pharmaceutically similar to Afrinol;
2. Co-Tylenol or a product pharmaceutically similar to Co-Tylenol;
3. A product containing an antihistamine and a decongestant;
4. A decongestant other than a decongestant listed in paragraph (d) of this subsection;
5. An over-the-counter drug for colds, coughs, or sinuses other than those drugs listed in paragraph (d) of this subsection. This includes Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang; and
6. A drug identified on the most current edition of the Prohibited List published by the World Anti-Doping Agency. The most current edition of the Prohibited List may be obtained, free of charge, at the Internet address www.wada-ama.org;

(c) The following types of drugs or injections are not prohibited:

1. Aspirin and products containing aspirin; and
2. Nonsteroidal anti-inflammatories.

(d) The following types of drugs or injections are approved by the authority:

1. Antacids, such as Maalox;
2. Antibiotics, antifungals, or antivirals prescribed by a physician;
3. Antidiarrheals, such as Imodium, Kaopectate, or Pepto-Bismol;
4. Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1, or Teldrin;
5. Antinauseants, such as Dramamine or Tigan;
6. Antipyretics, such as Tylenol;
7. Antitussives, such as Robitussin, if the antitussive does not contain codeine;
8. Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet, or Zantac;
9. Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent), or Salbutamol (Albuterol, Proventil, or Ventolin);
10. Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide, or Vanceril;
11. Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox, or Vosol;

12. Hemorrhoid products, such as Anusol-HC, Preparation H, or Nupercainal;

13. Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane, or Milk of Magnesia;

14. Nasal products, such as AYR Saline, HuMist Saline, Ocean, or Salinex;

15. The following decongestants:

- a. Afrin;
- b. Oxymetazoline HCL Nasal Spray; or
- c. Another decongestant pharmaceutically similar to a decongestant listed in clauses a. or b. or this subparagraph.

(3) An unarmed combatant shall submit to a urinalysis or chemical test before or after a contest or exhibition if the authority or a representative of the authority directs him to do so.

(f) A licensee who violates a provision of this section shall be subject to disciplinary action by the authority. In addition to any other disciplinary action by the authority, if an unarmed combatant who won or drew a contest or exhibition is found to have violated the provisions of this section, the authority may, in its sole discretion, change the result of that contest or exhibition to a no decision.

Section 34. Method of Judging. (1) Each judge of a contest or exhibition of mixed martial arts shall score the contest or exhibition and determine the winner through the use of the following system:

(a) The better contestant of a round shall receive ten (10) points, and his opponent shall receive proportionately less.

(b) If the round is even, each contestant shall receive ten (10) points.

(c) No fraction of points shall be given.

(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.

(2) After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the authority's desk.

(3) The majority opinion shall be conclusive and, if there is no majority, the decision shall be a draw.

(4)(a) When the authority's representative has checked the scores, he shall inform the announcer of the decision.

(b) The announcer shall then inform the audience of the decision over the speaker system.

(5) Unjudged exhibitions shall be permitted with the prior approval of the authority.

Section 35. The following acts shall constitute fouls in mixed martial arts:

- (1) Butting with the head;
- (2) Eye gouging;
- (3) Biting;
- (4) Hair pulling;
- (5) Fishhooking;
- (6) Groin attacks;
- (7) Putting a finger into any orifice or into any cut or laceration on an opponent;
- (8) Small joint manipulation;
- (9) Striking to the spine or the back of the head;
- (10) Striking downward using the point of the elbow;
- (11) Throat strikes including grabbing the trachea;
- (12) Clawing, pinching, or twisting the flesh;
- (13) Grabbing the clavicle;
- (14) Kicking the head of a grounded opponent;
- (15) Kneeing the head of a grounded opponent;
- (16) Stomping the head of a grounded opponent;
- (17) Kicking to the kidney with the heel;
- (18) Spiking an opponent to the canvas on his head or neck;
- (19) Throwing an opponent out of the fenced area;
- (20) Holding the shorts of an opponent;
- (21) Spitting at an opponent;
- (22) Engaging in unsportsmanlike conduct that causes an injury to an opponent;
- (23) Holding the fence;
- (24) Using abusive language in the fenced area;
- (25) Attacking an opponent on or during the break;
- (26) Attacking an opponent who is under the care of the

referee;

(27) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;

(28) Intentionally disregarding the instructions of the referee;

(29) Timidity, such as intentionally or consistently dropping the mouthpiece or faking an injury;

(30) Interference by the corner; and

(31) The throwing by a contestant's corner staff of objects into the cage during competition.

Section 36. (1) If a contestant fouls his opponent during a contest or exhibition of mixed martial arts, the referee may penalize him by deducting points from his score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul and its effect upon the opponent.

(2) If the referee determines that it is necessary to deduct a point or points because of a foul, he shall warn the offender of the penalty to be assessed.

(3) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(4) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and shall not be deducted from the score of any subsequent round.

Section 37. (1)(a) If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine if the contestant who has been fouled is able to continue or not.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the authority's representative of his determination that the foul was or was not accidental.

(2) If the referee determines that a contest or exhibition of mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the contest or exhibition shall be declared a no contest if the foul occurs during:

(a) The first two (2) rounds of a contest or exhibition that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a contest or exhibition that is scheduled for more than three (3) rounds.

(3) If an accidental foul renders a contestant unable to continue the contest or exhibition, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a contest or exhibition that is scheduled for three (3) rounds or less; or

(b) The completed third round of a contest or exhibition that is scheduled for more than three (3) rounds, the outcome shall be determined by scoring the completed rounds.

(4) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the contest or exhibition stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

(5) A contestant committing a foul may be issued a violation by the inspector or employee of the authority.

Section 38. A contest of mixed martial arts may end in the following ways:

(1) Submission by:

(a) Physical tap out; or

(b) Verbal tap out;

(2) Technical knockout by the referee or physician stopping the contest;

(3) Decision via the scorecards, including:

(a) Unanimous decision;

(b) Split decision;

(c) Majority decision; and

(d) Draw, including:

1. Unanimous draw;

2. Majority draw; and

3. Split draw;

(4) Technical decision;

(5) Technical draw;

(6) Disqualification;

(7) Forfeit; or

(8) No contest.

Section 39. Within twenty-four (24) hours of the conclusion of a show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the authority the form MMA Event Report.

Section 40. The following requirements apply to all bouts between female contestants:

(1) A contestant shall not wear facial cosmetics during the bout;

(2) A contestant with long hair shall secure her hair with soft and nonabrasive material;

(3) Weight classes shall be those established in section 23 of this administrative regulation;

(4) A contestant shall wear a properly-fitted:

(a) Groin protector; and

(b) Mouthpiece;

(5) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout;

(6) A promoter shall provide a separate locker room for female contestants; and

(7) A physician examining a female contestant shall be accompanied by a female authority representative when in the female locker room.

Section 41. (1) Each contestant shall attend a pre-fight meeting as directed by a representative of the authority.

(2) Each contestant and official shall check in with a representative of the authority no less than one (1) hour prior to the starting time of the event.

(3) Each contestant shall stay in the locker room area until it is time for them to compete.

Section 42. (1) Each show shall be video recorded and retained by the promoter for at least one (1) year.

(2) Upon request of the authority, the promoter shall provide the visual recording of a show to the authority.

Section 43. A promoter shall maintain an account with the recognized national database as identified by the authority, and submit contestants' names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

Section 44. All nonsanctioned activities, such as concerts, shall be completed prior to the scheduled start time of the event.

Section 45. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for License as a Mixed Martial Arts Contestant", 3/12;

(b) "MMA Show Notice Form", 10/11; and

(c) "MMA Event Report", 10/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(As Amended at ARRS, November 7, 2016)**

201 KAR 27:017. Requirements for elimination events.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171, 229.180, 15 U.S.C. 6304, **EO 2016-270**

STATUTORY AUTHORITY: KRS 229.151(1), 229.171(1), 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the ~~authority[commission]~~ to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. **Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission**[Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all boxing, kickboxing, mixed martial arts, sparring, and wrestling shows or exhibitions to be conducted, held, or given within the Commonwealth. KRS 229.151(1) authorizes the Kentucky Boxing and Wrestling Authority to provide regulatory oversight over boxing, wrestling, and other full contact competitive bouts within the Commonwealth. KRS 229.180 authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function]. This administrative regulation establishes the rules of conduct governing elimination events.

Section 1. Show Date. (1) A promoter shall request a show date by completing and submitting to the commission the Show Notice Form, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(a).

(2) The Show Notice Form shall be submitted for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Commission approval shall be effective upon the commission:

- (a) Placing the event on the Calendar of Events available on the commission's Web site at <http://ins.kbwa.ky.gov/ecal.asp>; or
- (b) Providing written notice that the event is approved.

Section 2. Compensation. (1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, officials shall be paid one-half (1/2) the compensation agreed upon prior to the show or exhibition.

(2) Before the commencement of the main event of an exhibition, a promoter of a show or exhibition shall tender to an inspector a certified check or money order made payable to each official who will officiate the show or exhibition. The schedule of compensation to be paid by the promoter to an official officiating an elimination event show shall be as follows:

- (a) For a judge:
 - 1. \$150 per day for shows of fifty (50) or fewer contestants; or
 - 2. \$175 per day for shows of over fifty (50) contestants;
- (b) For a timekeeper:
 - 1. \$150 per day for shows of fifty (50) or fewer contestants; or
 - 2. \$175 per day for shows of over fifty (50) contestants;
- (c) For a physician: \$300 plus five (5) dollars per contestant;
- and
- (d) For a referee:
 - 1. \$150 dollars per day for shows of fifty (50) or fewer contestants; or
 - 2. \$175 dollars per day for shows of over fifty (50) contestants.

Section 3. Pre-Bout. (1) A contestant shall report to, and be under the general supervision of, an inspector in attendance at the show and shall be subject to any ~~instructions[orders]~~ given by the inspector.

(2) A contestant shall ~~submit[produce]~~ one (1) form of picture identification to the inspector.

Section 4. The Ring. (1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the commission.

(a) Alcohol shall be prohibited in the areas under the control of the commission.

(b) Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission without inspector approval.

(2) An event held outdoors while the heat index is or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entirety of the ring.

(3) A ring shall have a canvas mat or similar material, unless the event is held outdoors, in which case only canvas shall be used.

(4) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring. A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for the contestants to enter the ring and the spectator area.

(5) The ring specifications shall be as **established in this subsection.[follows:]**

(a) A bout shall be held in a four (4) sided roped ring with the following specifications:

1. The floor of the ring inside the ropes shall not be less than sixteen (16) feet square;

2. The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;

3. The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

4. The ring shall have steps to enter the ring on two (2) sides.

(b) The ring shall be formed of ropes with the following specifications:

1. There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

- a. Twenty-four (24) inches;
- b. Thirty-six (36) inches; and
- c. Forty-eight (48) inches.

2. A fourth rope may be used if the inspector finds that it will not pose a health or safety concern.

3. The ropes shall be at least one (1) inch in diameter.

4. The ropes shall be wrapped in a clean, soft material and drawn taut.

5. The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.

6. The ropes shall be supported by ring posts that shall be:

- a. Made of metal or other strong material;
- b. Not less than three (3) inches in diameter; and
- c. At least eighteen (18) inches from the ropes.

(c) The ring floor shall be padded or cushioned with a clean, soft material that:

1. Is at least one (1) inch thick and uses slow recovery foam matting;

2. Extends over the edge of the platform; and

3.a. Is covered with a single canvas stretched tightly. If the event is held outdoors, only canvas shall be used; and

b. Is clean, sanitary, dry, and free from:

- (i) Grit;
- (ii) Dirt;
- (iii) Resin; and

(iv) Any other foreign object or substance at commencement of the event.

(d) A ring rope shall be attached to a ring post by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 5. Equipment. (1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the ring, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;

2. A clean bucket;

3. Towels; and

4. Rubber gloves;

(d) A complete set of numbered round-cards, if needed; and

(e) Gloves for each contestant.

(3) A scale used for any weigh-in shall be approved **as accurate** in advance by an inspector.

Section 6. Contestant Equipment and Attire. (1) A contestant shall be clean and neatly attired in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

(3) A contestant shall wear shoes during a bout, and the shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

(4) A contestant shall wear a properly fitted:

(a) Groin protector; and

(b) Double-arch mouthpiece.

(5) **If a contestant has long hair, the hair shall be [A contestant shall have long hair]** secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) **If cosmetics are used,** a contestant shall use a minimum of cosmetics.

(7) A contestant shall wear boxing gloves that shall be:

(a) Dry, clean, and sanitary;

(b) Furnished by the promoter;

(c) Clearly labeled with the promoter's name;

(d) Of equal weight not less than sixteen (16) ounces each;

and

(e) Thumbless or thumb-attached.

Section 7. Pregnancy Test Required for Females. (1) A female contestant shall submit proof **[that]** she is not pregnant prior to her bout. The proof may be either:

(a) An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the bout that shows she is not pregnant; or

(b) From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(2) A female contestant shall be prohibited from competing if:

(a) She is pregnant; or

(b) She fails to comply with this section.

Section 8. Weight Classes. An elimination event shall be divided into at least two (2) weight divisions. Open shows shall not be permitted.

Section 9. Bout Requirements. An elimination event shall:

(1) Be no more than three (3), one (1) minute rounds in length;

(2) Contain a rest period of one (1) minute between rounds;

and

(3) Be scored on the ten (10) point must system.

Section 10. Non-Contestant Participants. (1) A promoter shall provide a minimum of two (2) security guards for a show.

(2) Judges, physicians, referees, and timekeepers shall be assigned to elimination events by the commission. The commission shall assign to each event:

(a) Three (3) judges;

(b) One (1) timekeeper;

(c) One (1) physician; and

(d) One (1) referee if fifty (50) or fewer contestants participate

in the elimination event, or two (2) referees if more than fifty (50) contestants participate in the elimination event.

Section 11. Physicians and Healthcare Requirements. (1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician shall ensure that all equipment required by subsection (6) of this section is present before the start of the first bout or exhibition.

(4) The physician shall prohibit a contestant from competing if the physician **[reasonably]** believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(5) The physician's duties during the bout or exhibition **shall be as established in this subsection. [are as follows:]**

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(6) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(7) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(8) If at any time a contestant begins to bleed so that blood may come into contact with the other contestant, the gloves of the other contestant, the ring, the officials, or the audience, the bout shall be terminated.

(a) The judges shall score the bout until the time the bout was halted and shall determine the winner.

(b) Either the referee or the ringside physician has the power to terminate the bout under this subsection.

Section 12. Insurance. (1) A promoter shall provide insurance for a contestant for any injuries sustained in the elimination event show.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4) The deductible expense under the policy for a contestant shall not exceed \$500.

Section 13. Other Provisions. (1) The inspector shall **be present for [make]** all bouts in an elimination event.

(2) A contestant shall not compete against a member of the opposite sex.

(3) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located. ~~(4) In order to participate in an elimination event, a contestant shall be required to obtain a permit issued by the authority to participate in the event.~~

(2) A contestant shall complete and submit to the authority the form Application for an Elimination Event Contestant Permit.

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~~(3) The contestant shall also pay a fee of five (5) dollars to participate in an elimination event show.~~

~~(4) The permit and the payment of the fee to participate in an elimination event shall allow participation in that event only.~~

~~Section 2. Before the commencement of the main event of an elimination event or exhibition, the promoter of the show or exhibition shall tender to the inspector or employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 3 of this administrative regulation.~~

~~Section 3. The schedule of compensation to be paid by the promoter to an official officiating in the elimination event shall be as follows:~~

~~(1) For a judge: \$150 per day for shows of fifty (50) or fewer contestants or \$175 per day for shows of over fifty (50) contestants.~~

~~(2) For a timekeeper: \$150 per day for shows of fifty (50) or fewer contestants or \$175 per day for shows of over fifty (50) contestants.~~

~~(3) For a physician: \$300 plus five (5) dollars per contestant.~~

~~(4) For a referee: \$150 dollars per day for shows of fifty (50) or fewer contestants or \$175 dollars per day for shows of over fifty (50) contestants.~~

~~Section 4. If a show or exhibition is cancelled with less than twenty-four (24) hours notice to the authority, an official shall be paid one-half (1/2) of the compensation required by this administrative regulation.~~

~~Section 5. The promoter shall submit a request for a show date to the authority for approval no less than thirty (30) calendar days before the requested date. There shall not be advertising of the event prior to approval by the authority. Once the show date has been approved, all advertisements shall include the promoter's license number.~~

~~Section 6. (1) Before the commencement of a show, any change or substitution shall be:~~

~~(a) Announced from the ring; and~~

~~(b) Posted in a conspicuous place at the ticket office.~~

~~(2) A purchaser of a ticket shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.~~

~~Section 7. The row nearest the ring on all four (4) sides shall be under the exclusive control of the authority.~~

~~Section 8. (1) The ring shall have an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring.~~

~~(2) A partition, barricade, or some type of divider shall be placed between:~~

~~(a) The first row of the spectator seats and the six (6) foot area surrounding the ring; and~~

~~(b) The entry lane for boxers to enter the ring and the spectator area.~~

~~Section 9. The ring specifications shall meet the requirements established in this section.~~

~~(1) All bouts shall be held in a four (4) sided roped ring with the following specifications:~~

~~(a) The ring shall be at least sixteen (16) feet by sixteen (16) feet inside the ropes;~~

~~(b) The floor of the ring shall extend beyond the ropes for a distance of at least one (1) foot;~~

~~(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and~~

~~(d) The ring shall have steps to enter the ring on two (2) sides.~~

~~(2) The ring shall be formed of ropes with the following specifications:~~

~~(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:~~

~~1. Twenty-four (24) inches;~~

~~2. Thirty-six (36) inches; and~~

~~3. Forty-eight (48) inches;~~

~~(b) A fourth rope may be used. If used, the fourth rope shall be approved by the inspector or employee of the authority prior to the commencement of the show;~~

~~(c) The ropes shall be at least one (1) inch in diameter;~~

~~(d) The ropes shall be wrapped in a clean, soft material and drawn taut; and~~

~~(e) The ropes shall be held in place with vertical straps on each of the four (4) sides of the ring.~~

~~(3) The ropes shall be supported by ring posts that shall be:~~

~~(a) Made of metal or other strong material;~~

~~(b) Not less than three (3) inches in diameter; and~~

~~(c) At least eighteen (18) inches from the ropes.~~

~~(4) The ring floor shall be padded or cushioned with a clean, soft material that:~~

~~(a) Is at least one (1) inch in thickness using slow recovery foam matting;~~

~~(b) Extends over the edge of the platform; and~~

~~(c) Is covered with a single tightly stretched canvas or synthetic material. If the event is held outdoors, only canvas shall be used.~~

~~(5) The ring ropes shall be attached to the ring posts by turnbuckles padded with a soft vertical pad at least six (6) inches in width.~~

~~Section 10. A bell or horn shall be used by the timekeeper to indicate the time.~~

~~Section 11. In addition to the ring and ring equipment, the promoter shall supply the following items, which shall be available for use as needed:~~

~~(1) A public address system in good working order;~~

~~(2) Chairs for the judges and timekeepers, elevated sufficiently to provide an unobstructed view of the ring and the ring floor;~~

~~(3) Items for each contestant's corner including:~~

~~(a) A stool or chair;~~

~~(b) A clean bucket;~~

~~(c) Towels; and~~

~~(d) Rubber gloves;~~

~~(4) A clean stretcher and a clean blanket placed under or adjacent to the ring throughout each program; and~~

~~(5) First aid oxygen apparatus or equipment.~~

~~Section 12. (1) A contestant shall wear boxing gloves that shall be:~~

~~(a) Dry, clean, and sanitary;~~

~~(b) Furnished by the promoter;~~

~~(c) Clearly labeled with the promoter's name;~~

~~(d) Of equal weight;~~

~~(e) Of not less than sixteen (16) ounces each; and~~

~~(f) Thumbless or thumb attached.~~

~~(2) Bandaging of the hands shall not be allowed.~~

~~(3) A contestant shall wear properly fitted headgear that shall be:~~

~~(a) Clean and sanitary;~~

~~(b) Furnished by the promoter; and~~

~~(c) Clearly labeled with the promoter's name.~~

~~(4) A contestant shall not substitute gloves or headgear.~~

~~(5) An elimination event shall be divided into at least two (2) weight divisions. Open shows shall not be permitted.~~

~~(6)(a) An elimination event round shall:~~

~~1. Not exceed sixty (60) seconds duration; and~~

~~2. Have not less than a one (1) minute rest period between rounds.~~

~~(b) Elimination event bouts shall not exceed three (3) rounds.~~

~~(7) A person over the age of thirty-nine (39) shall not participate in an elimination event without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no~~

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later than fifteen (15) business days prior to the scheduled bout.

Section 13. A contestant shall report to, and be under the general supervision of, the inspector or employee of the authority in attendance at the show and shall be subject to any orders given by the inspector or employee of the authority.

Section 14. The inspector or an employee of the authority shall make all bouts in an elimination event.

Section 15. (1) A contestant shall produce one (1) form of picture identification.

(2) A contestant shall not assume or use the name of another.

(3) A contestant shall not change his ring name nor be announced by any name other than that appearing on his license, except upon approval of the inspector or employee of the authority.

Section 16. A contestant shall not compete against a member of the opposite sex.

Section 17. A contestant shall:

(1) Be clean and neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors;

(2) Wear closed toe and heel shoes during the contest;

(3) Wear a groin protector;

(4) Wear a kidney protector if available; and

(5) Wear a mouthpiece.

Section 18. In addition to other requirements in this administrative regulation, the following requirements apply to all bouts between female contestants:

(1) A contestant shall not wear facial cosmetics during the bout;

(2) A contestant with long hair shall secure her hair with soft and nonabrasive material; and

(3) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

Section 19. Scales used for any weigh-in shall be approved in advance by the authority.

Section 20. (1) Each promoter shall provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted to ensure that adequate protection against disorderly conduct has been provided.

(2) Any disorderly act, assault, or breach of decorum on the part of a licensee at the premises shall be prohibited.

(3) A promoter shall provide security in the locker room area.

Section 21. (1) All emergency medical personnel and portable medical equipment shall be stationed at ringside during the event.

(2) Resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician shall be on site at all contests.

(3) If the ambulance or emergency medical technician is required to leave the event boxing shall not be allowed to continue until an ambulance is on site and the emergency medical technicians are once again at ringside.

Section 22. There shall be at least one (1) physician licensed by the authority at ringside before a bout shall be allowed to begin. The physician shall have at ringside any medical supplies reasonably anticipated to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in an elimination event.

Section 23. (1) The promoter shall secure insurance for his contestants that provides medical coverage for injuries sustained in the boxing event.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the

authority no less than two (2) business days before the event.

Section 24. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to elimination events by the authority. The authority shall assign to each event:

(1) Three (3) judges;

(2) One (1) timekeeper;

(3) One (1) physician; and

(4) One (1) referee if fifty (50) or fewer contestants participate in the elimination event, or two (2) referees if more than fifty (50) contestants participate in the elimination event.

Section 25. If at any time during or between rounds a contestant begins to bleed so that blood may come into contact with the other contestant, the gloves of the other contestant, the ring, the officials, or the audience, the bout shall be terminated. The judges shall score the bout until the time the bout was halted and shall determine the winner. Either the referee or the ringside physician has the power to terminate the bout under this section.

Section 26. (1) The authority may request a contestant to submit to a drug screen for illegal drugs at the contestant's expense. If the drug screen indicates the presence of illegal drugs in the contestant, or if the contestant refuses to submit to the test, the authority shall:

(a) Suspend or revoke the license of the contestant;

(b) Impose a fine upon the contestant; or

(c) Impose both penalties established in paragraphs (a) and (b) of this subsection.

(2) From arrival to the venue to the conclusion of the event, a contestant shall not consume, possess, or participate under the influence of alcohol or any other substance that may affect the contestant's ability to participate.

Section 27. The promoter shall submit written notice to a local hospital with an on-call neurosurgeon that an elimination event is being held. This notice shall include the date, time and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 28. Any event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof.

Section 29. Incorporation by Reference. (1) "Application for an Elimination Event Contestant Permit", 3/12, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.].

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email: Barry.Dunn@ky.gov.

PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(Amended After Comments)

201 KAR 27:021. Drug testing for boxing, kickboxing, mixed martial arts, wrestling, and elimination event shows.

RELATES TO: KRS 229.071, 229.081, 229.091, 229.111, 229.171, 229.180, 229.200, 229.991, EO 2016-270

STATUTORY AUTHORITY: KRS 229.071, 229.081, 229.091, 229.111, 229.171, 229.180, 229.200, 229.991

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission. This administrative regulation establishes the policies, procedures, and penalty guidelines associated with drug testing for participants in boxing, kickboxing, mixed martial arts, wrestling, and elimination event shows and exhibitions.

Section 1. Definitions. (1) "In-competition" means the period commencing twelve (12) hours before the beginning of a bout, match, or exhibition of unarmed combat in which the licensee is scheduled to participate through the end of the bout, match, or exhibition and the sample collection process related to the bout match or exhibition.

(2) "Out-of-competition" means any period that is not in-competition.

(3) "Prohibited List" means the World Anti-Doping Agency Prohibited List dated January 2016.

Section 2. Applicability. This administrative regulation shall apply to all contestants, judges, and referees in boxing, kickboxing, mixed martial arts, wrestling, and elimination events.

Section 3. Prohibitions. (1) The Prohibited List shall be used in conjunction with this administrative regulation.

(2) Except as established in Section 4 of this administrative regulation, the substances and methods listed in the following classes of the Prohibited List shall be prohibited in-competition and out-of-competition:

(a) S0. Non-approved substances;

(b) S1. Anabolic agents;

(c) S2. Peptide hormones, growth factors, and related substances and mimetics;

(d) S3. Beta-2 agonists;

(e) S4. Hormone and metabolic modulators;

(f) S5. Diuretics and masking agents;

(g) M1. Manipulation of blood and blood components;

(h) M2. Chemical and physical manipulation; and

(i) M3. Gene Doping.

(3) Except as established in Section 4 of this administrative regulation, the following substances listed in the Prohibited List shall be prohibited only while a licensee is in-competition:

(a) S6. Stimulants;

(b) S7. Narcotics;

(c) S8. Cannabinoids;

(d) S9. Glucocorticoids; and

(e) P1. Alcohol[General Provisions. The administration of or use of any item listed in this section that has not been approved by the commission, including the drugs or injections or methods listed in Section 2 of this administrative regulation, in any part of the body, either before or during a bout or exhibition, to or by any person who holds a license in boxing, kickboxing, mixed martial artist, or elimination event, shall be prohibited:

(1) Alcohol;

(2) Stimulant; or

(3) Drug or injection or methodology.

Section 2. Prohibited Substances.(1) The following types of drugs, injections, stimulants, and methods shall be prohibited pursuant to Section 1 of this administrative regulation:

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol;

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol;

(c) A decongestant other than a decongestant identified in Section 4 of this administrative regulation; and

(d) Any over-the-counter drug for colds, coughs, or sinuses other than those drugs listed in Section 4 of this administrative regulation, including Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(2) With the exception of stimulants listed in section S-5 and S-6 of the World Anti-Doping Agency's Prohibited List, 2015, which are prohibited at all times, any prohibited substance or method drug identified on the World Anti-Doping Agency's Prohibited List, 2015.

(3) The World Anti-Doping Agency's definitions, prohibited lists, prohibited methodologies, and tolerance levels shall be used in interpreting violations of this administrative regulation.

Section 3. Non-prohibited but Discouraged Substances. The following types of drugs or injections are not prohibited pursuant to Section 1 of this administrative regulation, but their use is discouraged:

(1) Aspirin and products containing aspirin; or

(2) Nonsteroidal anti-inflammatories].

Section 4. Approved Substances. The following types of drugs or injections are approved:

(1) Antacids, such as Maalox;

(2) Antibiotics, antifungals, or antivirals for which the licensee has a prescription[that have been prescribed by a physician];

(3) Antidiarrheals, such as Imodium, Kaopectate, or Pepto-Bismol;

(4) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1, or Teldrin;

(5) Antinauseants, such as Dramamine or Tigan;

(6) Antipyretics, such as Tylenol;

(7) Antitussives, such as Robitussin, if the antitussive does not contain codeine;

(8) Antulcer products, such as Carafate, Pepcid, Reglan, Tagamet, or Zantac;

(9) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent), or Salbutamol (Albuterol, Proventil, or Ventolin);

(10) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide, or Vanceril;

(11) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox, or Vosol;

(12) Hemorrhoid products, such as Anusol-HC, Preparation H, or Nupercainal;

(13) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane, or Milk of Magnesia;

(14) Nasal products, such as AYR Saline, HuMist Saline, Ocean, or Salinex; and

(15) The following decongestants and any decongestant that is pharmaceutically similar:

(a) Afrin; or

(b) Oxymetazoline HCL Nasal Spray.

Section 5. Testing Requirement. (1) A licensed boxer, kickboxer, professional mixed martial artist, amateur mixed martial artist, wrestling, or elimination event contestant, judge, or referee shall submit to a blood test, urinalysis, or chemical test at any time, in-competition[in] or out-of-competition[out of competition], if

the commission or a representative of the commission directs him or her to do so.

Section 6. **Violations and Penalties**~~[Disciplinary Action]~~. (1) A licensee who violates any provision of this administrative regulation shall be subject to a penalty issued~~[disciplinary action]~~ by the commission.

(2) A blood test shall not be required within seven (7) days of the bout, competition, or exhibition unless directed by the commission upon finding of probable cause that a violation of Section 3 of this administrative regulation has occurred.

(3)(a) In addition to any other penalty issued~~[disciplinary action taken]~~ by the commission, if a contestant who won or drew a bout is found to have violated the provisions of this administrative regulation, the commission may change the result of that bout to a no decision loss if the commission finds that the drug used may have affected the result.

(b) A note shall be placed on the contestant's record that the change in decision was the result of testing positive for a banned substance or prohibited method.

(4) The commission shall investigate each alleged violation of this administrative regulation.

Section 7. Penalty Guidelines. The guidelines for use in determining a penalty pursuant to 201 KAR 27:105, Section 3 shall be as follows~~[Each alleged violation of the commission's anti-doping policies shall be examined on a case-by-case basis and the penalties imposed shall be based upon the totality of the circumstances. The ultimate penalty may be lesser than or greater than the following penalty guidelines]:~~

(1) For~~[opiates]~~ cannabis or cannabinoids:

(a) 1st offense: six (6) month suspension and a fine of fifty (50) dollars;

(b) 2nd offense: twelve (12) month suspension and a \$100 fine;

(c) 3rd offense: twenty-four (24) month suspension and a \$250 fine; or

(d) 4th offense: lifetime ban and a \$500 fine;

(2) For sedatives, muscle relaxants, sleep aids, ~~[or]~~ anxiolytics, opiates, or opioids~~[, or opiates cannabis]~~:

(a) 1st offense: eighteen (18) month suspension and a \$100 fine;

(b) 2nd offense: twenty-four (24) month suspension and a \$250 fine;

(c) 3rd offense: thirty-six (36) month suspension and a \$500 fine; or

(d) 4th offense: lifetime ban and a \$1,000 fine;

(3)~~[(2)]~~ For diuretics being used to cut weight:

(a) 1st offense: twenty-four (24) month suspension and a \$250 fine;

(b) 2nd offense: thirty-six (36) month suspension and a \$500 fine; or

(c) 3rd offense: lifetime ban and a \$1,000 fine;

(4)~~[(3)]~~ For stimulants:

(a) 1st offense: twenty-four (24) month suspension and a \$250 fine;

(b) 2nd offense: thirty-six (36) month suspension and a \$500 fine; or

(c) 3rd offense: lifetime ban and a \$1,000 fine;

(5)~~[(4)]~~ For anabolic steroids:

(a) 1st offense: thirty-six (36) month suspension and a \$500 fine;

(b) 2nd offense: forty-eight (48) month suspension and a \$750 fine; or

(c) 3rd offense: lifetime ban and a \$1,000 fine; or

(6)~~[(5)]~~ For avoiding or refusing testing or detection, altering or adulterating a urine or blood sample, providing a urine or blood sample not from the contestant, or using any masking agent:

(a) 1st offense: forty-eight (48) month suspension and a \$750 fine; or

(b) 2nd offense: lifetime ban and a \$1,000 fine.

Section 8. Incorporation by Reference. (1) "World Anti-Doping

Agency Prohibited List", January 2016~~[2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 656 Chamberlin Avenue, Suite B~~[911 Leewood Dr.]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at http://www.usada.org/wp-content/uploads/wada-2016-prohibited-list-en.pdf [<https://wada-main-prod.s3.amazonaws.com/resources/files/wada-2015-prohibited-list-en.pdf>].

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(As Amended at ARRS, November 7, 2016)

201 KAR 27:105. Violations, penalties, and appeals~~[Disciplinary action]~~.

RELATES TO: KRS 229.021, 229.031, 229.071, 229.091, 229.155, 229.171, 229.180, 229.190, 229.200, 229.991, EO 2016-270

STATUTORY AUTHORITY: KRS 229.071, 229.091, 229.155, 229.171, 229.180, 229.190, 229.200, 229.991

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the authority~~[commission]~~ to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission. This administrative regulation provides the policies and procedures that govern the finding of disciplinary actions that result from a violation of KRS Chapter 229 or 201 KAR Chapter 27, the issuance of a penalty, and the appeal of a penalty.

Section 1. Violations. (1) A person shall be guilty of a violation for any of the following actions:

(a) Violating any provision of KRS Chapter 229;

(b) Violating any provision of 201 KAR Chapter 27;

(c) Being found guilty of, pleading guilty to, pleading no contest to, or entering an Alford plea to a crime, other than a traffic violation, that is detrimental to the interests of boxing, kickboxing, mixed martial arts, or wrestling generally or to the public interest, convenience, or necessity in any jurisdiction;

(d) Being found liable in a civil action for any claim that involves fraud or dishonesty in any jurisdiction if the person is a licensed promoter, manager, referee, or judge;

(e) Violating a law related to boxing, kickboxing, mixed martial arts, elimination events, or wrestling in any jurisdiction;

(f) Placing a bet or wager on any bout or match in which the person participates or works;

(g) Serving as, or consorting or associating with any person who is, a bookmaker or illegal gambler;

(h) Participating in an unlicensed event; or

(i) Declaring bankruptcy if the person is a licensed promoter, manager, referee, or judge.

(2) A ~~[non-natural]~~ person shall be guilty of a violation if the person~~[it]~~ authorizes or ratifies any of the actions in subsection (1) of this section if the action is taken by the person's~~[its]~~ agent, employee, shareholder, member, officer, or director.

(3) A person who commits a violation shall be issued a notice of violation.

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Section 2. ~~Penalties~~~~[Disciplinary Action]~~. (1) If the commission has reason to believe that a person has committed a violation, the commission may impose one (1) or more of the following actions:

- (a) Issue a cease and desist order;
 - (b) ~~Issue a notice of violation~~;
 - (c) ~~Declare a contestant ineligible to compete or disqualify the contestant~~;
 - (c) ~~(d)~~ Eject the person from the premises at which the show or exhibition is taking place;
 - (d) ~~(e)~~ Issue a fine;
 - (e) ~~(f)~~ Suspend, reprimand, revoke, probate, or refuse to renew or issue a license; ~~or~~ and
 - (f) ~~(g)~~ Refer the person for criminal prosecution.
- (2) In issuing a penalty~~[taking disciplinary action]~~ pursuant to subsection (1) of this section, the commission shall consider:
- (a) The severity of the violation;
 - (b) The licensee's~~[disciplinary]~~ history of violations and penalties; and
 - (c) The violation's potential impact on health, safety, and the outcome of a contest; and
 - (d) If the penalty is for a violation of 201 KAR 27:021, the penalty guidelines established in 201 KAR 27:021, Section 7(8).

~~(3) The commission delegates to its inspectors the authority to take disciplinary action, subject to the appeal rights in Section 4 of this administrative regulation.~~

(4) A person whose license is currently suspended~~[or revoked]~~ shall be prohibited from:

- (a) Being present in a locker room that is used during a commission-sanctioned event; and
- (b) Being located within the six (6) foot area surrounding the ring or cage at a commission-sanctioned event~~[attending an event sanctioned by the commission during the term of the suspension or revocation]~~.

Section 3. Inspector's Authority to Issue a Violation and a Penalty. (1) Pursuant to KRS 229.155, the commission shall authorize its inspectors to:

- (a) Issue a notice of violation in accordance with Section 1 of this administrative regulation; and
 - (b) Issue a penalty in accordance with Section 2 of this administrative regulation.
- (2) A penalty issued by an inspector shall be subject to appeal pursuant to Section 5 of this administrative regulation.

Section 4. Reciprocity of a Penalty~~[Discipline]~~. (1) A licensee who is subjected to a penalty~~[discipline]~~ in any jurisdiction shall report to the commission within ten (10) days the date, type, and reason for the penalty~~[discipline]~~ given and the name of the regulatory body that ordered the penalty~~[discipline]~~.

(2) The commission shall enforce the penalty~~[discipline]~~ given~~[disciplinary action taken]~~ by any other regulatory body unless the licensee shows good cause why the commission should not reciprocally enforce the penalty~~[discipline]~~.

Section 5~~[4]~~. Appeals. (1) Any person issued a penalty~~[subjected to disciplinary action]~~ may appeal the penalty~~[discipline]~~ to the full commission.

(2) An appeal shall be filed within twenty (20) days of the date the penalty is~~[discipline was]~~ issued.

(3) The provisions of KRS Chapter 13B shall govern all administrative appeals.

Section 6~~[5]~~. Effect of Expiration of License on Jurisdiction of the Commission. The expiration of a license shall not deprive the commission of jurisdiction to:

- (1) Proceed with an investigation of the former licensee; or
- (2) Issue a penalty~~[disciplinary action]~~ against the former licensee.

CHAD E. MILLER, Chairman
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 7, 2016)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640, 532.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," November 7/October 14/August 12~~[June 14]~~, 2016, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 6/10/14)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 2/26/16)
- 2.12 Abandoned Inmate Funds (Amended 2/26/16)
- 3.1 Code of Ethics (Amended 12/10/13)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)
- 3.9 Student Intern Placement Procedure~~[Program]~~ (Amended 11/7/16/8/12/16~~[Added 9/13/2010]~~)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 6/14/16)
- 3.17 Uniformed Employee Dress Code (Amended 2/26/16)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 5.1 Research and Survey Projects (Amended 12/10/13)
- 5.3 Program Evaluation and Measurement (Amended 6/9/15)
- 6.1 Open Records Law (Amended 5/14/07)
- 6.2 Inmate Record (Added 11/7/16/8/12/16)
- 8.2 Fire Safety (Amended 3/14/14)
- 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
- 9.6 Contraband (Amended 2/26/16)
- 9.8 Search Policy (Amended 5/13/14)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 2/26/16)
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 11.2 Dietary Procedures and Compliance (Amended 3/14/14)
- 11.4 Alternative Dietary Patterns (Amended 3/14/14)
- 13.1 Pharmacy Policy and Formulary (Amended 1/15/15)
- 13.2 Health Maintenance Services (Amended 2/26/16)
- 13.3 Medical Alert System (Amended 3/14/14)
- 13.5 Advance Healthcare Directives (Amended 6/14/16)

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- 13.6 Sex Offender Treatment Program (Amended 11/7/16[8/12/16][5/15/08])
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 13.13 **Behavioral**[**Mental**] Health Services (Amended 11/7/16[10/14/16][8/12/16]) [6/9/15])
- 13.15 Inmate Observer Program (Added 8/12/16)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 2/26/16)
- 14.4 Legal Services Program (Amended 3/14/14)
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 6/14/16)
- 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 6/14/16)
- 15.1 Hair, Grooming, and ID Card Standards (Amended 8/12/16[4/15/15])
- 15.2 Rule Violations and Penalties (Amended 8/12/16[6/14/16])
- 15.3 Meritorious Good Time (Amended 11/7/16[8/12/16][12/13/05])
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 2/26/16)
- 15.6 Adjustment Procedures and Programs (Amended 11/7/16[8/12/16][3/14/14])
- 15.7 Inmate Accounts (Amended 10/14/16[4/15/15])
- 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
- 16.1 Inmate Visits (Amended 10/12/12)
- 16.2 Inmate Correspondence (Amended 11/7/16[10/14/16][8/12/16]) [4/15/15])
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 8/12/16[4/15/15])
- 16.5 Video Visitation (Added 8/12/16)
- 17.1 Inmate Personal Property (Amended 6/14/16)
- 17.2 Assessment Center Operations (Amended 6/9/15)
- 17.3 Controlled Intake of Inmates (Amended 3/14/14)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 8/12/16[4/10/06])
- 18.1 Classification of the Inmate (Amended 1/15/15)
- 18.2 Central Office Classification Committee (Amended 8/20/13)
- 18.3 Confinement of Youthful Offenders (Added 6/9/15)
- 18.5 Custody and Security Guidelines (Amended 6/14/16)
- 18.7 Transfers (Amended 5/13/16)
- 18.9 Out-of-state Transfers (Amended 2/26/16)
- 18.11 Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 2/26/16)
- 18.15 Protective Custody (Amended 2/26/16)
- 18.16 Information to the Parole Board (Effective 3/14/14)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Amended 2/26/16)
- 19.3 Inmate Wage/Time Credit Program (Amended 1/15/15)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)
- 22.2 Recreation and Inmate Activities (Added 3/14/14)
- 23.1 Religious Programs (Amended 8/12/16[8/20/13])
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)

- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Institutional Inmate Furloughs (Amended 07/09/07)
- 25.6 Community **Service** Center Program **and Jail Placement** (Amended 11/7/16[8/12/16][07/09/07])
- 25.10 Administrative Release of Inmates (Amended 8/12/16[11/9/10])
- 25.11 Victim Services Notification (Amended 8/25/09)
- 25.12 Home Incarceration Program (Added 8/12/16)
- 26.1 Citizen Involvement and Volunteer Service Program (Amended 10/12/12)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BALLARD, Commissioner

APPROVED BY AGENCY: October 10, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Fire Commission (As Amended at ARRS, November 7, 2016)

739 KAR 2:040. Survivor benefits for death of a firefighter.

RELATES TO: KRS 61.315, Chapter 95A, 136.392

STATUTORY AUTHORITY: KRS 61.315[(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315[(3)] authorizes the payment of survivor benefits of \$80,000[\$50,000] to the survivor of a paid or volunteer firefighter who is killed in the line of duty after July 1, 2002[1994]. This administrative regulation establishes the procedures and criteria that[which] shall be utilized to determine the eligibility of the paid or volunteer firefighter's survivor benefits. [This administrative regulation applies to both paid and volunteer firefighters.]

Section 1. Definitions. (1) "**Child or children**" means a:

- (a) **Biological child or children, including a child or children born after the firefighter's death;**
- (b) **Stepchild or stepchildren; and**
- (c) **Legally adopted child or children.**

(2) "Active member" means a paid firefighter that is listed on the department roster and participates in the department's training programs and other various activities.

(2) "Commission" means commission as defined by KRS 95A.210(1).

(3) [(2)] [(3)] "Death in the line of duty" means death that[which] occurs as a direct result of an act or acts in the "performance of duty," as defined in subsection (6) of this section[established in 739 KAR Chapter 2] and includes[described in these administrative regulations and shall include] death that[which] results from a heart or circulatory malfunction that[which] is treated within forty-eight (48) hours after participation in the performance of these duties or as the result of illness, cancer as established in KRS 61.315(10)[paragraph (b) of this subsection], or other sickness or injury caused by the performance of these duties that[which] result in death within twelve (12) months of the activities as established[described][elsewhere] in this[these] administrative regulation, if[regulations providing] death is not caused by suicide or self-inflicted injury.

[(a) If death occurs after twelve (12) months and is believed to be related to the]above stated[causes as established in this subsection, the commission has the right of review with the possibility of determination of death in performance of duty.

(b) If a firefighter dies as the result of cancer, the death

shall be a direct result of an act in the line of duty if the firefighter:

1. Was a firefighter for at least five (5) consecutive years;
2. Developed one (1) or more of the following cancers that caused the firefighter's death within ten (10) years of separation from service as a firefighter:

- a. Bladder cancer;
- b. Brain cancer;
- c. Colon cancer;
- d. Non-Hodgkin's lymphoma;
- e. Kidney cancer;
- f. Liver cancer;
- g. Lymphatic or hematopoietic cancer;
- h. Prostate cancer;
- i. Testicular cancer;
- j. Skin cancer;
- k. Cervical cancer; or
- l. Breast cancer;

3. Did not use tobacco products for a period of ten (10) years prior to the diagnosis of cancer;

4. Was under the age of sixty-five (65) at the time of death;

5. Was not diagnosed with any cancer prior to employment as a firefighter; and

6. Was exposed while in the course of firefighting to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program, and the carcinogen is reasonably associated with one (1) or more of the cancers listed in subparagraph 2. of this paragraph [These activities shall not include participation in any sports or athletic event or contest, whether for the purpose of fund raising or any other purpose].

(3)[(4)] "Child or children" means stepchildren, legally adopted children, and children born posthumously.

(4)[(5)] "Firefighter" means firefighter as defined by [in] KRS 61.315(1).

(5)[(6)] "Heart or circulatory malfunction" means myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident that [which] the symptoms [of such malfunction] are first medically treated within forty-eight (48) hours after participation in the performance of the duties of a paid firefighter as established in subsection (6) of this section [739 KAR Chapter 2] described in these administrative regulations.

(6)[(7)] "Performance of duty" means a firefighter acting in the performance of his or her duties while [when] engaged in the following activities if the activities are performed at the direction or with the knowledge of an officer of the fire department or if [when] immediate action is required at the scene of an emergency not involving his department or other emergency organization:

- (a) Firefighting;
- (b) Fire drills or other related training;
- (c) Rescue or emergency activities;
- (d) Repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department;
- (e) Traveling to or from a [Answering an emergency] call for service;
- (f) Riding in or upon the fire or emergency apparatus that [which] is owned or used by the fire department;
- (g) Performing other activities [duties] of the fire department as authorized by the jurisdiction that [which] the department serves; or [and]
- (h) Attending meetings related to the fire service and travel to and from the meetings [whether local, state, or national], as long as he or she is representing his or her local, state, or national fire related organization.

Section 2. Requirements for Eligibility. (1)(a) If death occurs after twelve (12) months and is related to the causes established in KRS 61.315(10)(b), the commission shall review the conditions to determine if the death constituted death in the performance of duty.

(b) Survivors. Benefits shall be paid to the surviving spouse, surviving child or children or both; or the surviving parents, as set

forth in KRS 61.315(2).

(2) Heart or circulatory malfunction limitations. If an individual becomes an active member of a fire department and has not within five (5) years prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his or her eligible survivors shall receive the benefits if the firefighter dies [is killed] in the line of duty.

(a) If the firefighter has been medically diagnosed as [a] having had or receiving medication for an illness established in this subsection [the above illnesses] within five (5) years prior to becoming an active member of a fire department and presents a medical statement to the commission from the firefighter's doctor that the firefighter has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting, the eligible survivors shall be eligible to receive the benefits granted through KRS 61.315 if the firefighter is killed in the line of duty.

(b) 1. If a firefighter of a fire department is medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, his or her [their] survivors shall not be eligible to receive benefits from this program in event of the firefighter's death caused by heart or circulatory malfunction until a medical statement from a physician establishes [their doctor] that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission.

2. Upon review and approval pursuant to KRS Chapter 61 and this administrative regulation, of the statement by the commission, the firefighter's survivors shall [again] become eligible to receive benefits from this program.

(c) A deceased firefighter's survivors shall not be eligible for benefits under this administrative regulation if the deceased firefighter was mistakenly or fraudulently included on a fire department's roster, or did not actively serve as a firefighter for a minimum of five (5) years prior to diagnosis of the cause of death.

(3)(a) Autopsy. The commission shall reserve [reserves] the right to request an autopsy providing sufficient cause is [can be] shown for this request.

(b) If an autopsy is performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be submitted [furnished] to the commission.

Section 3. Application. (1)(a) Upon the death in the line of duty of a firefighter, the fire department of which the firefighter was a member at the time of death shall notify the commission's administrator of the death immediately.

(b) Upon receipt of the notification, the administrator shall submit the Report of Firefighter's Death, [send] Form KPF-4, [July 14, 1998], to the notifying fire department in care of the chief; Claim for Survivor Benefits, [as well as] Form KPF-5, to the known survivors of the deceased firefighter; [and] the Requirements for Cancer Death Benefits form to both the notifying fire department in care of the chief and the known survivors of the deceased firefighter.

(2) Upon receipt of the forms required by subsection (1) of this section [KPF-4 and KPF-5 and the Requirements for Cancer Death Benefits form], [July 14, 1998], the chief and survivors or their representative shall complete [properly fill out] the forms and return them to the commission in care of the administrator.

(3) Upon the receipt of the [properly] completed forms established in subsection (1) of this section, a [duly] licensed physician member of the commission shall review all pertinent medical records and forms submitted on behalf of the deceased firefighter and make a medical determination of if the conditions surrounding the death qualify the family members for benefits pursuant to [deceased firefighter meets the requirements of] this administrative regulation.

(a) Upon the medical director's determination that the [deceased firefighter meets the] requirements of KRS 61.315

and this administrative regulation have been met, a committee of the commission appointed by the chair[chairman] of the commission shall review the forms and forward the forms[them] with the commission's[their] recommendations to the full commission for determination of eligibility.

(b) If there are questions about the forms, the committee and the administrator may seek clarification of the questions on behalf of the commission.

Section 4. Certification of Payment of Benefits. Upon certification of survivorship rights to the Firefighter's Death Benefit, the sum of ~~\$80,000~~[\$50,000] shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and the treasurer shall transmit the check to the commission's administrator for payment to the eligible survivor or survivors.

Section 5. ~~[False and Fraudulent Statements. A person who knowingly or willfully makes any false or fraudulent statements or representation in any record or report to the commission under KRS]~~[Chapter] ~~[61.315 or this administrative regulation shall cause the survivors to become ineligible for further funds and those survivors may be responsible for the return to the state treasury of those funds that]~~[which] ~~[were received through these false or fraudulent statements or representations.~~

Section 6. Appeals. (1) ~~A decision~~[Decisions] ~~[of the commission negatively] affecting the eligibility of a survivor to be a recipient of the fund shall not be final until the survivor shall have been afforded an opportunity to be heard on the matter.~~

~~(2) An appeal may be taken from a final decision of the commission to withhold payment from the fund to any survivor. The appeal shall be to the circuit court of the circuit where the controversy originated.~~

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

(a) "Report of Firefighter's Death," Form KPF-4, November 7, 2016;~~[25, 2014]~~[July 14, 1998];

(b) "Claim for Survivor Benefits," Form KPF-5, December 1, 2014; and

~~(c) "Requirements for Cancer Death Benefits", July 2016~~[July 14, 1998].

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 118 James Court, Suite 50, Lexington, Kentucky 40505[1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40604], Monday through Friday, 8 a.m. to 4:30 p.m.

GILBERT "TIGER" ROBINSON, Chair

APPROVED BY AGENCY: July 12, 2016

FILED WITH LRC: July 13, 2016 at 11 a.m.

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**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Kentucky Office of Assistive Technology
(As Amended at ARRS, November 7, 2016)**

789 KAR 1:010. General eligibility criteria for assistive technology loans.

RELATES TO: KRS 151B.450-151B.475

STATUTORY AUTHORITY: KRS 151B.465(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.465(9) requires the Board of Directors of the Kentucky

Assistive Technology Loan Corporation to promulgate administrative regulations through the cabinet to establish and administer a program for providing low-interest loans to qualified borrowers through qualified lenders for the acquisition of assistive technology. This administrative regulation prescribes when, and under what conditions, assistive technology loans shall be provided, in order to distribute limited funds equitably over the population of qualified borrowers.

Section 1. Definitions. (1) "KATLC" means the Kentucky Assistive Technology Loan Corporation.

(2) "Nonprofit organization" means an incorporated entity under the provisions of KRS 273.163 to 273.387 that is in good standing with the Kentucky Office of the Secretary of State.

Section 2. Loan Purposes. The board shall:

(1) Consider:

(a) A loan for the acquisition of assistive technology equipment if the equipment is essential to compensate for the limitations caused by the disability; or

(b) An additional loan to finance a repair or provide maintenance; and

(2) Depending on the availability of funds and the applicant's eligibility for a loan, include in the amount of the loan:

(a) The cost of an assistive technology service, including an assessment or training, if the service is directly related to the assistive technology device; or

(b) An extended service agreement or warranty.

Section 3. Eligibility to Apply for a Low Interest Loan. (1) Except as provided in subsection (2) of this section, to be eligible to apply for a low interest loan, an applicant shall:

(a) Be an individual who meets the definition of qualified borrower established in KRS 151B.450(6) with a disability that is not of a temporary, transient, or acute nature;

(b) Be eighteen (18) years old and have the legal authority to enter into a contract; and

(c) Be a resident of Kentucky for at least six (6) continuous months prior to the date of application.

(2) To be eligible to apply for a low interest loan, a nonprofit organization shall:

(a) Provide assistive technology to an individual with disabilities who is a resident of Kentucky; and

(b) Affirm that, and explain how, the adaptive equipment will be used for a current or potential employee, client, customer, or other associated individual with disabilities as required by KRS 151B.450(6).

Section 4. Initial Verification of Disability. An applicant for an initial loan shall verify disability by furnishing one (1) or more of the following:

(1) A statement from a licensed medical professional indicating how the disability substantially affects one (1) or more major life activities as described in KRS 151B.450;

(2) Proof of enrollment in one of the following:

(a) State vocational rehabilitation program;

(b) Social Security Disability Insurance (SSDI);

(c) Medicare enrollment based on disability;

(d) Medicaid enrollment based on disability;

(e) Veterans Administration enrollment based on current disability; or

(f) Educational services enrollment under an individualized family service plan or individualized education plan; or

(3) Other proof of a disability that affects a major life activity as required by KRS 151B.450(6).

Section 5. Required KATLC Application Information. The following material shall be required as part of the loan request:

(1) Legal name, current address and telephone number, and Social Security number (if a nonprofit organization, the employer identification number shall substitute for the Social Security number);

(2) Nature of relationship to a person with a disability (if

applicant does not have a disability);

(3) Nature of disability and how it affects one (1) or more major life activities as described in KRS 151B.450;

(4) Description of the assistive technology being requested and how it will compensate for the limitations of a disability and improve the quality of life of an individual with a disability;

(5) Amount of money requested including the cost for an extended warranty, necessary training, or other item requested to be included in the amount of the loan. An itemized price quote from the potential seller shall be attached;

(6) Total current monthly income with sources;

(7) Total monthly installment payments, which shall include the amount paid in rent, mortgage, credit card payments, or unsecured loans;

(8) A signed statement that all submitted information is truthful and accurate;

(9) A signed waiver allowing the release of information about the individual between the board and the qualified lender; and

(10) If the applicant is a nonprofit organization, proof of that status as defined in Section 1(2) of this administrative regulation.

Section 6. Loan Application Procedure. (1) A loan request shall:

(a) Include as attachments all required information and documentation required by Section 5 of this administrative regulation; and

(b) Be submitted to the KATLC, 275 E Main Street Mail Drop 2-EK, Frankfort Kentucky 40621, 1-877-675-0195.

(2) After review of the request, the board of directors shall require the applicant to obtain an evaluation from an assistive technology professional, medical professional, or other professional if more information is needed for the board to make a decision.

(3) An application shall include a quote for the total price of the equipment or service for which the loan is being requested. The board shall require the applicant to obtain additional price quotes if it considers the submitted quote to be unusually high, unless the applicant can demonstrate that the equipment is available from a single source.

(4) The applicant shall be referred to a qualified lender that has previously entered into an agreement with the board that specifies the terms and conditions under which the qualified lender may make a loan. The qualified lender shall conduct a credit check of the applicant.

(5) The qualified lender may reject the loan application. The board may override the denial based upon the following criteria:

- (a) Medical debt;
- (b) Payment of current obligations;
- (c) Financial support from family;
- (d) Existence of co-signer;
- (e) Down payment; and
- (f) No credit history or limited credit history.

(6) KATLC shall notify the applicant of its decision in writing, or in appropriate alternative format as requested, within fifteen (15) days after the decision is made.

(7)(a) If desired, an applicant who is aggrieved by a decision of the board shall petition the board for reconsideration, in writing or in appropriate alternative format, and may provide additional documentation related to credit history, income, or assistive technology that addresses the stated reasons for denial.

(b) The board shall:

- 1. Consider the new information;
- 2. Provide the applicant with an opportunity to be heard; and
- 3. Inform the applicant of its decision at the meeting or in writing or in appropriate alternative format within seven (7) days if the applicant is not present at the meeting. The decision of the board shall be final.

Section 7. General Loan Requirements. (1) The minimum amount of a loan shall be \$500 and the maximum amount of a loan shall be ~~\$50,000~~~~[\$25,000]~~, except that the maximum amount for home modifications shall be \$15,000.

(2) The period of a loan shall be from a minimum of one (1)

year to a maximum of ten (10) years or the estimated life of a device, whichever is less. The loan period shall be congruent with the agreement between the board and the qualified lender pursuant to Section 10 of this administrative regulation.

(3) The assistive technology that can be titled shall be titled in the name of the qualified borrower with the board or its agent as lien holder.

(4) The board or the qualified lender may require a qualified borrower to insure the equipment for the remaining value of the loan.

(5) The qualified borrower shall be responsible for the repair or maintenance of the equipment. An additional loan may be considered to finance a repair or maintenance.

(6) An individual may obtain more than one (1) loan if the total amount of all loans ~~does[de]~~ not exceed ~~\$50,000~~~~[\$25,000]~~.

(7) The qualified lender may require a down payment.

Section 8. Priority Consideration. An application shall be considered in the order in which it was received according to the following order of preference:

(1) An individual with a disability or parent or legal guardian of a person with a disability who has no current loans through the board;

(2) An individual with a disability or parent or legal guardian of a person with a disability who has one (1) or more existing loans through the board; and

(3) A nonprofit organization.

Section 9. Confidentiality. The application and all submitted information shall be held confidential. (1) KATLC shall use an identification number for each application. Unless otherwise required, the name, Social Security number, address, telephone number, and electronic mail address of the applicant shall not be revealed.

(2) The board shall meet in closed session if discussing an appeal of an individual application and shall refer to an application in open session by its identification number.

(3) The secretary of the cabinet or a designee shall maintain access to all records relating to an application or loan.

Section 10. Agreement with a Qualified Lender. (1) In contracting with one (1) or more qualified lenders, the board shall give primary consideration to:

- (a) The lender's ability to provide loans statewide;
- (b) The most favorable interest rate available for technology loans;
- (c) The most favorable interest rate to be paid on corporation deposits; and
- (d) The funds to be made available for technology loans over and above the amount of corporation funds on deposit.

(2) A qualified lender shall:

- (a) Execute a written agreement with the board that establishes the requirements and conditions for issuing a loan, the length of the loan, and procedures for collecting on delinquent or defaulted loans; and
- (b) Agree to abide by all administrative regulations pertinent to the corporation in relation to loans.

PATRICK B. SHIRLEY, Staff Attorney

For ROWENA HOLLOWAY, Chair

APPROVED BY AGENCY: September 14, 2016

FILED WITH LRC: September 15, 2016 at noon

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education
and Training
(As Amended at ARRS, November 7, 2016)

803 KAR 2:412. Fall protection.

RELATES TO: KRS 338.015, 338.031, 338.051, 338.061, 29 C.F.R. 1926.500-1926.503

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061(1) require the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance relating to fall protection in the construction industry. This administrative regulation requires employers to comply with federal standards except for certain limited residential construction activities~~in which the fall protection trigger height is changed from six (6) feet to ten (10) feet~~. When engaged in those limited activities, employers may choose compliance options not provided in the federal standards.

Section 1. Definitions.

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

(2) ~~"Eave" means the horizontal lower edge of a roof.~~

~~(3)] "Employee" is defined by KRS 338.015(2).~~

~~(3)](4)] "Employer" is defined by KRS 338.015(1).~~

~~(4)](5)] "Fall restraint system" means a system that:~~

(a) Is used to prevent an employee from falling any distance consisting of an anchorage, connectors, and body belt or harness; and

(b) May include, lanyards, lifelines, or rope grabs designed for that purpose.

~~(5)](6)] "Guardrail system" is defined by 29 C.F.R. 1926.500(b).~~

~~(6)](7)] "Leading edge" is defined by 29 C.F.R. 1926.500(b).~~

~~(7)](8)] "Personal fall arrest system" is defined by 29 C.F.R. 1926.500(b).~~

~~(8)](9)] "Platform" is defined by 29 C.F.R. 1926.450.~~

~~(9)](10)] "Rake edge" means the roof edge at the gable end of a structure.~~

~~(10)](11)](14)] "Residential construction" means construction work on a stand-alone[standalone] single family dwelling, duplex, threeplex, or fourplex structure.~~

~~(11)](12)](14)] "Roofing work" is defined by 29 C.F.R. 1926.500(b).~~

~~(12)](13)](12)] "Safety monitoring system" is defined by 29 C.F.R. 1926.500(b).~~

~~(13)](14)](13)] "Safety net system" means a system used in accordance with 29 C.F.R. 1926.502(c).~~

~~[(14)] "Slide guard system" means an equipment system that:~~

(a) Is designed to prevent employees from sliding off a sloped roof to a lower level; and

(b) Consists of manufactured roof brackets used in conjunction with dimensional lumber or may be a site-built system of similar design and dimension.]

~~(14)](15)] "Slope" means the roof vertical rise in inches for every horizontal twelve (12) inch length, with:~~

(a) The horizontal twelve (12) inch length referred to as the run;

(b) The slope referred to as pitch; and

(c) The slope expressed with the rise (vertical) mentioned first and the run (horizontal) mentioned second, such as "4 in 12" or "4 on 12" and written as "4 in 12" or "4:12" or "4/12."

~~(15)](16)] "Standard" is defined by KRS 338.015(3).~~

~~(16)](17)] "Three (3) points of contact" means either:~~

(a) One (1) hand and both feet; or

(b) One (1) foot and both hands.

~~[(17)] "Visible defect" means saw cuts, warps, twists, holes, splits, breaks, or gouges.]~~

~~[(18)] "Walking/working surface" is defined by 29 C.F.R. 1926.500(b).]~~

Section 2. (1) The construction industry shall comply with the following federal regulations, except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation:

(a) 29 C.F.R. 1926.500 through 29 C.F.R. 1926.501(b)(12), revised July 1, 2016[2013]; and

(b) 29 C.F.R. 1926.501(b)(14) through 29 C.F.R. 1926.503, revised July 1, 2016[2013]; and

~~(c) The amendment to 29 C.F.R. 1926.500 as published in the April 11, 2014 Federal Register, Volume 79, Number 70.]~~

(2) An employer may utilize Appendices A, B, C, D, and E to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2016[2005], except the Sample Fall Protection Plan for Residential Construction found in Appendix E.

(3) The Non-Mandatory Sample Fall Protection Plan for Residential Construction may be used and is incorporated by reference in Section 4 of this administrative regulation.

Section 3. Residential Construction. (1) General.

(a) While engaged in residential construction activities, each employee[Employees] working six (6)[ten (10)] feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section~~while exposed to any of the following~~:

1. Unprotected sides and edges;

2. Leading edges;

3. Hoist areas;

4. Form work and reinforcing steel; or

5. Roofing work on roof slopes three (3) in twelve (12) or less.

(b) The employer shall use a measure that meets the criteria established in this section and shall not be required to demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, or personal fall arrest systems before using a measure provided in this section.

(c) If an employer can demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, or a measure established in this section,~~[for a particular workplace situation,]~~ the employer shall develop and implement a written fall protection plan which meets the requirements of 29 C.F.R. 1926.502(k) for a particular workplace situation in lieu of implementing guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section.

(2) Floor system.

(a) Each employee[Employees] engaged in residential construction floor system work exposed to a fall hazard six (6)[ten (10)] feet or more above a lower level to the exterior of the structure being constructed shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(b) Each employee[Employees] engaged in residential construction floor system work exposed to an interior fall hazard six (6)[ten (10)] feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first joist or truss shall be placed into position and secured by workers on the ground, from ladders, or from a scaffold system.

2. Successive joists or trusses shall be placed into position and then secured from a secured temporary platform.

3. The temporary platform shall be at least eighteen (18) inches wide and secured.

4. The[An] employee performing the work shall work from the platform and remain on the platform.

(c) Each employee[Employees] engaged in leading edge residential construction floor system work six (6)[ten (10)] feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall

restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first row of floor sheathing shall be placed into position, installed, and secured from the ground, from ladders, from a scaffold system, or from a secured temporary platform at least eighteen (18) inches wide.

2. ~~The~~An employee performing the work shall work from the platform and remain on the platform.

3. After the first row of sheathing has been installed and secured, only employees performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

4. After two (2) rows of sheathing have been installed, only ~~the~~an employee performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

5. All other employees shall remain at least four (4) feet away from the leading edge.

(3) Roof system.

(a) ~~Each employee~~Employees engaged in residential construction roof truss or rafter work ~~six (6)~~ten (10) feet or more above a lower level shall:

1. Be protected by guardrail systems, safety net systems, personal fall arrest systems; or

2. Personal fall restraint systems or implement the measure established in paragraph (b) of this subsection.

(b) The employee releasing the hoist line or installing the bracing shall:

1. Move or work from within the webbing of the truss or within the rafters on a secured temporary platform at least eighteen (18) inches wide; or

2. Maintain three (3) points of contact while moving or working within the webbing of the trusses or within the rafters.

(c) Employees shall not move or work outside the webbing of the trusses or outside the rafters unless utilizing a personal fall arrest system or personal fall restraint system.

(d) ~~Each employee~~Employees engaged in roof sheathing may utilize a slide guard system in accordance with the provisions established in subsection (5) of this section.

(e) ~~Employees~~ engaged in residential construction attic work ~~six (6)~~ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or the measures established in this paragraph.

1. ~~Each employee~~Employees shall move or work from within the webbing of the trusses or within the rafters on a secured temporary platform at least eighteen (18) inches wide.

2. ~~Each employee~~Employees shall remain on the platform while performing the work.

(4) Roofing work.

(a) Supplies or materials shall not be placed or stored within six (6) feet of the roof edge.

(b) ~~An employee~~A person shall not ascend, work on, or descend the roof within six (6) feet of the rake edge except while applying or removing roofing materials or equipment.

(c) Warning line systems.

1. ~~Each employee~~Employees engaged in residential construction roofing work ~~six (6)~~ten (10) feet or more above a lower level on roof slopes three (3) in twelve (12) or less shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or a combination of warning line system and guardrail system, warning line system and safety net system, warning line system and personal fall arrest system, or warning line system and safety monitoring system. On roofs fifty (50) feet or less in width, a safety monitoring system alone may be used. Appendix A to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2005, may be used as a guideline to determine roof width.

2. ~~Each employee~~Employees performing residential construction roofing work between a roof edge and a warning line shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

~~[(5) Slide guard systems.~~

(a) ~~Employers and employees installing residential construction roof sheathing with a ground-to-eave height up to twenty-five (25) feet or engaged in residential construction roofing work with a ground-to-eave height up to twenty-five (25) feet may utilize a slide guard system in accordance with the provisions established in this subsection with a safety monitor system meeting the requirements of 29 C.F.R. 1926.502(h)(1) through (h)(4).~~

(b) ~~Slide guards systems shall not be used with a slope less than four (4) in twelve (12) or greater than eight (8) in twelve (12).~~

(c) ~~Employers and employees installing residential construction roof sheathing who utilize a slide guard system shall install the slide guard system immediately after the first row of sheathing is installed.~~

(d) ~~Slide guard systems shall comply with the following provisions:~~

1. ~~Each slide guard system shall be installed, utilized, and removed under the supervision of a competent person, as defined in 29 C.F.R. 1926.32(f).~~

2. ~~Each slide guard system shall be used in accordance with the manufacturer's specifications, limitations, and recommendations.~~

3. ~~Each slide guard system shall be maintained in accordance with the manufacturer's specifications and recommendations.~~

4. ~~The manufacturer's specifications shall be available at the jobsite for review if the slide guard system is not utilized and maintained in accordance with this subsection.~~

5. ~~Each slide guard system shall be inspected for visible defects by a competent person before each work shift and after any occurrence which could affect the slide guard system's structural integrity.~~

6. ~~For each slide guard system, each damaged or weakened component shall be immediately replaced or repaired.~~

7. ~~For each slide guard system, if replacement or repair of a damaged or weakened component is not feasible, work shall be suspended until:~~

a. ~~The damaged or weakened component is replaced or repaired; or~~

b. ~~Another form of fall protection is utilized.~~

8. ~~The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.~~

9. ~~Unless required otherwise by the manufacturer's specifications, all perpendicular slide guard members shall:~~

a. ~~Be number two (2) or better construction grade lumber;~~

b. ~~Have a minimum dimension of two (2) inches nominal by six (6) inches nominal;~~

c. ~~Use lumber that is free from cracks or other visible defects; and~~

d. ~~Use other type of material that meets the same dimensions and is equivalent in strength, with the engineering specifications available at the site for review.~~

10. ~~All perpendicular slide guard members shall be secured to the brackets and protected against cantilevering or failure due to material flex.~~

11. ~~All slide guard systems shall be on the same walking/working surface as the employee being protected.~~

12. ~~A continuous slide guard system below the walking or working area shall be installed along the eave no closer than six (6) inches from the eave and remain in place until the work is completed.~~

13. ~~Additional continuous slide guards systems shall be installed below each walking or working area no more than eight (8) feet apart vertically.~~

14. ~~The additional slide guards shall be installed using the following procedure:~~

a. ~~The employee, while standing on the slide guard below, shall secure the roof bracket, or jack, for the next slide guard;~~

b. ~~The employee shall install and secure the next perpendicular slide guard member;~~

c. ~~The employee shall then climb up to the new slide guard to continue work;~~

d. ~~This sequence shall be repeated as work proceeds up the roof;~~

e. Once the work is complete and the slide guards are to be removed, the employee shall climb down to the next lower slide guard;

f. The employee shall remove the perpendicular slide guard member from the slide guard above;

g. The employee shall remove the roof brackets, or jacks, above;

h. The employee shall repeat the sequence down the roof; and

i. When all above slide guards have been removed, the slide guards at the eave shall be removed.

15. Manufactured roof brackets, or jacks, shall:

a. Be a minimum of six (6) inch brackets;

b. Be secured according to the manufacturer's specifications, limitations, and recommendations;

c. Bear on a solid surface so that all anchors penetrate the roof's surface and the rafter or truss below, unless specified otherwise by the manufacturer's specifications;

d. Not be spaced greater than eight (8) feet apart horizontally or according to the manufacturer's specifications, whichever is less; and;

e. Have the manufacturer's specifications available at the jobsite for review if the manufactured roof brackets, or jacks, are not utilized in accordance with the provisions established in this subparagraph.

16. Nonmanufactured, job, or site made slide guard systems shall comply with the provisions established in this subparagraph.

a. Horizontal members shall be anchored with a minimum of two (2) sixteen (16) "penny", or 16d, common nails at least every four (4) feet so that all nails penetrate the roof's surface and the rafter or truss below.

b. The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.

c. Horizontal and perpendicular members shall be number two (2) or better construction grade lumber and have a minimum dimension of two (2) inches nominal by six (6) inches nominal.

d. Perpendicular members shall be anchored to the horizontal members with a minimum of one (1) sixteen (16) "penny", or 16d, common nail at least every two (2) feet.

e. The perpendicular member shall be provided with support bracing at least every six (6) feet.

f. More than one (1) person shall not occupy any given eight (8) feet of a job made slide guard system.

g. Engineering specifications shall be available at the site for review if the design or installation does not meet the minimum specifications established in this subparagraph. An engineer's seal shall not be required. Engineering specifications shall establish that nonmanufactured, job, or site made slide guard systems shall be equivalent to a system constructed in accordance with the provisions established in this subparagraph.]

Section 4. Incorporation by Reference. (1) A "Non-Mandatory Sample Fall Protection Plan for Residential Construction", August 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, 1047 US Highway 127 South, Suite 4, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at www.labor.ky.gov.

[Section 5. Effective Date. The amendments to this administrative regulation shall be effective January 1, 2017.]

As approved by the Kentucky Occupational Safety and Health Standards Board.

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: June 14, 2016

FILED WITH LRC: June 15, 2016 at 10 a.m.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

PUBLIC PROTECTION CABINET
Department of Housing Buildings and Construction
Division of Plumbing
(As Amended at ARRS, November 7, 2016)

815 KAR 20:010. Definitions for 815 KAR Chapter 20.

RELATES TO: KRS 132.010(9), (10), Chapter 318

STATUTORY AUTHORITY: KRS[43A.120,] 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130

requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. [The office is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code]. This administrative regulation establishes definitions for terms used in 815 KAR Chapter 20[relates to the definitions needed to interpret other sections of the subsequent administrative regulations or comprising the State Plumbing Code. This amendment creates an additional definition for use in the State Plumbing Code to clarify the type and size of rock to use for bedding under piping. It was approved by the Plumbing Code Committee and Board of Housing].

Section 1. Definitions[Definition of Terms]. (1) "ABS" means acrylonitrile-butadiene-styrene.

(2) "Administrative authority" means the Department[Office] of Housing, Buildings and Construction or any person or agency authorized by the department[office] to administer and enforce the provisions of the state plumbing code.

(3)[(2)] "Air break[(~~drainage system~~)]" means a piping arrangement for a drainage system in which a drain from a fixture, appliance, or device discharges indirectly into another fixture, receptacle, or interceptor at a point below the flood level rim.

(4)[(3)] "Air gap[(~~drainage system~~)]" means, for a drainage system, the unobstructed vertical distance through the free atmosphere between the outlet of waste pipe and the flood level rim of the receptacle into which it is discharging.

(5)[(4)] "Air gap[(~~water distribution system~~)]" means, for a water distribution system, the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of the receptacle.

(6)[(5)] "Anchors" means "supports" as defined by this administrative regulation.

(7)[(6)] "Apprentice[plumber]" is[as] defined by[in] KRS 318.010(7).

(8)[(7)] "Approved" means accepted or acceptable under an applicable specification stated or cited in this code.

(9)[(8)] "Area drain" means a receptacle designed to collect surface or storm water from an open area.

(10)[(9)] "Aspirator" means a fitting or device supplied with water or other fluid under positive pressure, which passes through an integral orifice or "constriction" causing a vacuum. Aspirators are often referred to as "suction" apparatus[-] and are similar in operation to an ejector.

(11) "ASTM" means American Society for Testing and Materials.

(12)[(10)] "Autopsy table" means a fixture or table used for postmortem examination of a body.

(13)[(11)] "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Back siphonage is one type of backflow.

(14)[(12)] "Backflow connection" means any arrangement whereby backflow may occur (see "cross connection" as defined by this administrative regulation).

(15)[(13)] "Backflow preventer" means a device or means to prevent backflow.

(16)[(14)] "Backflow preventer, reduced pressure zone type" means an assembly of differential valves and check valves, including an automatically opened spillage port to the atmosphere.

(17)[(15)] "Back siphonage" means the flowing back of used,

contaminated, or polluted water from a plumbing fixture or vessel or other sources into a potable water supply pipe due to a negative pressure in a such pipe.

(18)[(16)(a)] "Basement" means the lowest level of a dwelling unit, which is wholly or partly below the ground level in which the entrance and exit is made by use of a stairway or other mechanical means and which may or may not have an entrance and exit at the basement floor level.

(19)[(b)] "Basement floor drain[drains]" means a drain placed in the basement floor of a residence that does or does ~~which may or may~~ not receive sanitary waste water.

(20)[(17)] "Battery of fixtures" means any group of two (2) or more similar adjacent fixtures that ~~which~~ discharge into a common horizontal waste or soil branch.

(21)[(18)] "Bedpan hopper" means "clinical sink" as defined by this administrative regulation.

(22)[(19)] "Bedpan steamer or boiler" means a fixture used for scalding bedpans or urinals by direct application of steam of boiling water.

(23)[(20)] "Bedpan unit" means a small workroom in the nursing area designed and equipped for emptying, cleaning, and sometimes for steaming bedpans, and for no other purpose ~~purposes~~.

(24)[(21)] "Bedpan washer and sterilizer" means a fixture designed to wash bedpans and to flush the contents into the sanitary drainage system. It can ~~may~~ also provide for disinfecting utensils by scalding with steam or hot water.

(25)[(22)] "Bedpan washer hose" means a device supplied with hot and cold water and located adjacent to a water closet or clinical sink to be used for cleaning bedpans.

(26)[(23)] "Boiler blow-off" means an outlet on a boiler to permit emptying or discharge of sediment.

(27)[(24)] "Boiler blow-off tank" means a vessel designed to receive the discharge from a boiler blow-off outlet and to cool the discharge to a temperature that ~~which~~ permits its safe discharge to the drainage system.

(28)[(25)] "Branch" means that part of the piping system that ~~which~~ extends horizontally, at a slight grade, with or without lateral or vertical extensions or vertical arms, from the main to receive fixture outlets not directly connected to the main.

(29)[(26)] "Branch, fixture" means "fixture branch" as defined by this administrative regulation.

(30)[(27)] "Branch interval" means a distance along a soil or waste stack corresponding in general to a story height, but in no case less than eight (8) feet, within which the horizontal branches from one (1) floor or story of a building are connected to the stack.

(31)[(28)] "Branch vent" means a vent connecting one (1) or more individual vents with a vent stack or stack vent.

(32)[(29)] "Building" means a structure having walls and a roof designed and used for the housing, shelter, enclosure, or support of persons, animals or property.

(33)[(30)] "Building classification" means the arrangement of buildings in classes according to occupancy.

(34)[(31)] "Building drain" means that part of the lowest piping of a drainage system that ~~which~~ receives the discharge from soil, waste, or ~~and~~ other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two (2) feet outside the building wall.

(35)[(32)] "Building drain; combined" means a building drain that ~~which~~ conveys both sewage and storm water or other drainage.

(36)[(33)] "Building drain; sanitary" means a building drain that ~~which~~ conveys sewage only.

(37)[(34)] "Building drain; storm" means a building drain that ~~which~~ conveys storm water or other drainage but not sewage.

(38)[(35)] "Building gravity drainage system" means a drainage system that ~~which~~ drains by gravity into the building sewer.

(39)[(36)] "Building sewer" means that part of the drainage system that ~~which~~ extends from the end of the building drain and conveys its discharge to a public sewer, private sewer, individual sewage-disposal system, or other point of disposal.

(40)[(37)] "Building sewer; combined" means a building sewer that ~~which~~ conveys both sewage and storm water or other

drainage.

(41)[(38)] "Building sewer; sanitary" means a building sewer that ~~which~~ conveys sewage only.

(42)[(39)] "Building sewer; storm" means a building sewer that ~~which~~ conveys storm water or other drainage but no sewage.

(43)[(40)] "Building subdrain" means that portion of a drainage system that ~~which~~ does not drain by gravity into the building sewer.

(44)[(41)] "Cesspool[Cesspools]" means a lined and covered excavation in the ground that ~~which~~ receives a discharge of domestic sewage or other organic wastes from a drainage system, so designed as to retain the organic matter and solids, but permitting the liquids to seep through the bottom and sides.

(45)[(42)] "Circuit vent" means a branch vent that serves two (2) or more traps and extends from the downstream side of the highest fixture connection of a horizontal branch to the vent stack.

(46)[(43)] "Clinical sink ~~[(bedpan hopper)]~~ or "bedpan hopper" means a fixture for the rinsing of bedpans and soiled linens. ~~Such fixture shall have a trap size of not less than three (3) inches.~~

(47)[(44)] "Code" is ~~as~~ defined by ~~in~~ KRS 318.010(11).

(48)[(45)] "Combination fixture" means a fixture combining one (1) sink and laundry tray or a two (2) or three (3) compartment sink or laundry tray in one (1) unit.

(49)[(46)] "Combined building drain" means "building drain; combined" as defined by this administrative regulation.

(50)[(47)] "Combined building sewer" means "building sewer; combined" as defined by this administrative regulation.

(51)[(48)] "Combination waste and vent system" means a specially designed system of waste piping embodying the horizontal wet venting of one (1) or more sinks or floor drains by means of a common waste and vent pipe adequately sized to provide free movement of air above the free water surface in the drain.

(52)[(49)] "Common vent" means a vent connecting at the junction of two (2) fixture drains and serving as a vent for both fixture drains.

(53)[(50)] "Conductor" means a pipe inside the building that ~~which~~ conveys storm water from the roof to a storm or combined building drain.

(54)[(51)] "Continuous vent" means a vertical vent that is a continuation of the drain to which it connects.

(55)[(52)] "Continuous waste" means a drain from two (2) or more fixtures connected to a single trap.

(56)[(53)] "Cross connection" means any physical connection or arrangement between two (2) otherwise separate piping systems, one (1) of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there could ~~may~~ be a flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems. (See "backflow" and "back siphonage" as defined by this administrative regulation.)

(57)[(54)] "Dead end" means a branch leading from a soil, waste or vent pipe, building drain, or building sewer, and terminating at a developed length of two (2) feet or more by means of a plug, cap, or other closed fitting.

(58)[(55)] "Developed length" means the length of a pipe line measured along the center line of the pipe and fittings.

(59)[(56)] "Diameter" means the nominal diameter as designated commercially.

(60)[(57)] "Domestic sewage" means the waterborne wastes derived from ordinary living processes.

(61)[(58)] "Double offset" means two (2) changes of direction installed in succession or series in a continuous pipe.

(62)[(59)] "Downspout" means "leader" as defined by this administrative regulation.

(63)[(60)] "Drain" means any pipe that ~~which~~ carries waste water or waterborne wastes in a building drainage system.

(64)[(61)] "Drainage pipe" means "drainage system" as defined by this administrative regulation.

(65)[(62)] "Drainage system":

(a) Means includes all the piping, within public or private premises, which conveys sewage, rain water, or other liquid

wastes to a point of disposal; and

(b) Does not mean:

1. ~~It does not include~~ The mains of a public sewer system;
2. ~~A~~ private or public sewage-treatment or disposal plant; or
3. ~~Neither does this apply to~~ Plumbing appliances.

(66)(63) "Drainage system ~~[(building-gravity)]~~" means, for building gravity, a drainage system ~~that~~which drains by gravity into the building sewer.

(67)(64) "Drainage system ~~[(subbuilding)]~~" means, for a subbuilding, "building subdrain" as defined by this administrative regulation.

(68)(65) "Dry well" means "leaching well" as defined by this administrative regulation.

(69)(66) "Dual vent" means "common vent" as defined by this administrative regulation.

(70)(67) "Durham system" means a ~~term used to describe~~ soil or waste system in which~~systems where~~ all piping is of threaded pipe, tube, or other~~such~~ rigid construction, using recessed drainage fittings to correspond to the types of piping.

(71)(68) "Dwelling unit" means one (1) or more rooms with provision for living, sanitary, and sleeping facilities arranged for the use of one (1) family or individual.

(72) [(69)] "DWV" means ~~an abbreviated term for~~ drain, waste, and vent piping as used in common plumbing practice.

(73)(70) "Effective opening" means the minimum cross-sectional area at the point of water supply discharge, measured or expressed in terms of ~~[(i)]~~ diameter of a circle, ~~or~~~~[(ii)]~~ if the opening is not circular, the diameter of a circle of equivalent cross-sectional area.

(74)(71) "Ejector" means "aspirator" as defined by this administrative regulation.

(75)(72) "Existing work" means a plumbing system or any part thereof installed prior to the effective date of this code.

(76)(73) "Farm" as associated with "farmstead" as defined ~~by~~which is defined in KRS 318.010(8), means property ~~with~~that shall have a bona fide "agricultural land" or "horticultural land" use as defined by KRS 132.010(9) and (10) and qualified by and registered with the PVA in that county.

(77)(74) "Fire line" means a system of pipes and equipment used exclusively to supply water for extinguishing fires.

(78)(75) "Fixture" means "plumbing fixture" as defined by this administrative regulation.

(79)(76) "Fixture branch" means the piping distance between a soil, waste, and vent stack and the fixture trap.

(80)(77) "Fixture drain" means the drain from the trap of a fixture to the junction of that drain with any other drain pipe.

(81)(78) "Fixture supply" means the water supply pipe connecting a fixture to a branch water supply pipe or directly to a main water supply pipe.

(82)(79) "Fixture unit, drainage (d.f.u.)" means a measure of the probable discharge into the drainage system by various types of plumbing fixtures. The drainage fixture-unit valve for a particular fixture depends on its volume rate of drainage discharge, on the time duration of a single drainage operation, and on the average time between successive operations. (Note: In general, on small systems, one (1) drainage fixture unit approximates one (1) cubic foot per minute.)

(83)(80) "Fixture unit, supply (s.f.u.)" means a measure of the probable hydraulic demand on the water supply by various types of plumbing fixtures. The supply fixture-unit valve for a particular fixture depends on its volume rate of supply, on the time duration of a single supply operation, and on the average time between successive operations.

(84)(81) "Flood level" means "flood level rim" as defined by this administrative regulation.

(85)(82) "Flood level rim" means the edge of the receptacle from which water overflows.

(86)(83) "Flooded" means the condition ~~that~~which results ~~at the point~~when the liquid in a container or receptacle rises to the flood-level rim.

(87)(84) "Floor drain" means a drain placed in the floor of a building for the purpose of receiving sanitary waste water.

(88)(85) "Floor pantry" means a workroom in the nursing area designed and equipped to prepare supplemental diets or beverages, and to assemble food trays at meal times if used in conjunction with decentralized food service.

(89)(86) "Flow pressure" means the pressure in the water supply pipe near the faucet or water outlet while the faucet or water outlet is wide-open and flowing.

(90)(87) "Flush valve" means a device located at the bottom of a tank for slushing water closets and similar fixtures.

(91)(88) "Flushing type floor drain" means a drain ~~that~~which is equipped with an integral water supply enabling flushing of the drain receptor and trap.

(92)(89) "Flushometer valve" means a device ~~that~~which discharges a predetermined quantity of water to fixtures for flushing purposes and is closed by direct water pressure.

(93)(90) "Frost-proof closet" means a hopper with no water in the bowl and with the trap and water supply control valve located below frost line.

(94)(91) "Grade" means the fall (slope) of a line of pipe in reference to a horizontal plane. In drainage it is usually expressed as the fall in a fraction of an inch per foot length of pipe.

(95) "Grade plane" means a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane is established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1,829 mm) from the building, between the building and a point six (6) feet (1,829 mm) from the building.

(96)(92) "Grease interceptor" means "interceptor" as defined by this administrative regulation.

(97)(93) "Grease trap" means "interceptor" as defined by this administrative regulation.

(98)(94) "Grillage" means sand, pea gravel, or limestone rock sizes #57 and smaller~~as defined by Kentucky Department of Highways and~~ used for bedding for piping systems.

(99)(95) "Hangers" means "supports" as defined by this administrative regulation.

(100)(96) "Horizontal branch drain" means a drain branch pipe extending laterally from a soil or waste stack or building drain, with or without vertical sections or branches, which receives the discharge from one (1) or more fixture drains and conducts it to the soil or waste stack or to the building drain.

(101)(97) "Horizontal pipe" means any pipe or fitting ~~that~~which makes an angle of less than forty-five (45) degrees with the horizontal.

(102)(98) "Hose bibb" means a sill cock, wall hydrant, or similar faucet with a downward angled threaded nozzle.

(103)(99) "Hot water" means water at a temperature of not less than 120 degrees Fahrenheit.

(104) [(100)] "House drain" means "building drain" as defined by this administrative regulation.

(105)(101) "House sewer" means "building sewer" as defined by this administrative regulation.

(106)(102) "Indirect waste pipe" means a waste pipe not directly connected with the drainage system, but which discharges into the drainage system through an air break or air gap into a trap, fixture, receptor, or interceptor.

(107)(103) "Individual sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank, cesspool, or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.

(108)(104) "Individual vent" means a pipe installed to vent a fixture drain. It connects with the vent system above the fixture served or terminates outside the building into the open air.

(109)(105) "Individual water supply" means a supply other than an approved public water supply which serves one (1) or more families.

(110)(106) "Industrial floor drain" means a drain placed in the floor of a building other than in a toilet room or shower room to receive waste water.

(111)(107) "Industrial wastes" means liquid wastes resulting from the processes employed in industrial and commercial

establishments.

(112)[(108)] "Insanitary" means contrary to sanitary principles; injurious to health.

(113)[(109)] "Interceptor" means a device designed and installed so as to separate and retain deleterious, hazardous, or undesirable matter from normal wastes while permitting normal sewage or liquid wastes to discharge into the drainage system by gravity.

(114)[(140)] "Installed" means altered, changed, or a new installation.

(115)[(141)] "Invert" means the lowest portion of the inside of any horizontal pipe.

(116)[(142)] "Kitchen sink unit" means a sink, double or single compartment, food waste disposer, and dishwasher placed in a unit so arranged that the dishwasher abuts the sink.

(117)[(143)] "Lavatory" means a hand basin, such as in a bathroom.

(118)[(144)] "Leaching well or pit" means a pit or receptacle having porous walls that allow[which permit] the contents to seep into the ground.

(119)[(145)] "Leader" means an exterior drainage pipe for conveying storm water from roof or gutter drains.

(120)[(146)] "Liquid waste" means the discharge from any fixture, appliance, area or appurtenance, which does not contain fecal matter.

(121)[(147)] "Load factor" means the percentage of the total connected fixture unit flow that[which] is likely to occur at any point in the drainage system.

(122)[(148)] "Local vent stack" means a vertical pipe to which connections are made from the fixture side of traps and through which vapor and foul air can[may] be removed from the fixture or device used on bedpan washers.

(123)[(149)] "Local ventilating pipe" means a pipe through which foul air is removed from a room or fixture.

(124)[(120)] "Loop vent" means a circuit vent that[which] loops back to connect with a stack vent instead of a vent stack.

(125)[(121)] "Main" means the horizontal, vertical, and continuous piping that[which] receives the waste, soil, main, or individual vents from fixture outlets, or traps, directly or through branch pipes.

(126)[(122)] "Main sewer" means "public sewer" as defined by this administrative regulation.

(127)[(123)] "Main vent" means the principal artery of the venting system to which vent branches can[may] be connected. (Manufacturer's Floor Drain. See "industrial floor drain" as defined by this administrative regulation.)

(128)[(124)] "Multiple dwelling" means a building containing more than two (2) dwelling units.

(129)[(125)] "Nominal pipe size" means a standard expression in inches and fractions thereof to designate the approximate inside diameter of a pipe, conduit, or tube.

(130)[(126)] "Nonpotable water" means water not safe for drinking, personal, or culinary use.

(131)[(127)] "Nuisance" means dangerous to human life or detrimental to health; whatever building, structure, or premise is not sufficiently ventilated, sewered, drained, cleaned or lighted, in reference to its intended or actual use; and whatever renders the air or human food or drink or water supply unwholesome.

(132)[(128)] "Nurses' station" means an area in the nursing unit separated from the corridor by counter or desk, designed to permit nurses to record and file each patient's history and progress, observation, and control of corridor, preparation of medicines, and maintain contact with patients, the hospital, and the outside by local and public means of communication.

(133)[(129)] "Offset" means a combination of elbows or bends that[which] bring one (1) section of the pipe out of line but into a line parallel with the other section.

(134)[(130)] "Oil interceptor" means "interceptor" as defined by this administrative regulation.

(135)[(131)] "Person" is[as] defined by[is] KRS 318.010(9).

(136)[(132)] "Pitch" means "grade" as defined by this administrative regulation.

(137)[(133)] "Plumber's apprentice" means any person other

than a journeyman or master plumber, who, as his principal occupation, is engaged in working as an employee of a master plumber under the immediate and personal supervision of either a master or journeyman plumber in learning and assisting in the installation of plumbing.

(134)] "Plumbing" is[as] defined by[is] KRS 318.010(4).

(138)[(135)] "Plumbing appliance" means any one (1) of a special class of plumbing fixture that[which] is intended to perform a special function. Its operation and control may be dependent upon one (1) or more energized components, such as motors, controls, heating elements, or pressure or temperature-sensing elements. [Such] Fixtures can[may] operate automatically through one (1) or more of the following actions:

(a) A time cycle;

(b)[-] A temperature range;

(c)[-] A pressure range;

(d)[-] A measured volume or weight; or

(e) Manual adjustment or control[the fixture may be manually adjusted or controlled] by the user or operator.

(139)[(136)] "Plumbing appurtenance" means a manufactured device, or a prefabricated assembly of component parts, and[which] is an adjunct to the basic piping system and plumbing fixtures. An appurtenance demands no additional water supply, nor does it add any discharge load to a fixture or the drainage system. It is presumed that it performs some useful function in the operation, maintenance, servicing, economy, or safety of the plumbing system.

(140)[(137)] "Plumbing fixture":

(a) Means a receptacle or device that[which] is either permanently or temporarily connected to the water distribution system of the premises, and demands a supply of water therefrom, or it discharges used water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises, or that[which] requires both a water supply connection and a discharge to the drainage system of the premises; and

(b) Does not mean[-] Plumbing appliances as a special class of fixture are further defined. This definition does not include the piping that[which] carries water or sewage.

(141)[(138)] "Plumbing inspector" means a duly authorized employee or agent of the Department[Office] of Housing, Buildings and Construction who is charged with the responsibility of inspecting plumbing installations and with the enforcement of the state plumbing laws and code.

(142)[(139)] "Plumbing repair" means as used in the code to mean replacing a part or putting together that which is torn or broken.

(143)[(140)] "Plumbing system" means the following: appliances and water heaters; the water supply distributing pipes; the fixtures and fixture traps; the soil, waste and vent pipes; the house drain and house sewer; the storm water drainage within a building with their devices, appurtenances and connections all within and adjacent to the building.

(144)[(141)] "Pool" means "swimming pool" as defined by this administrative regulation.

(145)[(142)] "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Division of Water in 401 KAR Chapter 8[Quality] or the administrative regulations of the Department[Office] of Housing, Buildings and Construction.

(146)[(143)] "Private or private use" means, in the classification of plumbing fixtures, private applies to fixtures in residences and apartments and to fixtures in private bathrooms of hotels as well as similar installations in other buildings where the fixtures are intended for the use of a family or an individual.

(147)[(144)] "Private sewer" means a sewer, serving two (2) or more buildings, privately owned, and not directly controlled by public authority.

(148)[(145)] "Public or public use" means, in the classification of plumbing fixtures, public applies to fixtures in general toilet rooms of schools, gymnasiums, hotels, railroad stations, public buildings, bars, public comfort stations, and other installations (whether pay or free) where a number of fixtures are installed so

that ~~the fixtures~~^[their] use is similarly unrestricted.

(149)[(146)] "Public sewer" means a common sewer directly controlled by public authority.

(150)[(147)] "Public water main" means a water supply pipe for public use controlled by public authority.

(151) "PVC" means polyvinyl chloride.

(152)[(148)] "Receptor" means a fixture or device ~~that~~^[which] receives the discharge from indirect waste pipes.

(153)[(149)] "Relief vent" means an auxiliary vent ~~that~~^[which] permits additional circulation of air in or between drainage and vent systems.

(154)[(150)] "Replace" means to put something new or rebuilt in the place of that which was existing.

(155)[(151)] "Return offset" means a double offset installed so as to return the pipe to its original alignment.

(156)[(152)] "Revent pipe" means "individual vent" as defined by this administrative regulation.

(157)[(153)] "Rim" means an unobstructed open edge of a fixture.

(158)[(154)] "Riser" means a water supply pipe ~~that~~^[which] extends vertically one (1) full story or more to convey water to branches or to a group of fixtures.

(159)[(155)] "Roof drain" means a drain installed to receive water collecting on the surface of a roof and to discharge it into a leader or a conductor.

(160)[(156)] "Roughing-in" means the installation of all parts of the plumbing system ~~that~~^[which] can be completed prior to the installation of fixtures. This includes drainage, water supply, ~~and~~ vent piping, and the necessary fixture supports.

(161)[(157)] "Safe waste" means "indirect waste pipe" as defined by this administrative regulation.

(162)[(158)] "Sand interceptor" means "interceptor" as defined by this administrative regulation.

(163)[(159)] "Sand trap" means "interceptor" as defined by this administrative regulation.

(164)[(160)] "Sanitary sewer" means a sewer ~~that~~^[which] carries sewage and excludes storm, surface, and ground water.

(165)[(161)] "Scrub sink" means a device usually located in the operating suite to enable operating personnel to scrub their hands prior to operating procedures. The hot and cold water supply is activated by a knee-action mixing valve or by wrist or pedal control.

(166)[(162)] "Seepage well or pit" means a covered pit with open-jointed lining into which septic tank effluent is received that will seep or leach into the surrounding porous soil.

(167)[(163)] "Separator" means "interceptor" as defined by this administrative regulation.

(168)[(164)] "Septic tank" means a watertight receptacle ~~that~~^[which] receives the discharge of a building sanitary drainage system or part thereof, and is designed and constructed so as to digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through a system of open joint or perforated piping, or a seepage pit.

(169)[(165)] "Sewage" means any liquid waste containing animal or vegetable matter in suspension or solution, including^[and may include] liquids containing chemicals in solution.

(170)[(166)] "Sewage ejector^[ejectors]" means a device for lifting sewage by entraining it in a high velocity jet of steam air or water.

(171)[(167)] "Side vent" means a vent connecting to the drain pipe through a fitting at an angle not greater than forty-five (45) degrees to the vertical.

(172)[(168)] "Size of pipe and tubing" means "diameter" as defined by this administrative regulation.

(173)[(169)] "Slope" means "grade" as defined by this administrative regulation.

(174)[(170)] "Soil pipe" means any pipe ~~that~~^[which] conveys the discharge of water closets or similar fixtures, with or without the discharges from other fixtures, to the house drain.

(175)[(171)] "Soil vent" means "stack vent" as defined by this administrative regulation.

(176)[(172)] "Special wastes" means wastes ~~that~~^[which] require special treatment before entry into the normal plumbing system.

(177)[(173)] "Special waste pipe" means pipes ~~that~~^[which] convey special wastes.

(178)[(174)] "Stack" means any vertical line of soil, waste, ^{or} vent piping.

(179)[(175)] "Stack group" means a group of fixtures located adjacent to the stack so that by means of proper fittings, vents ~~can~~^[may] be reduced to a minimum.

(180)[(176)] "Stack vent" means the extension of a soil or waste stack above the highest horizontal drain connected to the stack.

(181)[(177)] "Stack venting" means a method of venting a fixture or fixtures through the soil or waste stack.

(182)[(178)] "Sterilizer, boiling type" means a fixture (nonpressure type), used for boiling instruments, utensils, and other equipment (used for disinfection). Some devices are portable^[,] others are connected to the plumbing system.

(183)[(179)] "Sterilizer, instrument" means a device for the sterilization of various instruments.

(184)[(180)] "Sterilizer, pressure instrument washer-sterilizer" means a fixture (pressure vessel) designed to both wash and sterilize instruments during the operating cycle of the fixture.

(185)[(181)] "Sterilizer, pressure (autoclave)" or "autoclave" means a fixture (pressure vessel) designed to use steam under pressure for sterilizing^{[, -Also called an autoclave].}

(186)[(182)] "Sterilizer, utensil" means a device for the sterilization of utensils as used in hospital services.

(187)[(183)] "Sterilizer vent" means a separate pipe or stack, indirectly connected to the building drainage system at the lower terminal, which receives the vapors from nonpressure sterilizers, or the exhaust vapors from the pressure sterilizers, and conducts the vapors directly to the outer air. Sometimes a sterilizer vent is referred to as^[called] vapor, steam, atmospheric, or exhaust vent.

(188)[(184)] "Sterilizer, water" means a device for sterilizing water and storing sterile water.

(189)[(185)] "Still" means a device used in distilling liquids.

(190)[(186)] "Storm drain" means ^["]building storm drain^["].

(191)[(187)] "Storm sewer" means a sewer used for conveying rain water, surface water, condensate, cooling water, or similar liquid wastes.

(192)[(188)] "Subsoil drain" means a drain ~~that~~^[which] collects subsurface water and conveys it to a place of disposal.

(193)[(189)] "Sump" means a tank or pit, which receives sewage or liquid waste, located below the normal grade of the gravity system and ~~that is~~^[which must be] emptied by mechanical means.

(194)[(190)] "Sump pump" means a mechanical device, ^{or} other than an ejector or bucket, for removing sewage or liquid waste from a sump.

(195)[(191)] "Supports" means devices for supporting and securing pipe, fixtures, and equipment.

(196)[(192)] "Swimming pool" means any structure, basin, chamber, or tank containing any artificial body of water for swimming, diving, wading or recreational bathing.

(197)[(193)] "Trap" means a fitting or device ~~that~~^[which] provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or waste water through it.

(198)[(194)] "Trap arm" means that portion of a fixture drain between a trap and its vent.

(199)[(195)] "Trap primer" means a device or system of piping to maintain a water seal in a trap, typically installed where infrequent use of the trap would result in evaporation of the trap seal, such as floor drains.

(200)[(196)] "Trap seal" means the vertical distance between the crown weir and the top of the dip of the trap.

(201)[(197)] "Utility room" means a workroom in the patient nursing area, designed and equipped to facilitate preparation, cleaning, ^{and} incidental sterilizing of the various supplies, instruments, ~~and~~ utensils^[, etc.,] involved in nursing treatment and care, exclusive of medications handled in nurses' stations and bedpan cleaning and sterilizing.

(202)[(198)] "Vacuum" means any pressure less than exerted by the atmosphere.

(203)[(199)] "Vacuum breaker" means "backflow preventer" as defined by this administrative regulation.

(204)[(200)] "Vacuum breaker, nonpressure type (atmospheric)" means a vacuum breaker that[which] is not designed to be subjected to static line pressure.

(205)[(204)] "Vacuum breaker, pressure type" means a vacuum breaker designed to operate under conditions of static line pressure.

(206)[(202)] "Vent pipe" means any pipe provided to ventilate a house drainage system and to prevent tray siphonage and back pressure.

(207)[(203)] "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system or to provide a circulation of air within the[such] system to protect trap seals from siphonage and back pressure.

(208)[(204)] "Vertical pipe" means any pipe or fitting that[which] makes an angle of forty-five (45) degrees or less with the vertical.

(209)[(205)] "Wall hung water closet" means a wall mounted water closet installed in such a way that no part of the water closet touches the floor.

(210)[(206)] "Waste pipe and special waste" means any pipe that[which] receives the discharge of any fixture (except water closets or similar fixtures) and discharges to the house drain, soil, or waste stacks. If a[When such] pipe does not connect directly with a house drain, waste, or soil stack, the pipe[it] is considered to contain[termed a] special waste.

(211)[(207)] "Water distributing pipe" means a pipe within the building or on the premises that[which] conveys water from the water-service pipe or meter to the point of usage.

(212)[(208)] "Water lifts" means "sewage ejector" as defined by this administrative regulation.

(213)[(209)] "Water outlet" means a discharge opening through which water is supplied to a fixture, into the atmosphere (except into an open tank that[which] is part of the water supply), to a boiler or heating system, or to any devices or equipment requiring water to operate but that[which] are not part of the plumbing system.

(214)[(210)] "Water riser pipe" means "riser" as defined by this administrative regulation.

(215)[(214)] "Water service pipe" means the pipe from the water main or other source of potable water supply to the water distributing system of the building served.

(216)[(212)] "Water supply stub" means a vertical pipe less than one (1) story in height supplying one (1) or more fixtures.

(217)[(213)] "Water supply system" means the water service pipe, the water-distributing pipes, and the necessary connecting pipes, fittings, control valves, and all appurtenances in or adjacent to the building or premises.

(218)[(214)] "Well, bored" means a well constructed by boring a hole in the ground with an auger and installing a casing.

(219)[(215)] "Well, drilled" means a well constructed by making a hole in the ground with a drilling machine of any type and installing casing and screen.

(220)[(216)] "Well, driven" means a well constructed by driving a pipe in the ground. The drive pipe is usually fitted with a well point and screen.

(221)[(217)] "Well, dug" means a well constructed by excavating a large diameter shaft and installing a casing.

(222)[(218)] "Wet vent" means a vent that[which] receives the discharge of wastes other than from water closets.

(223)[(219)] "Yoke vent" means a pipe connecting upward from a soil or waste stack to a vent stack for the purpose of preventing pressure changes in the stack.

STEVEN A. MILBY, Commissioner

DAVID A. DICKERSON, Secretary

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

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Income Support

Child Support Enforcement

(As Amended at ARRS, November 7, 2016)

921 KAR 1:410. Child support collection and enforcement.

RELATES TO: KRS 13B.010(2), 15.055, 67A.620, 95.620(1), 95.878, 131.570, 161.700(1), 186.570(2), 205.594, 205.595, ~~205.7685,~~ 205.710-205.802, 237.110(4), 403.211-403.215, 405.060(2), (3), 405.405-405.991, 407.5101-407.5902, 427.125, 31 C.F.R. 285.1, 285.3, 45 C.F.R. 302.32-302.36, 302.60-302.80, 303.3, 303.6, 303.31, 303.32, 303.35, 303.70, 303.72, 303.100-303.102, 303.104, 15 U.S.C. 1673, 42 U.S.C. 652, ~~653, 653A,~~ 654, 659, 664, 666(a)(1)-(4), (6)-(12), (14)-(19), (b), (c)

STATUTORY AUTHORITY: KRS 15.055(2), 186.570(2), 194A.050(1), 205.712(2)(~~o~~)(~~e~~), 205.712(~~16~~)(~~8~~)(~~18~~)(~~16~~), 205.745(9), ~~205.7685(3),~~ 205.795, 405.411(2), 405.520, 42 U.S.C. 652, 653, 654, 656, 659, 666(a), (b), (c), 669a

NECESSITY, FUNCTION, AND CONFORMITY: 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. 42 U.S.C. 666 requires states to have laws that prescribe procedures to improve effectiveness of child support enforcement. KRS 205.712(2)(o) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection and enforcement of child support.

Section 1. Definition. "Lump sum payment of any kind" means a lump sum payment of earnings as defined in KRS 427.005.

Section 2. Collection. (1) Income withholding shall be used for the collection of a support obligation or health insurance coverage in an order being enforced by the Child Support Enforcement (CSE) program.

(2) The cabinet shall issue the CS-89, Income Withholding for Support and CS-72, National Medical Support Notice to an employer or other income source:

(a) Within fifteen (15) calendar days of a request for income withholding; or

(b) Within two (2) working days after entry of an obligor into the State Directory of New Hires.

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date of the CS-89; and

(b) Transfer the CS-72 to the employer's health plan administrator within twenty (20) business days after receipt of the notice.

(4) The employer or other income source, in accordance with KRS 405.465(4) and (6)(a), may deduct the sum of one (1) dollar for each payment made pursuant to the order.

(5) The total amount to be withheld shall not exceed the maximum amount allowed under 15 U.S.C. 1673(b).

(6) In the case of an initial withholding, the cabinet shall send the obligor a copy of the CS-89 in order to notify the obligor that the income withholding:

(a) May be contested by requesting an administrative hearing pursuant to 921 KAR 1:430, in accordance with KRS 405.467(4); and

(b) Shall apply to the current and any subsequent employer.

(7) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the CS-72.

(8) If an obligor terminates employment, the employer or other income source shall notify the cabinet of the obligor's last known address and name of the new employer, if known, in accordance with KRS 405.465(5).

(9) An obligor shall inform the cabinet of any changes in:

- (a) A current employer or source of income;
- (b) Access to health insurance; and
- (c) Residential or mailing address.

(10) If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(11) If an arrearage only amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by court or administrative order.

(12) The employer or other income source shall forward:

(a) The support obligation payment to the state disbursement unit in the child support agency within seven (7) working days from the date an amount is withheld; or

(b) The medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan within twenty (20) business days.

(13) The employer or other income source shall include on the transmittal to the cabinet the obligor's:

- (a) Name;
- (b) Social Security number; and
- (c) Cabinet-assigned identification number.

(14) The employer or other source of income shall not be required to change payroll frequency but shall withhold:

(a) At least once monthly; and

(b) May combine withheld amounts from more than one (1) obligor's income in a single payment to the cabinet, if the amount attributable to each obligor is identified by:

- 1. Name;
- 2. Social Security number; and
- 3. Cabinet-assigned identification number.

(15)(a) An employer with twenty (20) or more employees shall provide written notification of a lump sum payment of any kind of \$150 or more to be made to an employee who is currently under an income withholding order, in accordance with KRS 405.465.

1. The written notice to the cabinet shall include the following:

- a. Name of the employee;
- b. Social Security number of the employee;
- c. Amount of the lump sum payment; and
- d. Intended payment date.

2. The notice may include multiple employees on one (1) written notification if the information in accordance with [this] subparagraph 1 of this paragraph is provided for each employee.

(b) Upon receipt of notification of a lump sum payment, Child Support Enforcement shall determine if the employee owes an arrearage on a support obligation enforced by the cabinet.

(c) If the employee owes no arrearage, Child Support Enforcement or its designee shall notify the employer to release the lump sum payment to the employee.

(d) If the employee owes an arrearage, pursuant to paragraph (b) of this subsection, Child Support Enforcement or its designee shall initiate:

- 1. A court order to the employer in accordance with KRS 405.465; or
- 2. An administrative order in accordance with KRS 405.470.

(e) If Child Support Enforcement or its designee does not contact the employer, the employer shall:

1. Hold the lump sum for thirty (30) calendar days, in accordance with KRS 405.465(6)(a), from the projected date of its release; and

2. Release the lump sum payment to the employee after the 30th calendar day, unless the employer has received from Child Support Enforcement or its designee a court order or an administrative order to withhold any portion of the lump sum payment.

(16) If an obligor receives unemployment compensation benefits, the cabinet shall:

(a) Through an agreement with the Education Cabinet, Office of Employment and Training, submit a CS-76, Unemployment Insurance Notice of Withholding, to the Department of Unemployment Insurance within the Education Cabinet to collect a child support payment from an obligor receiving unemployment

compensation; and

(b) Notify an obligor with a CS-73, Unemployment Insurance Letter, along with a copy of the CS-76, Unemployment Insurance Notice of Withholding that:

- 1. Current child support obligation or delinquency is owed;
- 2. The cabinet has completed a CS-76 to order withholding of:
 - a. Fifty (50) percent of the unemployment benefit; or
 - b. The amount of the assigned support obligation, whichever is less; and
- 3. The obligor may contest the withholding by requesting an administrative hearing as specified in 921 KAR 1:430.

Section 3. Support Collection by Methods Other than Collection through Income Withholding. (1) Federal income tax refund offset and federal administrative offset.

(a) A public assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet;

3. An arrearage of at least \$150; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case, for which the cabinet is providing services, involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:

1. Cabinet is enforcing a court-ordered or administratively-established support obligation;

2. Cabinet verifies accuracy of the obligor's name and Social Security number;

3. Nonpublic assistance arrearage owed is equal to or greater than \$500, exclusive of fees, court costs, or other non-child support debt; and

4. Cabinet has the following:

- a. A copy of the current support order;
- b. A copy of the payment record; and
- c. The custodial parent's last known address.

(c)1. If a case is submitted for federal tax refund offset, the case may be subject to federal administrative offset of nonexempt federal payments pursuant to 42 U.S.C. 664 and 31 C.F.R. 285.1 and 285.3.

2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(d) An Advance Notice of Intent to Collect Past Due Support, Form CS-122, shall be sent to the obligor of the intent to intercept the tax refund and the administrative offset to be applied to the obligor's account. The notice shall inform noncustodial parents:

1. Of their right to contest the fact that past due support is owed or the amount of past due support by requesting an administrative hearing;

2. Of the procedures and timeframe for contacting CSE to request an administrative hearing;

3. That the hearing shall be conducted by the submitting state unless the noncustodial parent requests the hearing be conducted by the state with the order upon which the referral for offset is based; and

4. That, in the case of a joint return, the Secretary of the U.S. Treasury shall notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse.

(2) State income tax refund offset.

(a) A public assistance case and nonpublic assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet or the Child Support Enforcement program is providing services involving past due child support, a specific dollar amount of medical support, or spousal support;

3. An arrearage of at least \$150; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) In accordance with KRS 131.570, an advance written notice shall be sent to the obligor that he may contest the accuracy of a past due amount by requesting an administrative hearing as specified in 921 KAR 1:430.

(3) Tort claim settlements and state administrative offset. The cabinet shall:

(a) Identify a child support case for state administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (2)(a) or (b) of this section; and

(b) Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection.

(4) Financial Institution Data Match (FIDM). The cabinet shall:

(a) Use the following criteria to identify a case for seizure of assets:

1.a. Assignment of support is made to the cabinet; or

b. Child Support Enforcement program is providing support services; and

2. The obligor owes past-due support in an amount equal to or greater than one (1) month's support obligation;

(b) Issue a CS-68, Order to Withhold and Deliver, and CS-69, Answer to Withhold and Deliver, to a financial institution holding the obligor's account or accounts;

(c) Issue a CS-68 and CS-121, Noncustodial Parent's Answer to Withhold and Deliver, to the obligor within two (2) working days:

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and

2. To notify the obligor that the funds in the account with the financial institution may be retained by requesting an administrative hearing to contest the Order to Withhold and Deliver in accordance with 921 KAR 1:430;

(d) Notify an obligor that to retain the funds in the account with the financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar days from the date of receipt of a CS-68:

1. Pay the total arrearage;

2. Request an~~and~~ administrative hearing to contest the CS-68; or

3. Post a bond satisfactory to the cabinet; and

(e) ~~To release or amend an Order to Withhold and Deliver~~[After an administrative hearing, if a case does not qualify for the withhold and deliver process], send a CS-70, Release/Amendment of Order to Withhold and Deliver to:

1. The obligor; and

2. The financial institution.

(5) If a seizure of assets request is identified, as specified in subsection (4)(a) of this section, and is initiated from outside the commonwealth as a result of a FIDM, pursuant to 42 U.S.C. 666(a)(17), the cabinet shall comply with KRS 205.712, 407.5305, and 407.5507 to issue:

(a) A CS-68 and a CS-69 to a financial institution holding the obligor's account or accounts;

(b) A CS-68 and a CS-121, Noncustodial Parent's Answer to Withhold and Deliver, to the obligor within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and

(c) A CS-70 to the financial institution if the initiating state's request is withdrawn.

Section 4. Enforcement Actions. (1) Liens.

(a) The cabinet shall file a lien on an obligor's interest in personal or real property, in accordance with KRS 205.745, if:

1. The obligor owes an arrearage equal to or greater than one (1) month's obligation;

2. The child support has been assigned to the cabinet;

3. The property has been identified and located; and

4. The value of the property exceeds the costs related to filing the lien.

(b) To file a lien, the cabinet shall:[f]

1. Issue a CS-85, Notice of Lien, for property within or outside Kentucky in accordance with KRS 205.745 or 205.7785; and

2. Provide a CS-119, Noncustodial Parent's Notice of Lien,

along with a copy of the CS-85 to the obligor notifying him that:

a. The obligor may contest the lien as specified in 921 KAR 1:430;

b. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2); and

c. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, a CS-120, Release of Lien, shall be provided to the obligor.

(c) To release a lien, the cabinet shall provide a CS-120, Release of Lien, to the obligor.

(2) License and certificate denial, suspension, or revocation.

(a) If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 205.712(9):

1. The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.

2. The denial or suspension shall remain in effect until:

a. The obligor makes full payment of the arrears;

b. Payments on the past due child support are made in accordance with a court order, an administrative order, or Payment Agreement, CS-78;

c. The obligor complies with the subpoena or a warrant relating to paternity or child support proceedings has been removed;

d. The obligor provides supporting documentation of extenuating circumstances that is accepted by the cabinet; or

e. The appeal of the denial or suspension is upheld and the license is reinstated.

3. The cabinet shall send to the obligor a CS-44, Notice of Intent to Request Denial or Suspension, which includes:

a. A section for an Answer to Notice of Intent providing the obligor with notice of the obligor's right to request an administrative hearing contesting the action as specified in 921 KAR 1:430; and

b. Notification that the CS-63, Notice to Licensing/Certification Board or Agency shall be rescinded if an action specified in paragraph (a) 2 of this subsection has been taken.

4. The cabinet shall send to the issuing agency or board of licensure or certification a CS-63, if an action in subparagraph 2 of this paragraph has not been taken.

5. The cabinet shall send to the issuing agency or board of licensure or certification a CS-63, within twenty (20) calendar days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:

a. A license or certificate denial;

b. Suspension; or

c. Revocation.

6. The cabinet shall notify the issuing board or agency that the obligor is no longer subject to denial, suspension, or revocation, if the obligor, in accordance with KRS 205.712(11):

a. Has eliminated the child support arrearage;

b. Is making payments on the child support arrearage in accordance with a court or administrative order; or

c. Complies with a subpoena or warrant relating to paternity or child support proceedings.

(b) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(3) Vehicle booting.

(a) If an obligor owes an arrearage equal to or greater than six (6) months obligation of an assigned support obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

(b) The cabinet shall:

1. Verify with the Department of Vehicle Regulation that the vehicle identification number for the vehicle to be booted is register in the obligor's name;

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2. Verify the vehicle to be booted is solely owned by the obligor, co-owned by the obligor and current spouse, or owned by a business in which the obligor is the sole proprietor;

3. Send a notice of intent to the obligor, unless there is reason to believe that the obligor will leave town or hide the vehicle;

4. File a lien in the county where the vehicle is kept; and

5. Set a target date for booting the vehicle, if the obligor does not contact the cabinet within ten (10) days of notice to negotiate a settlement.

(c) The cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(4) Newspaper publication of a list of delinquent obligors. If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 405.411, a cabinet designee under 205.712(6) may:

(a) Compile and furnish a list to a newspaper of general circulation in that county for publication; and

(b) Include the name, last known address, and the past due amount owed by the obligor.

(5) Passport denial, revocation, or limitation. If the obligor owes an arrearage of \$2,500 or more, in accordance with 42 U.S.C. 652(k) and 654(31), the cabinet shall:

(a) 1. Provide the Advance Notice of Intent to Collect Past Due Support, CS-122, to the obligor of the determination to be referred for passport denial, revocation, or limitation; and

2. Include in the notice the consequences of the referral and the right to contest the action by requesting a hearing in accordance with KRS 205.712(8);

(b) Provide the U.S. Secretary of Health and Human Services the names of individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport; and

(c) Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet requests the release of the passport of an obligor that had been denied if any of the following criteria are met:

1. There was an erroneous submittal of a Social Security number;

2. There is a case of mistaken identity and the cabinet has verified this information;

3. The obligor is required to pay the past due support in full;

4. The obligor provides documentation on company letterhead verifying travel for employment or business purposes and makes alternate payment arrangements acceptable to the cabinet; or

5. There are extenuating circumstances in which the reason for travel is a family emergency and supporting documentation is provided to and accepted by the cabinet.

(6) Delinquent list.

(a) The cabinet shall provide to the Office of the Attorney General a list of names of delinquent obligors for publication on the Internet, as established in KRS 15.055 and 205.712(16).

(b) The cabinet shall send the obligor meeting the criteria in 40 KAR 1:080 a CS-175, Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing notifying him of his right to contest by requesting a hearing.

~~[(7) Consumer Reporting Agency (CRA). Prior to requesting information from a CRA for enforcement purposes and if the obligor has not provided written consent for CSE to request information from a CRA, the cabinet shall notify the obligor:~~

~~(a) By sending a CS-93, Notice of Intent to Request Information from Credit Reporting Agency; and~~

~~(b) In accordance with KRS 205.7685(2).]~~

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-44 Notice of Intent to Request Denial or Suspension", 9/10;

(b) "CS-63 Notice to Licensing/Certification Board or Agency", 9/10;

(c) "CS-68 Order to Withhold and Deliver", 9/10;

(d) "CS-69 Answer to Withhold and Deliver", 9/10;

(e) "CS-70 Release/Amendment of Order to Withhold and Deliver", 9/16[9/10];

(f) "CS-72 National Medical Support Notice", 3/15;

(g) "CS-73 Unemployment Insurance Letter", 9/10;

(h) "CS-76 Unemployment Insurance Notice of Withholding", 9/10;

(i) "CS-78 Payment Agreement", 9/10;

(j) "CS-85 Notice of Lien", 10/12;

(k) "CS-89 Income Withholding for Support", 3/15;

~~(l) "CS-93 Notice of Intent to Request Information from Credit Reporting Agency", 3/15;~~

~~(m) "CS-119 Noncustodial Parent's Notice of Lien", 9/10;~~

~~(n) "CS-120 Release of Lien", 9/16[9/10];~~

~~(o) "CS-121 Noncustodial Parent's Answer to Withhold and Deliver", 9/10;~~

~~(p) "CS-122 Advance Notice of Intent to Collect Past-Due Support", 10/12; and~~

~~(q) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", 4/09.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENNO, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: August 23, 2016

FILED WITH LRC: August 24, 2016 at 1 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40602, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amended After Comments)

804 KAR 1:071. Repeal of~~[804 KAR 1:070,]~~ 804 KAR 1:090~~[,]~~ and 804 KAR 1:120.

RELATES TO: KRS 241.060

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations regarding control of the trafficking of alcoholic beverages. This administrative regulation repeals~~[804 KAR 1:070,]~~ 804 KAR 1:090~~[,]~~ and 804 KAR 1:120 because they are duplicative of KRS statutes and are therefore unnecessary.

Section 1. The following administrative regulations are hereby repealed:

(1)~~[804 KAR 1:070, Samples;~~

~~(2)]~~ 804 KAR 1:090, Athletic team sponsorship; and

~~(2) [(3)]~~ 804 KAR 1:120, Rebates and gift certificates.

CHRISTINE TROUT, Commissioner

DAVID DICKERSON, Secretary

APPROVED BY AGENCY: November 14, 2016

FILED WITH LRC: November 15, 2016 at 11 a.m.

CONTACT PERSON: Melissa McQueen, Staff Attorney,
Department of Alcoholic Beverage Control, 1003 Twilight Trail,
Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479, email Melissa.McQueen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 804 KAR 1:090 and 1:120.

(b) The necessity of this administrative regulation: The existing regulations listed above duplicate various statutory provisions and are therefore unnecessary. This administrative regulation repeals those duplicative administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS §241.060(1) authorizes the board to promulgate administrative regulations. Information in the regulations being repealed is contained in statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of these administrative regulations will eliminate duplicative references to statutes and will promote a better, clearer, and less repetitive regulatory scheme.

(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: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Alcoholic Beverage Control (the "ABC") is affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: Because this regulation repeals unnecessary regulations, ABC will not be required to take any additional action.

(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 to repeal these administrative regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no financial benefit to repeal these administrative regulations.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed to implement and enforce the repeal of these administrative regulations.

(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 repeal these administrative regulations.

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation repeals earlier regulations and applies equally to all 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 is 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.

(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.

(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? There is no cost to repeal these administrative regulations.

(d) How much will it cost to administer this program for subsequent years? There is no cost to repeal these administrative regulations.

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 are not expected to be any additional costs to administer these regulatory changes at the local government level for this year or subsequent years.

PROPOSED AMENDMENTS

**FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Amendment)**

9 KAR 1:010. Statement of financial disclosure.

RELATES TO: KRS 11A.010(7), (9), (13), 11A.050(2), (3)

STATUTORY AUTHORITY: KRS 11A.110(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.050 mandates that each officer as defined in KRS 11A.010(7), public servant as listed in KRS 11A.010(9)(a)-(g), and candidate for the public offices listed in KRS 11A.010(9)(a)-(g) file a statement of financial disclosure with the commission. KRS 11A.050(2) requires the commission to prescribe the form for the statement of financial disclosure. This administrative regulation prescribes the form and incorporates it by reference.

Section 1. Definitions. (1) "Candidate" is defined by KRS 11A.010(13).

(2) "Commission" is defined by KRS 11A.010(2).

(3) "Officer" is defined by KRS 11A.010(7).

(4) [(3)] "Public servant" is defined by KRS 11A.010(9).

Section 2. (1) The statement of financial disclosure required of officers and public servants by KRS 11A.050(1) shall be filed on the [Ethics Commission] form Statement of Financial Disclosure and submitted in person, by U.S. Mail, electronically by facsimile or electronic mail to the commission's offices, or through an online system established by the commission ~~["Statement of Financial Disclosure"]~~.

(2) Candidates shall file a statement of financial disclosure on the [Ethics Commission] form Statement of Financial Disclosure and submit it in person, by U.S. Mail, electronically by facsimile or electronic mail to the commission's offices, or through an online system established by the commission ~~["Statement of Financial Disclosure"]~~.

Section 3. Incorporation by Reference. (1) "Statement of Financial Disclosure", rev. 11/2016, is incorporated by reference ~~The following material is incorporated by reference:~~

(a) "Statement of Financial Disclosure (Rev-092200)"; and

(b) "Instructions for Filing a Statement of Financial Disclosure (Rev-092200)"].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, #3 Fountain Place ~~Room 258 Capitol Annex, 702 Capital Avenue~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM DAVID DENTON, Chair

APPROVED BY AGENCY: November 14, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2016, at 10:00 a.m., at Executive Branch Ethics Commission, #3 Fountain Place, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through on December 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: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, #3 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 564-2686, email Katie.gabhart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance to Executive Agency officers as to how to file a Statement of Financial Disclosure with the Executive Branch Ethics Commission as required by KRS 11A.050.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 11A.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance and forms required by KRS 11A.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance and the forms required for Executive Agency officers to file a Statement of Financial Disclosure with the Executive Branch Ethics Commission as required by KRS 11A.050.

(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 change the administrative regulation by revising the forms to allow for filing by electronic mail, facsimile or an electronic filing system created by the Commission.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is required to allow for greater ease in filing by electronic means.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms to KRS 11A.050 by allowing Executive Branch officers to file their Statement of Financial Disclosure, which does not prohibit electronic filing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the administration of KRS 11A.050 by allowing greater ease in filing of the Statements of Financial Disclosure by Executive Branch officers through electronic means.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Officials of Executive Branch Agencies and those running for Constitutional office.

(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: All Executive Agency Officers and those running for Constitutional office will be able to file their Statements of Financial Disclosure through electronic means.

(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 Executive Branch Officials and those running for Constitutional office will have to file the required forms through whatever means they choose under the regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Executive Branch Officers and those running for Constitutional office will have greater ease and access to file their Statements of Financial Disclosure.

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

(a) Initially: There is no known cost associated with this amended administrative regulation.

(b) On a continuing basis: There is no known cost associated with this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's existing 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: This administrative regulation will not require an increase in any fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.050.

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

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

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

(c) How much will it cost to administer this program for the first year? Minimal costs already provided in the Commission's budget.

(d) How much will it cost to administer this program for subsequent years? Minimal costs already provided in the Commission's budget.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7894(6), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7894(6) requires the authority to promulgate administrative regulations as may be needed for the administration of the Kentucky Coal County College Completion Program. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. In order to participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed for the appropriate academic year in which an award is sought in accordance with their instructions:

(1) For the KHEAA Grant Program as set forth in 11 KAR 5:130, the Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program as set forth in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program as set forth in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program as set forth in 11 KAR 16:010:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Early Childhood Development Scholarship Application;

(5) For the Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;

(6) For the Go Higher Grant Program as set forth in 11 KAR 5:200;

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Go Higher Grant Program Application;

(7) For the Coal County Scholarship Program for Pharmacy Students as set forth in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application; and

(8) For the Kentucky Coal County College Completion Scholarship Program as set forth in 11 KAR 20:020:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Kentucky Coal County College Completion Scholarship Application.

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

(a) The "Free Application for Federal Student Aid July 1, 2016 – June 30, 2017" (FAFSA), December 2015[2016];

(b) The "Free Application for Federal Student Aid July 1, 2017 – June 30, 2018" (FAFSA), October 2016;

(c) The "KHEAA Work-Study Program Student Application", July 2001;

(d)[(e)] The "Teacher Scholarship Application", June 2006;

(e)[(f)] The "Early Childhood Development Scholarship Application", April 2006;

(f)[(g)] The "Robert C. Byrd Honors Scholarship Program", June 2009;

(g)[(h)] The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;

(h)[(i)] The "Go Higher Grant Program Application", January 2008;

(i)[(j)] The "Coal County Scholarship Program for Pharmacy Students Application", February 2011; and

(j)[(k)] The "Kentucky Coal County College Completion Scholarship Application", October 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at www.kheaa.com.

BECKY LAMB, Chair

APPROVED BY AGENCY: October 18, 2016

FILED WITH LRC: November 10, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, December 27, 2016, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public.

Any person who 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email address dbarber@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Rebecca Gilpatrick (rgilpatrick@kheaa.com, (502) 696-7394), Diana Barber

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by the Authority.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administration of the Early Childhood Development Scholarship Program, KHEAA Work-study Program, Teacher Scholarship Program, College Access Program (CAP), Kentucky Tuition Grant (KTG), and Go Higher Grant Programs as well as the Robert C. Byrd Scholarship Program pursuant to KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7890, 164.7894, 34 C.F.R. 654.30, 654.41, and 20 U.S.C. 1070d-36, 1070d-37, 1070d-38.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by prescribing the applications to be utilized under the grant, scholarship and work-study programs administered by the Authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by prescribing and incorporating the various application forms to be used by students to apply for the financial aid programs administered by the authority.

(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 changes the existing regulation by specifying the latest version of the Free Application for Federal Student Aid (FAFSA) for the 2017-2018 academic year that is to be completed by applicants for participation in the student aid programs administered by the Authority during that academic year.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to require student recipients to complete the correct version of the FAFSA for the desired academic year for which aid is sought.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by specifying the version of the FAFSA applications to be used when applying for an award under one of the student aid programs administered by the Authority.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the state student aid programs by requiring completion of the correct version of the FAFSA based on academic year for which an award is sought – 2016-2017 or 2017-2018 – in order to participate in said programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect all those individuals who seek to apply for student financial aid through the Authority.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those individuals who seek to participate in the various student financial aid programs administered by KHEAA will be required to complete the correct version of the FAFSA application as specified in this regulation in order to be considered for an award for a specific academic year.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required in order to implement this administrative regulation since it merely specifies the required version of the FAFSA to be used by program participants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

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? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7890, 167.7894, 34 C.F.R. §654.30, §654.41, 20 U.S.C. §1070d-36, 37, 38.

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 administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

(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 regulation will not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this 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:

40601; phone (502) 564-3490, fax (502) 564-5687, email Lindsay.Thurston@ky.gov.

**KENTUCKY STATE BOARD OF ELECTIONS
(Amendment)**

31 KAR 4:170. Exceptions to prohibition on electioneering.

RELATES TO: KRS 117.015, 117.235

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.235(3), 117.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.235(3) grants the State Board of Elections the authority to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes these exceptions.

Section 1. Definitions. (1) "Bumper sticker" means a sticker that measures within fourteen (14) inches by five (5) inches for display on a vehicle bearing a printed message soliciting votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question.

(2) "Electioneering" is defined by KRS 117.235(3).

(3) "Polling place" means a voting place established in accordance with the provisions of KRS 117.065.

(4) "Voting room" means a room in which votes are polled as established in accordance with the provisions of KRS 117.235(1).

Section 2. Exceptions to Electioneering. Electioneering shall not include:

(1) A bumper sticker affixed to a person's vehicle while parked within or passing through a distance of 300 feet of any polling place on the day of any election for a reasonable amount of time in which to vote; or

(2) A voter's use of a personal telecommunications device, computer, or other information technology system, to record or transmit electronically an image of his or her own personal likeness and ballot, if the voter does not use the picture:

(a) To solicit signatures to a petition or solicit votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question; and

(b) Within a distance of 100 feet of any entrance to a building in which a voting machine is located if that entrance is:

1. Unlocked; and

2. Used by voters on election day.

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: November 10, 2016

FILED WITH LRC: November 10, 2016 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2016, 9:00 a.m. Eastern Time, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five work 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 available unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day on December 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties, which include administering the election laws of the state. KRS 117.235(3) grants the State Board of Elections the authority to promulgate administrative regulations establishing exceptions to the statutory prohibition on electioneering.

(b) The necessity of this administrative regulation: This administrative regulation is being promulgated pursuant to KRS 117.015(1)(a) and KRS 117.235(3) in order to carry out the State Board of Elections' duty to administer the election laws of the state by promulgating an administrative regulation establishing exceptions to the statutory prohibition on electioneering. This administrative regulation once effective will prevent voter confusion, protect voters' First Amendment rights, and ensure uniform election administration in future elections.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties, which include administering the election laws of the state. KRS 117.235(3) grants the State Board of Elections the authority to promulgate administrative regulations establishing exceptions to the statutory prohibition on electioneering. This administrative regulation conforms to the authorizing statutes by establishing an exception to the statutory electioneering ban set forth in KRS 117.235(3).

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties, which include administering the election laws of the state. KRS 117.235(3) grants the State Board of Elections the authority to promulgate administrative regulations establishing exceptions to the statutory prohibition on electioneering. This administrative regulation will assist in effective administration of the statutes by preventing voter confusion, protecting voters' First Amendment rights, and ensuring uniform election administration.

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

(a) How the amendment will change the existing administrative regulation: This administrative regulation establishes an additional exception to the statutory prohibition on electioneering set forth in KRS 117.253(3).

(b) The necessity of the amendment to this administrative regulation: The existing regulation establishes an exception to the prohibition on electioneering. This administrative regulation establishes an additional exception that is necessary to prevent voter confusion, protect voters' First Amendment rights, and ensure uniform election administration.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties, which include administering the election laws of the state. KRS 117.235(3) grants the State Board of Elections the authority to promulgate administrative regulations establishing exceptions to the statutory prohibition on electioneering. This administrative regulation conforms to the content of the authorizing statutes by establishing an exception to the statutory prohibition on electioneering set forth in KRS 117.235(3).

(d) How the amendment will assist in the effective administration of the statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties, which include administering the election laws of the state. KRS 117.235(3) grants the State Board of Elections the authority to promulgate

administrative regulations establishing exceptions to the statutory prohibition on electioneering. This administrative regulation will assist in the effective administration of the statutes by preventing voter confusion, protecting voters' First Amendment rights, and ensuring uniform election administration.

(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 precinct election officers, county clerks, deputy county clerks, law enforcement officials, and voters who desire to conduct the activity permitted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Precinct election officers, county clerks, deputy county clerks, and law enforcement officials will need to familiarize themselves with the additional exception to prohibition of electioneering provided for in this administrative regulation. Voters who desire to conduct the activity permitted by this administrative regulation are not required to take any action to comply with this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, precinct election officers, county clerks, deputy county clerks, and law enforcement officials will be able to prevent voter confusion, protect voters' First Amendment rights, and ensure the uniform administration of elections.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' 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: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the State Board of Elections, voters, county clerks, deputy county clerks, and law enforcement officials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 117.015(1)(a) and KRS 117.235(3).

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

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

revenue for state or local governments 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 the subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local governments 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 cost to state or local governments to administer this program for the subsequent years.

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

Revenues(+/-):

Expenditures(+/-):

Other Explanation (+/-):

PERSONNEL BOARD (Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.005, 18A.0751(1)(e), (4)(e), 18A.111
STATUTORY AUTHORITY: KRS 18A.005, 18A.075(1), 18A.0751(1)(e), (4)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e) authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

Title Code	Job Classification	Length of Initial Probationary Period
20000562	Resort Park Manager I	12 months
20000563	Resort Park Manager II	12 months
20000564	Resort Park Manager III	12 months
20000570	Park Business Manager I	12 months
20000571	Park Business Manager II	12 months
20000572	Park Manager I/Historic Site Manager	12 months
20000573	Park Manager II	12 months
20000574	Park Manager III	12 months
20000609	Conservation Officer Recruit	12 months
20000616	Veterans Benefits Field Rep I	9 months
20000618	Veterans Benefits Regional Administrator	9 months
20000672	Facilities Security Sergeant	12 months
20000673	Facilities Security Lieutenant	12 months
20000676	State Park Ranger Recruit	12 months
20000680	Facilities Security Officer II	12 months
20000683	Mounted Patrol Officer Recruit	12 months
20000687	Police Telecommunicator I	12 months

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20000688	Police Telecommunicator II	12 months
20000689	Police Telecommunications Shift Supervisor	12 months
20000690	Police Telecommunications Supervisor	12 months
20000692	CVE Inspector I	12 months
20000694	CJIS (Criminal Justice Information System) Compliance Specialist I	12 months
20000695	CJIS Compliance Specialist II	12 months
20000696	CJIS Compliance Specialist III	12 months
20000697	CJIS Compliance Supervisor	12 months
20000698	Transportation Operations Center Specialist I	12 months
20000703	Polygraph Examiner II	12 months
20000704	Polygraph Examiner I	12 months
20000713	Driver's Test Administrator	12 months
20000716	Fish and Wildlife Telecommunicator I	12 months
20000813	Boiler Inspector I	12 months
20000820	Fire Protection Systems Inspector	12 months
20000870	Financial Institutions Examiner I	12 months
20000871	Financial Institutions Examiner II	12 months
20000872	Financial Institutions Examiner III	12 months
20000873	Financial Institutions Examiner IV	12 months
20000874	Financial Institutions Examiner Specialist	12 months
20000888	Insurance Fraud Investigator II[II]	12 months
20000889	Insurance Fraud Investigator III[III]	12 months
20000890	Insurance Fraud Investigator Supervisor	12 months
20000938	Forensic Firearms and Toolmark Examiner I	12 months
20000940	Forensic Chemist I	12 months
20000941	Forensic Chemist II	12 months
20000943	Forensic Biologist I	12 months
20000944	Forensic Biologist II	12 months
20000963 [20000693]	Therapy Program Assistant	9 months
20000971	Houseparent I	12 months
20000972	Houseparent II	12 months
20000974	Audiologist I	12 months
20001001	Patient Aide I	9 months
20001037	Medical Investigator I	12 months
20001038	Medical Investigator II	12 months
20001075 [20001077]	Student Development Associate	12 months
20001076	Student Development Assistant	12 months
20001104	KSB/KSD (Kentucky School for the Blind/Kentucky School for the Deaf) Administrator I	12 months
20001105	KSB/KSD Administrator III	12 months
20001106	KSB/KSD Administrator IV	12 months
20001107	KSB/KSD Administrator V	12 months
20001108	KSB/KSD Administrator VI	12 months
20001122	Disability Adjudicator I	12 months
20001125	Social Service Worker I	9 months
20001135	Juvenile Facility Superintendent I	12 months
20001136	Juvenile Facility Superintendent III	12 months
20001137	Facilities Regional Administrator	12 months
20001138	Youth Services Program Supervisor	12 months

20001139	Juvenile Facility Superintendent II	12 months
20001142	Human Rights Specialist	12 months
20001157	Administrative Hearing Officer I	12 months
20001159	Human Rights Enforcement Branch Manager	12 months
20001162	Human Rights Research/Information Compliance Supervisor	12 months
20001163	Human Rights Housing Compliance Supervisor	12 months
20001164	Human Rights Employment/Public Accommodations Compliance Supervisor	12 months
20001165	Human Rights Compliance Enforcement Officer II	12 months
20001166	Probation and Parole Officer I	12 months
20001171	Youth Worker I	12 months
20001174	Youth Worker Supervisor	12 months
20001175	Juvenile Services District Supervisor	12 months
20001480	Forestry Equipment Supervisor	12 months
20001481	Nursery Foreman	12 months
20001482	Nursery Superintendent	12 months
20001483	Forester	12 months
20001484	Forester Chief	12 months
20001485	Forester Regional	12 months
20001486	Rural Fire Suppression Technical Advisor	12 months
20001487	Forestry Program Specialist	12 months
20001488	Forestry Program Manager	12 months
20001489	Forestry Program Supervisor	12 months
20001492	Forest Ranger Technician I	12 months
20001493	Forest Ranger Technician II	12 months
20001494	Forest Ranger Technician III	12 months
20001495	Forest Ranger Technician Regional	12 months
20001841	Criminal Intelligence Analyst I	12 months
20001842	Criminal Intelligence Analyst II	12 months
20001882	Public Advocate Investigator I	12 months
20001895	Environmental Administrative Hearing Officer	12 months
20001899	Mitigation Specialist I	12 months
20001904	Investigator I	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in

the appropriate month following promotion, as required by KRS 18A.005(27), except as provided in KRS 18A.111.

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status. This shall include an employee ordered reinstated pursuant to KRS 18A.111(3), unless the board rules otherwise.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: November 15, 2016

FILED WITH LRC: November 15, 2016 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2016, at 9:00 a.m. Eastern Time at the Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 until 11:59 p.m. December 31, 2016. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Mark A. Sipek, Executive Director, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 564-1693, email MarkA.Sipek@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark A. Sipek

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

(b) The necessity of this administrative regulation: To establish the appropriate probationary periods for classifications throughout state government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.0751(4)(e) requires the Personnel Board to promulgate an administrative regulation listing the job classifications for which an initial probationary period in excess of six (6) months is required. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment would increase the initial probationary period for Social Service Worker I from six months to nine months. Clerical corrections to the Title Code for Therapy Program and Assistant Student Development Associate. With the abolishment of Insurance Fraud Investigator III, Title Codes and Job Classifications for Insurance Fraud Investigator II and III, will change to Insurance Fraud Investigator I and II.

(b) The necessity of the amendment to this administrative

regulation: Secretary of the Personnel Cabinet has recommended changes to the classifications for which an initial probationary period in excess of six (6) months is required.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consists of changes to the list of classifications for which an initial probationary period in excess of six (6) months is required. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment would allow for a longer probationary period for Social Service Worker I.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state employees appointed to the listed classifications, and the state government agencies that employ them.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Cabinet for Health and Family Services believes the extended probationary period will allow for additional time to assess a probationary employee's performance. The other state agencies using this classification (Kentucky Department of Veterans Affairs, Kentucky Department of Military Affairs, and the Justice and Public Safety Cabinet, Department of Juvenile Justice), do not oppose this amendment.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(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: Not applicable.

(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.

(9) TIERING: Is tiering applied? No. This regulation must apply equally to all classified employees in all state agencies with classified employees.

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? Cabinet for Health and Family Services; Kentucky Department of Veterans Affairs; Kentucky Department of Military Affairs; and the Justice and Public Safety Cabinet, Department of Juvenile Justice.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.0751 and KRS 18A.111

(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? Not

applicable

(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? Not applicable

(c) How much will it cost to administer this program for the first year? Not applicable

(d) How much will it cost to administer this program for subsequent years? Not applicable

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: It is not anticipated that this administrative regulation will have a fiscal impact.

PERSONNEL CABINET (Amendment)

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary an employee who is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

(a) Is in the same job classification;

(b) Is in the same work county; and

(c) Has a similar combination of education and experience relating to the relevant job class specification.

Section 2. Reentrance to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated, or probationarily appointed in one (1) of the following ways:

1. In accordance with the standards used for making new appointments in this administrative regulation; or

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed or probationarily appointed to a position in the classified service in one (1) of the following ways:

1. In accordance with the standards for making new appointments;

2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry

level salary and the midpoint salary;

3. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary; or

4. At a salary up to five (5) percent above the grade entry level wage for each year of service in the KRS Chapter 18A system, if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one of the following ways:

1. In accordance with the standards for making new appointments; or

2. At five (5) percent above the minimum salary for each year of service in the unclassified service, if the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(d) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary they were receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service.

(a) A former employee who is probationarily appointed at a salary below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

(b) A former employee who is probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under subsection (2)(b) of this section.

(2) Demotion.

(a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or

2. The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(b) An employee whose salary is not reduced by five (5) percent per grade upon demotion shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, or pay grade change until he is moved to a job classification with a higher pay grade than that from which he was demoted. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(3) Reclassification.

(a) An employee who is advanced to a higher pay grade through reclassification shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job classification with a higher pay grade

than that from which he was reclassified. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job classification with a higher pay grade than that from which he was reallocated. If a promotion, reclassification, detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

(b) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher pay grade, shall be adjusted to:

1. The salary received prior to the promotion or detail; and
2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent;
 2. The greater of the new grade minimum or ten (10) percent;
- or
3. The greater of the new grade minimum or a dollar amount approved by the secretary.

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

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification who is below the special entrance rate to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may uniformly grant to all employees in that job classification, except those employees who are on initial probation, a salary adjustment equal to the difference between the former entrance rate and the new entrance rate.

(9) Other salary adjustments. ~~[(a)]~~ On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a job classification within an agency who were eligible for, but did not receive, a five (5) percent salary adjustment as a result of a grade change applicable to the job classification, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal five (5) percent of the employee's salary immediately prior to the grade change.

~~[(b) On the 16th of a month, an appointing authority may grant a salary adjustment based on the establishment of a special entrance rate, under the following provisions:~~

~~1. The adjustment shall be uniformly granted to all employees within the agency who were eligible for, but did not receive, a salary adjustment equal to the difference in the former entrance rate and the new entrance rate at the time a special entrance rate was established; and~~

~~2. The total adjustment granted at the time of the special entrance rate and under this paragraph shall equal the difference in the former entrance rate and the new entrance rate.]~~

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

Section 4. Salary Advancements. (1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period, except as specified under Section 2(3) of this administrative regulation.

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Sections 3(2)(b), 3(3)(b), and 3(4)(b) of this administrative regulation.

(3) Annual increment dates shall be established as follows:

- (a) Upon completion of an initial probationary period;
 - (b) When a former employee has been probationarily appointed and has completed a total of twelve (12) months of service without receiving an increment; or
 - (c) When an employee returns from leave without pay under the provisions of subsection (5) of this section.
- (4) Annual increment dates shall not change if an employee:
- (a) Is in a position which is assigned a new or different pay grade;

- (b) Receives a salary adjustment as a result of a reallocation;
- (c) Is promoted;
- (d) Is transferred;
- (e) Is demoted;
- (f) Is detailed to special duty;
- (g) Receives an educational achievement award;
- (h) Returns from military leave;
- (i) Is reclassified; or
- (j) Receives a promotional increase after completion of a promotional probationary period.

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

(6) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

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

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

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

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

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

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

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

- a. Outside of work hours;
- b. While in state service; and
- c. On or after January 1, 1984;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

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

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

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

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

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

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

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

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

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

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

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

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

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel and the Secretary of the Finance and Administration Cabinet.

(3) An employee who is eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day,

lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums. (1) Shift premium.

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

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

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

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

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

(2) Weekend premium.

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

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

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

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

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

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

(3) Multilingual hourly premium.

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

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

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

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

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

are individually approved in accordance with this subsection.

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

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

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

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

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

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

(b) The employee has not received an ERA or a distinguished service award in the preceding twenty four (24) months, nor an Adjustment for continuing excellence (ACE) award in the preceding twelve (12) months; and

(c)1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or

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

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

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

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

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

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

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

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

1. Sufficient funds are available within the department; and
2. The criteria and limitations established in this section have been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award;

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

(d)1. The employee has demonstrated a sustained level of exceptional job performance;

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

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

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

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

(4) More than twenty-five (25) percent of the total number of full-time employees in a department, in a calendar year, shall not receive an ACE award.

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

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

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

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

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

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: November 15, 2016

FILED WITH LRC: November 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December 21, 2016 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. December 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: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for administration of the pay plan for classified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity for administration of the pay plan for classified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of classified compensation.

(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 eliminates eligibility for a discretionary salary adjustment for an employee on initial probation at the time a special entrance rate (SER) is established. This amendment also specifies that SER discretionary adjustments shall only be granted at the time an SER is established.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses a pay inequity where an employee completing initial probation could receive a salary greater than that of a more senior status employee, even when the entry pay for both was equal.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes equity for classified compensation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and their agencies are 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: No additional action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment promotes equity for compensation.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with classified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030; and KRS 18A.110(1)(c) and (7)(b)

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

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

(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.

(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.

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this 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:

PERSONNEL CABINET (Amendment)

101 KAR 2:180. Employee performance evaluation system.

RELATES TO: KRS 18A.110

STATUTORY AUTHORITY: KRS 18A.110(1)(i), (7)(j)

NECESSITY, FUNCTION and CONFORMITY: KRS 18A.110(1)(i) and (7)(j) requires the Secretary of the Personnel Cabinet to promulgate comprehensive administrative regulations for classified service employees to establish a uniform system of annual employee evaluations for classified employees. This administrative regulation establishes the uniform employee performance evaluation system.

Section 1. General Provisions. (1) The annual performance period shall be one (1) calendar year beginning on January 1.

(2) Except as provided in subsection (4)(d) of this section, performance evaluations shall be completed no later than January 31 after the end of the annual performance period.

(3) All agencies shall use the Annual Employee Performance Evaluation form.

(4)(a) Except as provided in paragraph (b) or (c) of this subsection, the first line supervisor of an employee when the evaluation is due shall be the evaluator.

(b) If the first line supervisor has not supervised the employee for at least sixty (60) calendar days during the performance year, the next line supervisor who meets the sixty (60) day requirement shall be the evaluator.

(c) If an employee changes jobs or reports to a different supervisor on or before November 1 of the performance year, the agency shall transfer all performance evaluation documentation for the performance year to the new evaluator for incorporation in the annual evaluation.

(d) If an employee changes jobs or reports to a different supervisor after November 1 of the performance year, the annual evaluation shall be completed by the former supervisor prior to the job change.

(5)(a) Except as provided in paragraph (b) of this subsection, the evaluator shall establish a performance plan for each eligible employee no later than January 31 after the start of the performance period.

(b) If an employee's position or job title changes during the performance year, the evaluator shall establish a new performance plan no later than thirty (30) calendar days after the start of the position or job title change. The new performance plan shall become a part of the original performance year evaluation documentation.

(6) The evaluator shall meet with the employee when

completing the performance plan to discuss job duties and expectations.

(7) Performance evaluations shall be in writing. The evaluator shall:

(a) Present and explain all documentation relevant to an employee's performance evaluation;

(b) Discuss both the positive and negative aspects of performance with the employee at the annual evaluation;

(c) Elicit the employee's opinions and concerns; and

(d) Discuss measures to improve or enhance performance with the employee.

(8) The Personnel Cabinet or agency personnel shall provide supervisor evaluation training on the performance evaluation system.

(a) The appointing authority shall require that supervisor evaluation training is completed prior to completing performance planning, interim reviews, and annual evaluations of employees.

(b) The Personnel Cabinet shall monitor and validate compliance with supervisor evaluation training requirements.

(9) An employee shall complete orientation to the performance evaluation system prior to January 1 of the employee's initial performance evaluation period.

Section 2. Employee Eligibility. Performance evaluations shall be completed for all full-time classified employees with status at the beginning of the performance year who have remained in continuous merit status throughout the performance year.

Section 3. Performance Planning. (1) The performance plan shall specify job responsibilities and expectations in the four (4) categories established in this subsection.

(a) Job tasks.

1. The job tasks category shall identify specific duties and expectations of the position held by the employee.

2. The employee's job duties shall be consistent with the position description.

3. Duties and expectations shall be in writing.

4. The evaluator shall assign points to identified duties and expectations.

(b) Adaptability/initiative.

1. The adaptability/initiative category shall identify job requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points.

(c) Communication/teamwork.

1. The communication/teamwork category shall identify requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points.

(d) Self-management.

1. The self-management category shall identify requirements of the agency relating to workplace standards that shall include:

a. Attendance;

b. Punctuality;

c. Career development;

d. Responsibility; and

e. Dependability.

2. The evaluator shall place each requirement under this category in writing and assign points.

(2) The evaluator shall develop the performance plan after consultation with the employee.

(a) The employee and evaluator shall certify in writing in the performance planning section of the evaluation form that the employee has met with the evaluator and is aware of the performance plan.

(b) The next line supervisor shall certify that he or she has reviewed the duties and expectations of the employee and finds them to be reasonable and appropriate based upon the employee's job classification.

(3) Total points assigned for all four (4) categories shall equal 100 total points. The evaluator shall distribute points among the four (4) categories as follows:

(a) The job tasks category shall have a minimum of fifty (50) points designated; and

(b) The other three (3) categories shall have a minimum of five (5) points designated to each category.

(4) To obtain the point total for each category, points assigned to each job duty within each category shall be multiplied by the numerical rating provided by the evaluator, as described in Section 5(3) of this administrative regulation.

(5) Total points in all four (4) categories shall be added to obtain a final performance evaluation score.

Section 4. Performance Coaching and Feedback. (1) Modification of the performance plan may occur during the performance evaluation period if the changes are consistent with the duties reflected on an employee's position description.

(a) The employee shall be given written notice of changes to the performance plan.

(b) Changes to the performance plan shall be indicated on the evaluation form or on a supplemental sheet attached to the form.

(c) Changes to the performance plan shall be initialed and dated by the evaluator and the employee when changes become effective.

(2) A mid-year interim review and year-end interim review [~~Three (3) interim reviews~~] shall be required during a performance year.

(a) The evaluator shall document the interim reviews.

1. Interim reviews shall not contain a rating.

2. The interim meeting section of the evaluation form shall contain comments by the evaluator for each category established in Section 3(1) of this administrative regulation.

(b) The employee and evaluator shall sign the performance evaluation form to certify that the interim reviews occurred.

(c) For consideration in the annual year evaluation, the employee may attach pertinent comments relating to the interim review within five (5) working days of the interim review meeting.

(d) The evaluator shall schedule interim reviews to discuss performance January 1 through ~~June 30 and July 1~~ [April 30, May 1 through August 31, and September 1] through December 31.

(e) The mid-year interim review shall be completed no later than July 31 after the end of the interim review period, and the year-end interim review shall be completed no later than January 31 after the end of the interim review period [~~Interim reviews shall be completed no later than thirty (30) calendar days after the end of each interim review period~~].

(f) Interim reviews shall document performance to justify the annual performance rating.

Section 5. Performance Evaluations and Ratings. (1) Except as provided in Section 1(4)(d) of this administrative regulation, the evaluator and the employee shall meet no later than January 31 after the performance period ends to discuss the performance ratings.

(2) Eligible employees shall be evaluated in the four (4) categories described in Section 3 of this administrative regulation.

(3) All job duties identified within the categories shall be rated on a scale of one (1) to five (5), with five (5) representing superior performance.

(4) The final performance evaluation shall consist of a defined numerical rating. Point values for the overall performance rating shall be:

(a) Outstanding: 450 to 500 points;

(b) Highly effective: 350 to 449 points;

(c) Good: 250 to 349 points;

(d) Needs Improvement: 150 to 249 points; or

(e) Unacceptable: less than 150 points.

(5) Unresolved disagreements on ratings or any aspect of the performance evaluation shall be reviewed through the reconsideration process established in Section 7 of this administrative regulation.

(6) Signatures of the evaluator, employee, and next line supervisor shall be required on the final evaluation.

(a) The next line supervisor shall sign the evaluation after it is completed, signed, and dated by the evaluator and the employee.

(b) For the purpose of evaluating or managing the performance of the evaluator, the next line supervisor's signature shall certify

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that he or she is aware of the evaluation and has reviewed it.

Section 6. Performance Incentives. Annual leave shall be awarded as a performance incentive at the following rates:

(1) Two (2) workdays, not to exceed sixteen (16) hours, for an "Outstanding" rating; or

(2) One (1) workday, not to exceed eight (8) hours, for a "Highly Effective" rating.

Section 7. Reconsideration and Appeal Process. (1) Within five (5) working days of the year-end interim review and annual[a] performance evaluation meeting, an employee may attach pertinent comments relating to the year-end interim review and may request initial reconsideration of the annual performance evaluation by the evaluator.

(2) Within five (5) working days of the receipt of the request for reconsideration, the initial reconsideration shall be conducted by the evaluator.

(3) If the employee refuses to sign the form in the employee response section, the evaluation shall not be eligible for reconsideration.

(4) Within five (5) working days after the initial reconsideration by the evaluator, an employee may submit a written request for reconsideration of the evaluation by the next line supervisor. If neither the evaluator nor the next line supervisor responds to the request for reconsideration in the designated time period, the employee may submit a written request to the appointing authority for response to the request for reconsideration and compliance with this section.

(5) The next line supervisor shall:

(a) Obtain written statements from both the employee and the evaluator; or

(b) Meet individually with the employee and the evaluator.

(6) The next line supervisor shall inform both the employee and evaluator in writing of the decision no later than fifteen (15) working days after receipt of the employee's request.

(7) Within sixty (60) calendar days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

Section 8. Evaluation-based Agency Action. If an employee receives an overall rating of unacceptable, the agency shall:

(1) Demote the employee to a position commensurate with the employee's skills and abilities; or

(2) Terminate the employee.

Section 9. (1) Except as requested in writing by the appointing authority and authorized by the Secretary of Personnel, all agencies shall comply with the provisions of this administrative regulation. An evaluator shall complete required performance planning, interim reviews, and annual evaluations for each eligible employee. If the Secretary of Personnel approves an exception, written justification for the decision shall be placed in the employee's personnel file.

(2) The exception decision shall be sent, in writing, to the appointing authority within ten (10) days of receiving the request for exception.

Section 10. Incorporation by Reference. (1) The "Annual Employee Performance Evaluation", January 2017[March-2015], is incorporated by reference.

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

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: November 15, 2016

FILED WITH LRC: November 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

Monday, December 21, 2016 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. December 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: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the uniform employee performance evaluation system.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a uniform system of annual employee evaluations for classified employees, and fulfills the secretary's statutory requirements to promulgate comprehensive regulations regarding the evaluation system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 requires the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A. Further, regulations which establish a uniform employee performance evaluation system are required pursuant to KRS 18A.110(1)(i) and (7)(j).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the uniform employee performance evaluation system, and explains how it is to be administered.

(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 regulation is amended to reduce the requirement for three (3) interim reviews to two (2) interim reviews. The mid-year interim review, to be completed by July 31, covers the period from January 1 through June 30. The year-end interim review, to be completed by January 31, covers the period from July 1 through December 31. The regulation is further amended to provide for conduct of the year-end interim review and the annual performance evaluation in a single meeting. Finally, the Annual Employee Performance Evaluation form, incorporated by reference, is updated to reflect the changes to interim reviews.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to ensure the consistent application of the employee evaluation system to all KRS Chapter 18A classified employees.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with authority provided in KRS 18A.030; and KRS 18A.110(1)(i) and (7)(j).

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that the requirements of the employee evaluation system are applied consistently to all KRS Chapter 18A classified employees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and their agencies are 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: The Personnel Cabinet is responsible for communicating the changes to employees and agencies. No additional action is required for compliance by each regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Fewer formal interim reviews will allow more time for coaching and feedback and result in a more efficient and effective process.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with classified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030; and KRS 18A.110(1)(i) and (7)(j)

(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.

(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.

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this 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:

PERSONNEL CABINET (Amendment)

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

RELATES TO: KRS 18A.110, 18A.155, 18A.202, 199.555

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.155(1)(b), (e), 18A.110(2), 18A.202(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees. This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

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

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees. An appointing authority shall set the salary of a former classified or unclassified employee, other than a returning retiree:

(a) In accordance with the standards used for making new appointments in this administrative regulation; or

(b) Up to a salary formerly paid in the classified or unclassified service, if that salary is within the current pay grade.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.

(2) Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(a) The employee's salary shall be reduced to a rate that is not below the minimum for the job classification to which the demotion is made; or

(b) The employee shall retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(3) Reclassification.

(a) An employee who is advanced to a higher pay grade through reclassification shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon reclassification to a higher grade.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

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

(b) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher pay grade shall be adjusted to:

1. The salary received prior to the detail; and

2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent;

2. The greater of the new grade minimum or ten (10) percent;

or

3. The greater of the new grade minimum or a dollar amount approved by the secretary.

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

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

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for but did not receive an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive at least a five (5) percent advancement as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an increase at the time of the grade change shall equal five (5) percent of the employee's salary immediately prior to the grade change.

~~[(c) An appointing authority may grant an employee who was eligible for, but did not receive an adjustment beyond the new minimum at the time the special entrance rate was established an increase equal to the difference between the old entrance rate and the new entrance rate.]~~

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

Section 4. Salary Advancements. (1) Initial appointment increase. An appointing authority shall grant a five (5) percent

increase to an employee, except an interim employee:

(a) On the first day of the month following completion of six (6) months of service; or

(b) No later than the first day following twelve (12) months of service.

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

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

(3) Annual increment dates shall be established as follows:

(a) On the date of receiving an initial appointment increase;

(b) On the first of the month following completion of twelve (12) months service by a former employee who is appointed or reappointed, except in the case of an interim employee; or

(c) On the first day of the month following completion of twelve (12) months service by an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives an increase six (6) months following promotion.

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

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

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

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

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

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

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

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

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

- b. While in state service;
- c. After establishing an increment date; and
- d. On or after January 1, 1984;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

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

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

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Weekend premium.

(a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on

Saturdays, Sundays, or state holidays as part of the usual work week.

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

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

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

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

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

(3) Multilingual hourly premium.

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

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

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

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

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

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

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

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

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

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

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

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

(c)1. The appointing authority determines that the employee's

acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or

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

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

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

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

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

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

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

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

1. Sufficient funds are available within the department; and

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

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

(a) The employee has an established annual increment date;

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award;

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

(d) 1. The employee has demonstrated a sustained level of exceptional job performance;

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

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

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

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

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

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

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

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

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

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

Section 11. Adoption Benefit Program. (1) A state employee

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

(2) The eligible employee shall receive:

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

(b) Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.

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

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs;

(d) Court costs; and

(e) Other reasonable fees or costs associated with child adoption in accordance with state and federal law and after review and approval by the court at the finalization of the adoption.

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

(a) Finalization of the adoption;

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

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

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

(6) Upon approval of the application for financial assistance, the employee's agency shall disburse funds in the amount authorized by the Secretary of Personnel.

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

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

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: November 15, 2016

FILED WITH LRC: November 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December 21, 2016 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. December 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: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity for administration of the pay plan and pay incentives for unclassified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.155 requires the secretary to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of compensation and pay incentives for employees in unclassified service.

(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 eliminates eligibility for a discretionary salary adjustment for an employee on initial probation at the time a special entrance rate (SER) is established. This amendment also specifies that SER discretionary adjustments shall only be granted at the time an SER is established.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses a pay inequity where an employee completing initial probation could receive a salary greater than that of a more senior employee in the same classification, even when the entry pay for both was equal.

(c) How the amendment conforms to the content of the authorizing statutes: The Personnel Cabinet Secretary is required to promulgate comprehensive administrative regulations for a compensation plan for employees in the unclassified service pursuant to KRS 18A.110(2) and 18A.155(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes equity for unclassified compensation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A unclassified employees and their agencies are 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: No additional action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment promotes equity for compensation.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any

new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with unclassified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2), 18A.155(1)(b), (e), 18A.110(2), 18A.202(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? No revenue will be generated.

(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.

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this 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:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 218A.205(3)(h), 314.011(12), 314.073, 314.991(1)-(3)

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "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

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~~nursing student or new employee~~[an experienced and competent nurse who assumes responsibility to assist with the clinical practice experience of a nursing student or new employee by serving as a role model, teacher, and resource].

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation shall be as follows:

(1) Fourteen (14) contact hours of continuing education, which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220;

(b) Be ~~completed~~[earned] during the earning[licensure] period; and

(c) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the earning[licensure] period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire earning[licensure] period; or

(c) Have been recertified during the earning[licensure] period;

(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the earning[licensure] period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;

2. That is qualitative or quantitative in nature;

3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior; ~~and~~

5. That is evidenced by an abstract of the project, which includes a summary of the findings;

(b) Publication of an article in a peer-reviewed health-related ~~journal~~[a nursing-related article];

(c) A nursing continuing education presentation that is:

1. ~~A presentation that is~~ Designed and developed by the presenter;

2. Presented to nurses or other health professionals; ~~and~~

3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; ~~and~~

4. Offered by a provider approved pursuant to 201 KAR 20:220; ~~or~~

(d) Participation as a preceptor for at least one (1) nursing student or new employee.

1. The preceptorship shall be for at least 120 hours.

2. There shall be a one (1) to one (1) relationship between the preceptor and the student or employee.

3. The preceptor may ~~train~~[precept] more than one (1) student or employee ~~and may combine the hours to total~~[during the] 120 hours.

4. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor's supervisor; or

(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period, which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment. The nurse shall submit:

1. The evaluation, which shall:

~~a.~~[1.] Cover a period of at least six (6) months during the earning period;

~~b.~~[2.] Be signed by the nurse's supervisor; and

~~c.~~[3.] Include the name, address, and telephone number of the employer; ~~and~~

2. The Nursing Employment Evaluation Form.

~~[(5) A nurse who renews a license for the first time following graduation from a prelicensure program of nursing shall utilize the following methods for continuing competency validation:~~

~~(a) If employed, either:~~

1. The provisions of subsection (4) of this section; or

2. ~~The provisions of subsection (4)(a) of this section and documentation of the nurse's completion of an orientation to the employer; or~~

~~(b) If not employed or is unable to provide proof of an orientation or an evaluation, the provisions of subsection (1) of this section.]~~

Section 4. (1) A licensee shall provide documentation of the ~~method~~[methods] used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the ~~method~~[methods] used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1)(a) Advanced practice registered nurses shall earn a minimum of five (5) contact hours in pharmacology.

(b) Advanced practice registered nurses with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) shall earn, as a part of the requirement of paragraph (a) of this subsection, at least one and one-half (1.5) contact hours related to the use of the KASPER system, pain management, or addiction disorders.

(2) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

~~(3)[(a) Registered nurses and licensed practical nurses licensed as of July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6) by December 31, 2013.~~

~~(b)] Registered nurses and licensed practical nurses licensed after July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6) within three (3) years of licensure.~~

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within ~~twenty (20)~~[~~thirty (30)~~] days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, ~~if the board determines that~~ a licensee has failed to comply with the continuing competency requirements, the licensee shall be allowed to cure the noncompliance if he or she:

1. Meets the continuing competency requirements within ~~thirty (30)~~[~~ninety (90)~~] days of notification of noncompliance; ~~and~~

2. Enters a consent decree with the board pursuant to 201 KAR 20:161, Section 2(5), within ten (10) days of notification by the board; ~~and~~

3. ~~Pays a civil penalty imposed by the board pursuant to KRS 314.994].~~

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to

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subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

~~(4)(a) Partial credit for attendance at a continuing education activity shall not be given.~~

~~(b)] A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.~~

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat the same continuing education offering within a licensure period. The board shall determine whether a continued education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.

Section 7. (1) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution shall qualify as a continuing education activity obtained from an approved provider if relevant to nursing practice under subsection (3) of this section.

(2) Contact hours shall be calculated as follows:

(a) One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or

(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

(3) The following courses shall be relevant to nursing practice:

(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or

(b) An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

(4) A licensee may request course review for approval of applicable nursing content pursuant to Section 8 of this administrative regulation.

(5) If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 8. (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an Application for Individual Review; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role~~the standards established by:~~

~~(a) Sections 2 through 7 of this administrative regulation; and~~

~~(b) 201 KAR 20:220].~~

(3) Approval~~by the board~~ of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be deemed to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

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

(a) "Application for Individual Review", 9/2005; and

(b) "Nursing Employment Evaluation Form", 6/2016~~[- Kentucky Board of Nursing, is incorporated by reference].~~

(2) This material~~[document]~~ 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.

JIMMY ISENBERG, President

APPROVED BY AGENCY: November 7, 2016.

FILED WITH LRC: November 10, 2016 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2016 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) December 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets continuing competency requirements for licensure and the procedures associated therewith.

(b) The necessity of this administrative regulation: It is required by KRS 314.073(1) and (2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.073 which requires the Board of Nursing to promulgate administrative regulations which set out methods for continuing competency and procedures to document and report the same.

(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 continuing competency methods and procedures.

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

(a) How the amendment will change this existing administrative regulation: The amendment deletes unnecessary language and updates other provisions. One form is incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the administrative regulation in order to keep it current.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 314.073 by maintaining currency in the procedures utilized and by removing language that is out of date or no longer needed.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by putting into place current procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: all nurses, approximately 85,000.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment:

Nurses will utilize the continuing competency provisions primarily for renewal of licensure.

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

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

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

(a) Initially: There is no additional cost.

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:220. Nursing continuing education provider approval.

RELATES TO: KRS 314.011(12), 314.073, 314.131(1), (2)
STATUTORY AUTHORITY: KRS 314.073(3), 314.131(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314.073(3) require the Board of Nursing to promulgate administrative regulations establishing requirements for

continuing competency and approval of providers of continuing education. This administrative regulation establishes requirements for providers of continuing education.

Section 1. ~~Definition~~[Definitions].[(1)] "Continuing education activity" means an offering given by a provider of continuing education who has been approved by the board and that relates to the practice of nursing or contributes to the competency of a nurse extending knowledge beyond that obtained in initial nursing preparation or pertinent to specific work requirements.

[(2)] ~~"Refresher course" means an organized learning experience, designed, planned, and evaluated to meet behavioral outcomes designed to update knowledge of nursing theory and practice competencies by licensure category.~~

Section 2. (1) A provider applicant who wants to offer a continuing education activity~~[or a refresher course]~~ shall submit an:

(a) Application for Provider Approval; and

(b) Application fee as established in 201 KAR 20:240.

(2) If an application is approved, the board shall issue a provider number to the applicant.

(3) On or before September 30 of the year in which an approval period expires, an approved provider shall submit the:

(a) Application for Provider Renewal; and

(b) Fee as established in 201 KAR 20:240.

(4) Renewal shall be for two (2) years.

(5)(a) A provider applicant may establish compliance by submitting evidence of approval by one (1) of the following organizations:

1. American Association of Nurse Practitioners;

2. American Association of Critical Care Nurses;

3. American Association of Nurse Anesthetists;

4. American College of Nurse Midwives;

5. American Nurses Credentialing Center;

6. Association of Women's Health, ~~Obstetric~~[Obstetrical] and Neonatal Nurses;

7. ~~Nurse~~[National Association of Nursing] Practitioners in Women's Health;

8. National Association of Pediatric Nurse~~[Nurses Associates and]~~ Practitioners;

9. National Association for Practical Nurses Education and Service;

10. National Federation of Licensed Practical Nurses;

11. National League for Nursing; or

12. State Boards of Nursing.

(b) Paragraph (a) of this subsection shall include a provider that offers a continuing education activity related to the pharmacology requirement established in 201 KAR 20:215, Section 5(2).

(6)(a) An organization that approves nursing continuing education may request that it be added to this administrative regulation.

(b) An organization shall be included in this administrative regulation if its standards are comparable to the standards established by the provisions of this administrative regulation.

Section 3. (1) The board may review a provider's continuing education activities~~[, refresher courses,]~~ or approval status at any time.

(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny or limit the provider's approval status.

(3) If after a review of a continuing education activity~~[or refresher course]~~ it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4)(a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.

(b) If a provider fails to submit a request for a hearing within the time established in paragraph (a) of this subsection, the board

shall implement the action proposed in its notice.

Section 4. Providers shall comply with the standards in this section.

(1)(a) A registered nurse who meets the qualifications established in paragraph (b) of this subsection shall be administratively responsible for continuing education activities, including:

1. Planning;
2. Development;
3. Implementation; and
4. Evaluation.

(b) A nurse administrator shall:

1. Hold a current license or privilege to practice;
2. Have experience in adult ~~and continuing~~ education; and
3. Hold a baccalaureate or higher degree, in nursing.

(c) The provider ~~may~~shall designate an alternate nurse administrator who shall meet the requirements established in paragraph (b) of this subsection.

(2) Organized learning activities shall be based upon a reasonable justification supporting the need for the continuing education that:

(a) Enhances the quality, safety, and effectiveness of care provided by nurses; and

(b) Contributes directly to the competence of a nurse.

(3) The content of nursing continuing education shall be designed to:

(a) Present current theoretical knowledge to enhance and expand nursing skills; and

(b) Promote competence in decision making.

(4) Outcomes for continuing education activities shall be:

(a) Related to nursing practice and interventions;

(b) Stated in clearly defined expected learner outcomes; and

(c) Consistent with evidence of a need for the continuing education activity~~[or refresher course]~~.

(5) The continuing education activity shall reflect~~[cooperative]~~ planning ~~among~~between the nurse administrator, faculty, and content experts.

(6)(a) The content for each educational activity shall~~include and~~ be documented in provider files and shall include the following:

1. The~~(a)~~ An agenda indicating a presentation schedule;

2. The name and credentials of the presenter and the topic to be covered;

3. Times for meals and breaks, if applicable;

4. Teaching methods, with corresponding time frames, for each content area; and

5. Learner outcomes.

~~(b) Presenters, topics, meals, breaks; and~~

~~(b) An outline format with corresponding time frames and teaching methods indicated for each content area.]~~

1. The content shall be relevant~~[related]~~ to and consistent with the learner outcomes~~[outcome]~~.

2. The learner outcomes shall provide statements of observable behaviors that present a clear description of the competencies to be achieved by the learner.

(7) Teaching methods shall be consistent with the content and learning outcomes and objectives, and shall reflect the use of adult learning principles. Activities of both the teacher and the learner shall be specified in relation to the content outline.

(8) Faculty for continuing education activities~~[and refresher courses]~~ shall have:

(a) Documented expertise in the subject matter; and

(b) Experience in presenting to adult learners and facilitating adult learning.

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity~~[or refresher course]~~ shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment, and supplies to ensure quality teaching and learning in a comfortable environment that is accessible to the

target audience.

(11) Participants shall be provided with essential information for review prior to registration. This information shall include:

(a) Learner outcomes;

(b) Content overview;

(c) Date, time, and presentation schedule;

(d) Presenter;

(e) Number of contact hours;

(f) Fee and refund policy;

(g) Target audience and any prerequisites; and

(h) Requirements for successful completion that shall be clearly specified and shall include a statement of policy regarding candidates who fail to successfully complete the continuing education activity.

(12) Published information about continuing education activities offered by providers approved by the board shall include the provider number.

(13)(a) A provider shall notify the board in writing within thirty (30) days~~[one (1) month]~~ of any changes in its administration, such as nurse administrator, mailing address, or telephone number.

(b) Information relevant to the qualifications of the new nurse administrator as established in subsection (1)(b) of this section shall be sent to the board.

(c) If a qualified nurse is not available to serve in the capacity of the administrator, the provider shall not offer any continuing education activity~~[or refresher course]~~ until a qualified nurse administrator is appointed.

(14) A provider shall designate and publish the number of hours of any portion of an offering dedicated to the pharmacology requirement of 201 KAR 20:215, Section 5(1)(a).

(15) Records of continuing education activities shall be maintained for a period of five (5) years,~~[except for HIV/AIDS education, which shall be maintained for at least twelve (12) years.]~~ including the following:

(a) Title, date, and site of the activity;

(b) Name of the person responsible for coordinating and implementing the activity;

(c) Purpose, documentation of planning~~[committee activities]~~, learner outcomes, content outline, faculty, teaching, and evaluation methods;

(d) Participant roster, with a minimum of:

1. Name and signature; and

2. ~~[Social Security number or]~~ License number;

(e) Summary of participant evaluations;

(f) Number of continuing education contact hours awarded:

1. Contact hours shall be calculated by taking the total number of minutes that the participants will be engaged in the learning activities, excluding breaks, and divide by fifty (50); and

2. Partial hours shall be permissible after one (1) contact hour is earned;

(g) Master copy of certificate of completion awarded; and

(h) Identification of required instructional materials and references.

(16) Participants shall receive a certificate of completion that documents participation with the following information:

(a) Name of participant;

(b) Offering title, date, and location;

(c) The provider's name, address, telephone number, approval number, and expiration date of the providership;

(d) Name and signature of authorized provider representative; and

(e) Number of continuing education contact hours awarded.

(17) There shall be a clearly defined method for evaluating the continuing education activity, which shall include:

(a) An evaluation tool that includes participant appraisal of achievement of each outcome, teaching effectiveness of each presenter, relevance of content to expected~~[stated]~~ outcomes, effectiveness of teaching methods, and appropriateness of physical facilities; and

(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.

(18) There shall be a summary of the participants' evaluations for each continuing education activity~~[or refresher course]~~ with an

action plan with time lines for resolution of identified deficiencies.

(19) The provider shall have current policies and procedures for the management of the providership that demonstrate compliance with the required standards.

(20) For an offering that includes clinical practice, the instructor-student ratio for the clinical experience shall not exceed one (1) to ten (10).

(21) The following constitute in-service education and shall not be considered as a continuing education activity for purposes of this administrative regulation:

- (a) An activity that is part of an employing agency's staff development program designed to provide information related to the work setting;
- (b) On the job training;
- (c) Orientation;
- (d) Basic cardiopulmonary resuscitation; and
- (e) Equipment demonstration.

Section 5. (1) The following forms are incorporated by reference:

(a) "Application for Provider Approval", 6/2016[40/2012], Kentucky Board of Nursing; and

(b) "Application for Provider Renewal", 6/2016[40/2012], Kentucky Board of Nursing.

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

JIMMY ISENBERG, President

APPROVED BY AGENCY: November 7, 2016.

FILED WITH LRC: November 10, 2016 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2016 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) December 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards and requirements for nursing continuing education (CE) providers.

(b) The necessity of this administrative regulation: It is required by KRS 314.073(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.073 which requires the Board to set standards for approval of CE providers.

(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 standards and requirements for

approval of CE providers.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes unnecessary language and updates several provisions. Two forms incorporated by reference have been updated. Separate reference to refresher courses has been removed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to update the administrative regulation and maintain currency.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 314.073 by updating the procedures and standards to be followed by CE providers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by updating the procedures and standards for CE providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: nursing CE providers, approximately 300.

(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 CE providers will follow the revised standards and requirements.

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

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

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

(a) Initially: There is no additional cost.

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Kentucky Board of 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(4)

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. KRS 335.070(6) and KRS 335.130(4) allow[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 course[courses] offered by an accredited postsecondary institution" means a graduate level social work course[; at the graduate level]:

(a) Designated by a social work title or content; or

(b) A graduate level[A_n] 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 empirically supported training program approved by the board that is at least six (6) hours in length and 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 or self-study, courses delivered through electronic media or technology including 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 shall be completed in person before a live presenter or through home or self-study, courses delivered through electronic media or technology including 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, each licensee shall complete a board approved three (3) hour course on the Kentucky Code of Ethical Conduct established in 201 KAR 23:080, which shall be taken in person before a live presenter or through courses delivered through electronic media or technology including 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, as part of the required continuing education hours, each licensed clinical social worker[workers] who is a[are] board approved supervisor[supervisors] pursuant to 201 KAR 23:070, Section 4[3](1)(c)2, shall complete a three (3) hour, board approved clinical social work supervision course, which shall be taken in person before a live presenter[every licensure renewal period as part of their thirty (30) continuing education hours].

(6) Training Program in Suicide Assessment, Treatment, and Management. Every six (6) years, as part of the required continuing education hours, each licensee shall complete a minimum of six (6) hours of continuing education in a board approved training program in suicide assessment, treatment, and management as required by KRS 210.366(2).

(a) The training program in suicide assessment, treatment, and management shall be approved by the board, by a pre-approved provider or sponsor identified in Section 3(1) of this administrative regulation, or by one (1) of the following boards:

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 completion of the training program in suicide assessment, treatment, and management if he or she:

1. Teaches or taught a graduate-level counseling course in suicide assessment, treatment, and management at least once per year during the six (6) year period; or

2. Teaches or taught a six (6) hour continuing education course in suicide assessment, treatment, 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, as part of the required continuing education hours, each licensee shall complete three (3) hours of continuing education in domestic violence related training courses as defined by 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, as part of the required continuing education hours, each licensee 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 ~~continuing~~~~[following]~~ education programs listed in this section.[:]

(1) Preapproved 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 4(1)(c)2., which require separate review and 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)(e)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;~~

2. ~~[3.] The American Counseling Association or any of its affiliated state chapters;~~

3. ~~[4.] The National Board for Certified Counselors or any of its affiliated state chapters;~~

4. ~~[5.] The American Psychiatric Association or any of its affiliated state chapters; or~~

5. ~~[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) A program that is not provided or sponsored by a preapproved provider or sponsor identified in subsection (1) of this section shall be reviewed by the board and approved for continuing education credit if the board determines that it is:

1. Relevant to the practice of social work; and

2. Contributes to the continuing professional competency of licensees.

(b) The board may approve various methods in which a continuing education program is presented including:

1. Home or self-study, courses delivered through electronic media or technology including distance learning, online, or teleconference courses; and

2. In-service training, conferences, or workshops provided by other organizations, educational institutions, or other service providers approved by the board.

(c) Board approval for home or self-study courses, courses delivered through electronic media or technology including distance learning, online, or teleconference courses shall be obtained each year unless the continuing education program does not require board approval under subsection (1) of this section~~[A program from any of the following sources shall be reviewed and~~

~~determined if it is relevant and therefore subsequently approved by the board.~~

~~(a) Relevant programs, including home study, distance learning or teleconference courses, and in-service training provided by other organizations, educational institutions, or other service providers approved by the board.~~

~~1. Board approval for home study, distance learning and teleconference courses shall be obtained each year unless the 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].~~

~~[3] [(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.

~~(4) Relevant articles authored by the licensee. A licensee who is an author of a relevant article, which is published in a professionally recognized or juried publication, shall earn 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~~~~[(c) 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 for continuing education credit during each renewal period.~~

~~(5) 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:~~

~~(a) Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; and~~

~~(b) Clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 4(1)(c)2~~~~[(d) 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 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 by subsection (3) 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 continuing professional competency of a 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/Sponsor Application for Continuing Education Approval, which 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:

a. Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; or

b. Clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 4(1)(c)2.; and

(b) Pays an application fee, payable to the Kentucky State Treasurer, of:

1. \$100 for each one (1) day program of eight (8) hours or less; and

2. \$100 for each additional one (1) day program of eight (8) hours or less.

(4) If the provider is requesting approval to meet the requirements of the Kentucky Code of Ethical Conduct course required for renewal by Section 2(4) of this administrative regulation, a minimum of one (1) presenter or instructor for the course shall:

(a) Hold a degree in social work;

(b) Hold an active license to practice social work in the Commonwealth of Kentucky;

(c) Not have an unresolved, pending disciplinary action before the board; and

(d) Not be practicing social work under terms or conditions of supervision imposed by the board.

(5) If the provider is requesting approval to meet the requirements of the clinical social work supervision course required for board approved supervisors by 201 KAR 23:070, Section 4(1)(c)2., each presenter or instructor for the course shall:

(a) Hold a degree in social work;

(b) Hold an active social work license in the Commonwealth of Kentucky;

(c) Be a board approved supervisor;

(d) Not have an unresolved, pending disciplinary action before the board; and

(e) Not be practicing social work under terms or conditions of supervision imposed by the board.

(6) A provider of continuing education shall be responsible for providing documentation in the form of a certificate of attendance or completion directly to the licensee, as established in Section 7(5) of this administrative regulation.

(7) A provider of a continuing education program requiring board approval shall not advertise that a course has been approved before written board approval has been received.

(8) Provider Renewal. An approved provider may submit a renewal request for a subsequent one (1) year period by:

(a) Notifying the board that the original information required in this section for each program remains current; and

(b) Paying a fifty (50) dollar renewal fee made payable to the Kentucky State Treasurer[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. Procedures for Approval and Renewal of Continuing Education for Sponsors and Programs. (1) Sponsor Approval. A sponsor seeking 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 by subsection (3) of this section.

(2) The board shall approve a continuing education program if it determines that the program being presented meets the following criteria[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 licenses[license] or certifications[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 Provider/Sponsor 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 each presenter and instructor documented 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 provider or sponsor; and

7. A statement whether the sponsor is requesting approval to meet the requirements of the following courses:

a. Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; or

b. 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 made payable to the Kentucky State Treasurer.

(4)[The sponsor shall specify whether it is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation.

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(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 to the board of the continuing education programs offered during that calendar year and shall include copies of attendance sheets and evaluations (or evaluation summaries) for each program.

(6) A sponsor of a continuing education program 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) A sponsor of a continuing education program requiring board approval shall not advertise that the course has 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 made payable to the Kentucky State Treasurer. (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 made payable to the Kentucky State Treasurer.

(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 his or her 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 3(4) of this administrative regulation;

(3) Maintain his or her (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; and

(5) If requested by the board, furnish documentation (of

attendance and participation in the appropriate number of continuing education courses completed (hours) at the time of his or her renewal, as follows:]

(a) [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;

(b) Documentation (Verification) of continuing education hours shall not otherwise be reported to the board;

(c) [(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

(d) [(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 Requirements. (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.

(a) 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.

(b) If the request is based upon undue hardship, the licensee shall submit a written explanation of the nature of the undue hardship.

(c) At its discretion, the board may request that a licensee provide additional information and verification by a third party.

(3) The board may grant a waiver (waivers) of the minimum continuing education requirements or an extension (extensions) of time to a licensee (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, or undue hardship 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.

(a) If the reapplication is based on medical disability or illness, the licensee shall include a written statement signed by a licensed

physician.

(b) If the reapplication is based upon undue hardship, the licensee shall submit a written explanation of the nature of the undue hardship.

(c) At its discretion, the board may request that a licensee provide additional information and verification by a third party to support the reapplication.

Section 10[14]. Continuing Education Requirements for Reinstatement of Expired License[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 documentation[evidence] of completion of 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 documentation 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/Sponsor[Provider] Application for Continuing Education[Credit] Approval", 10/2016[10/2010];

(b) "Provider/Sponsor Renewal Application for Continuing Education Approval", 11/2016[Sponsorship Application for Continuing Education-Credit Approval", 10/2010]; and

(c) "Individual Application for Continuing Education[Credit] Approval", 11/2016[10/2010].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of[Licensure for] Social Work, 43-44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the board's Web site bsw.ky.gov.

WILLIAM M. ADCOCK, Chair

APPROVED BY AGENCY: October 31, 2016

FILED WITH LRC: November 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2016, at 10:00 a.m., local time, at the Kentucky Board of Social Work, 43-44 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 the end of the calendar day, December 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, 43-44 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 or self-study, courses delivered through electronic media or technology including distance learning, online, or teleconference courses. 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 5,200 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 applied uniformly to each licensee, each provider of a

single continuing education course, and to each sponsor of multiple continuing education courses requesting approval from the board. This regulation does not distinguish between similarly situated "providers" on the basis of any factor because each provider seeking approval of a single course is required to submit the same information and pay a scheduled fee depending upon course credit hours; the same is true for a similarly situation "sponsor" who is requesting approval of more than one continuing education course. The evaluation criteria established by this amendment equalizes the requirements for providers and sponsors.

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 a continuing education requirement for suicide prevention training, mandated for all mental health professionals and occupational therapists by July 2016; 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. Please note the six hours for the suicide prevention programs should be included when licensees calculate the total continuing education hours due for their renewal period.

(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 Kentucky Board of Licensure for Occupational Therapy (Amendment)

201 KAR 28:090. Renewals.

RELATES TO: KRS 319A.160

STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a), (d), 319A.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3) authorizes the board to promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. (1) A person licensed as an OT/L or an OTA/L shall annually, on or before October 31, pay to the board a renewal fee

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as set forth in 201 KAR 28:110 for the renewal of the license and file an Annual OT/OTA Renewal Application. A license not renewed on or before October 31 of each year shall expire.

(2) A license issued to a person during the last ninety (90) days of a licensure period shall expire at the end of the subsequent licensure period.

Section 2. A sixty (60) day grace period shall be allowed beginning ~~November 1~~[October 31], during which time an individual may renew his or her license upon payment of the late renewal fee as set forth in 201 KAR 28:110. A license not renewed on or before December 31 shall terminate~~[based on the failure of the individual to renew in a timely manner]~~. Upon termination, the licensee shall no longer be eligible to practice occupational therapy in the commonwealth and shall be sent notice at the last known address available to the board of termination, and to cease and desist practice.

Section 3. After the sixty (60) day grace period, an individual with a terminated license shall have the license reinstated upon:

(1) Payment of the late renewal fee plus a reinstatement fee as set forth by 201 KAR 28:110;

(2) Completion of the Reinstatement Application for Licensure as an Occupational Therapist or Reinstatement Application for Licensure as an Occupational Therapy Assistant;

(3) Documentation of employment from the time of termination until the present;

(4) Documentation that licensure, certification, or registration in other states is in good standing;

(5) Documentation of current or initial certification by the National Board for Certification in Occupational Therapy or its equivalent;

(6) Completion of the board jurisprudence exam; and

(7) Proof of completion of continuing education as required on the Reinstatement Application for Licensure as an Occupational Therapist or Reinstatement Application for Licensure as an Occupational Therapy Assistant.

Section 4. Steps to renew an OT/L or OTA/L license shall include:

(1) Payment of the renewal fee as set forth by 201 KAR 28:110;

(2) Completion of the Annual OT/OTA Renewal Application, either online or by paper;~~[and]~~

(3) Completion of twelve (12) continuing competence units; and

(4) Completion of the board jurisprudence exam.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Annual OT/OTA Renewal Application", June 2016~~[February 2015]~~;

(b) "Reinstatement Application for Licensure as an Occupational Therapist", February 2015; and

(c) "Reinstatement Application for Licensure as an Occupational Therapy Assistant", February 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

KEVIN PRIDDY, COTA/L, Board Chair

APPROVED BY AGENCY: November 13, 2016

FILED WITH LRC: November 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2016 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on

the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on December 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: Kelly Walls, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, fax 502-564-481, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Kelly Walls, Kevin Priddy (phone 270-202-1701; kevinblot@gmail.com)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the deadline for renewal of a license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set a deadline for the renewal of a license for compliance with KRS 319A.160.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.160(1) for the board to set a deadline for the annual renewal of licenses..

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the deadline for license renewal.

(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 clarify the deadline for license renewal from on or before October 31 to on October 31, and requires the completion of the board jurisprudence exam.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that the deadline for license renewal is October 31.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute KRS 319A.160 (1).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying the deadline for licensure renewal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all licensees regulated by KRS Chapter 319A.

(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 change will only clarify the deadline for licensure renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation does not change the cost of license renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. All licensees will have a clearer idea of when they must renew their license.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A.

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

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

(9) TIERING: Is tiering applied? No tiering is applied for all licensees will be held to the same 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? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070(3)(a)KRS 319A.070(3)(d), 319A.160;

(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) 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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Occupational Therapy (Amendment)

201 KAR 28:200. Continuing competence.

RELATES TO: KRS 210.366, 319A.070(3)(d), 319A.160

STATUTORY AUTHORITY: KRS 319A.070(3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070 (3) authorizes the board to promulgate administrative regulations and to establish the requirements for continuing competence. This administrative regulation[establishes] sets forth the requirements for licensees to demonstrate continuing competence.

Section 1. Definitions. (1) "CCU" means continuing competence unit.

(2) "Contact hour" means sixty (60) minutes engaged in a learning activity, excluding meals, breaks, and registration.

(3) "Continuing competence" means a dynamic, multidimensional process to develop and maintain the knowledge, skills, interpersonal abilities, and critical and ethical reasoning necessary to perform occupational therapy professional responsibilities.

(4) "Continuing competence unit" means an assigned unit of measure for each continuing competence activity for which the values are given in Section 3 of this administrative regulation.

(5) "Training program in suicide assessment, treatment, and management" means six (6) or more hours of continuing education pre-approved by the board that contains educational objectives set forth in[is defined by] KRS 210.366[(+)(b)].

Section 2. Continuing Competence Requirements. (1) A licensee applying for license renewal shall complete a minimum of twelve (12) CCUs of qualified activities for maintaining continuing competence during the preceding annual renewal period.

(2) A licensee who is issued a license for a period less than twelve (12) months shall prorate the number of CCUs to one (1) CCU for each month licensed.

(3) An applicant for reinstatement or licensure who was previously licensed by the board and whose license has been put on inactive status, revoked, or expired for three (3) years or less from the time the application is filed shall obtain twelve (12) CCUs of qualified activities for maintaining continuing competence for each year in which the license has been in the status prior to receiving the license.

(4) An applicant for licensure who was previously licensed by the board and whose license has lapsed for more than three (3) years shall obtain thirty-six (36) CCUs of qualified activities for maintaining continuing competence.

(5) At least once every six (6) years from date of initial license issue or from date of last completed suicide training program, each licensee shall complete a training program in suicide assessment, treatment, and management that is pre-approved by the board.

Section 3. Qualified Activities for Maintaining Continuing Competence. The following activities qualify for the continuing competence requirements of this administrative regulation:

(1) Continuing education courses.

(a) A licensee may earn one (1) CCU for each contact hour in continuing education courses including workshops, seminars, conferences, electronic courses, or self-study courses.

(b) Documentation for this activity shall include a certificate of completion or similar documentation including:

1. Name of course, date, and the author or instructor;

2. Name of sponsoring organization and the location of the course; and

3. The number of contact hours attended.

(c) A training program in suicide assessment, treatment, and management shall meet the requirements established in Section 2(5) of this administrative regulation[total six (6) hours of CCU and be approved by the board].

(2) Employer provided in-service training.

(a) A licensee may earn one (1) CCU for each contact hour of in-service training provided to the licensee by the licensee's employer.

(b) No more than six (6) CCUs of employer-provided training may be counted towards the total number of required CCUs. If an employer hosts continuing education courses open to practitioners outside of the organization, these courses shall fall under subsection (1) of this section.

(c) Training that deals with issues completely unrelated to the practice of occupational therapy that are required for employment compliance standards shall not be counted toward the continuing competence requirements.

(d) Documentation for this activity shall include a certificate of completion or similar documentation including:

1. Name of course, date, and the instructor;

2. Name of providing organization and the location of the course; and

3. The number of contact hours attended.

(e) In-service training is structured training that is offered to an employee and that is intended to maintain or enhance the employee's job performance or to meet requirements that are imposed on the employer by a credentialing body.

(3) Academic coursework.

(a) Participation in on-site or distance learning academic

courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy shall be counted towards the requirements of this administrative regulation.

(b) A licensee may earn six (6) CCUs per credit hour.

(c) Documentation for this activity shall include:

1. An official transcript indicating successful completion of the course and the date on which the course was taken; and

2. A description of the course from the school catalogue or course syllabus.

(4) Independent study.

(a) Independent study may include[includes] reading books, journal articles, reviewing videos, and activities of a similar nature.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent in an independent study activity.

(c) Documentation for this activity shall include:

1. Title, author, and publisher of the material;

2. The time spent on the material;

3. The date of completion; and

4. A statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

(5) Mentorship.

(a) Credit may be earned by each participant in a formalized mentorship agreement defined by a signed contract between the mentor and mentee that outlines specific goals and objectives and designates the plan of activities for the participants.

(b) A licensee may earn one (1) CCU for five (5) contact hours spent in activities directly related to achievement of goals and objectives under a mentorship agreement.

(c) Documentation for this activity shall include:

1. The name of mentor and mentee;

2. A copy of a signed agreement;

3. The dates, hours spent and focus of mentorship activities; and

4. A statement outlining the outcomes of mentorship agreement.

(6) Fieldwork supervision.

(a) Credit may be earned by participation as the primary clinical fieldwork educator for an OT or OTA fieldwork student.

(b) A licensee may earn one (1) CCU per forty (40) hours of supervision for each fieldwork student supervised.

(c) Documentation shall include:

1. A written verification from the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form.

2. Evaluation scores and comments that are deleted or blocked out.

(7) Professional writing.

(a) Credit may be earned by the publication of a book, chapter, or article.

(b) A licensee may earn:

1. Twelve (12) CCUs as an author of a book;

2. Six (6) CCUs as an editor of a book;

3. Six (6) CCUs as author of a chapter;

4. Four (4) CCUs as author of a peer reviewed article;

5. Two (2) CCUs as author of a nonpeer reviewed article;

(c) Documentation for this activity shall consist of full reference for publication including, title, author, editor, and date of publication; or copy of acceptance letter if not yet published.

(8) Professional presentations and instruction.

(a) Credit may be earned by the presentation of academic guest lectures, state or national workshops or conferences, and employer-provider in-service training for OT/Ls or OTA/Ls.

(b) A licensee may earn two (2) CCUs for each hour of credit that is awarded for an activity.

(c) Documentation for this activity shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of that signed by the sponsor.

(9) Research.

(a) Credit may be earned for the development of or

participation in extensive scholarly research activities or extensive outcome studies.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a research project.

(c) Documentation for this activity shall include verification from the primary investigator indicating the name of research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project.

(10) Grants.

(a) Credit may be earned for the development of a grant proposal.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a grant proposal.

(c) Documentation for this activity shall include name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

(11) Professional meetings and activities.

(a) Participation in board or committee work with agencies or organizations in professionally related areas to promote and enhance the practice of occupational therapy may be counted toward the requirements of this administrative regulation.

(b) A licensee may earn one (1) CCU for five (5) contact hours on a committee or board.

(c) Documentation for this activity shall include:

1. The name of the committee or board, name of the agency or organization, purpose of service, and description of licensee's role; and

2. The participation shall be validated by an officer or representative of the organization or committee.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

(12) Specialty certifications.

(a) The board shall recognize completion of activities that result in an advanced competence credential or specialty certification earned or recertified during the current renewal period.

(b) A licensee may earn up to twelve (12) CCUs for each advanced competence recognition or specialty certification credential earned or recertified during a renewal period.

(c) Documentation for this activity shall include a certificate of completion that identifies satisfactory completion of requirements for obtaining advanced competence recognition or specialty certification.

(13) Continuing competence plan.

(a) A licensee may earn two (2) CCUs for completion of activities related to the development and implementation of a continuing competence plan for professional development.

(b) Documentation for this activity shall include a signed document by the licensee attesting to the fact that he or she has used a formal assessment process which included the establishment of professional development goals and objectives and a portfolio approach to organize and document continuing competence activities related to the licensee's plan.

(14) Volunteer services.

(a) Credit may be earned by participation in volunteer services performed for organizations, populations, or individuals if the services maintain or enhance the licensee's competence in professional skills in the practice of occupational therapy.

(b) A licensee may earn one (1) CCU for each five (5) contact hours.

(c) Documentation for this activity shall include verification letter from organizations and report of outcomes of services provided.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

Section 4. Approval of Courses for Continuing Education Credit under Section 3(1) of this administrative regulation. (1) A continuing education course shall be current in subject matter and relevant to the practice of occupational therapy.

(2) A continuing education course under Section 3(1) of this administrative regulation shall qualify for credit under this administrative regulation if it is approved by one (1) of the following

methods:

(a) The board shall approve a course or provider of a course that is administered or approved by:

1. A recognized national, state, or local occupational therapy association;
2. An accredited health care organization or facility; or
3. An accredited college or university.

(b) A continuing education course provider who does not come within the provisions of paragraph (a) of this subsection shall submit the following information to the board using the Application for Continuing Education Program Approval (Course Providers), at least ninety (90) days prior to the presentation of the course:

1. A thorough course description;
2. A statement of the projected learning outcomes;
3. A statement of the target audience;
4. The content focus of the course;
5. A detailed agenda for the activity;
6. A statement of the number of contact hours requested;
7. A listing of the presenters and their qualifications; and
8. A sample of the certificate of completion awarded to successful attendees.

(c) A licensee who does not come within the provisions of paragraph (a) or (b) of this subsection shall submit[te] the following information to the board using the Application for Continuing Education Program Approval (Course Providers):

1. A thorough course description;
2. A statement of the achieved learning outcomes;
3. The content focus of the course;
4. A detailed agenda for the activity;
5. A statement of the number of contact hours requested;
6. A listing of the presenters and their qualifications; and
7. A sample of the certificate of completion awarded to successful attendees.

Section 5. Waiver of Requirements. Under extenuating circumstances, the board may waive all or part of the continuing competence activity requirements of this administrative regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the board of an illness, injury, family hardship, active military service, or other similar extenuating circumstance which precluded the individual's completion of the requirements on a case-by-case basis.

Section 6. Documentation and Reporting Procedures. (1) A licensee shall maintain the required proof of completion for each continuing competence activity as specified in these administrative regulations.

(2) The required documentation shall be retained by the licensee for a minimum of one (1) year following the last day of the license renewal period for which the continuing competence activities were earned.

(3) A licensee shall not send his or her continuing competence activity documentation to the board unless audited under Section 7 of this administrative regulation or otherwise requested by the board.

Section 7. Audit of Continuing Competence Activities. (1) The board shall perform a random audit of up to ten (10) percent of all licensees who 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.

(2) A licensee who is audited shall respond to the audit within sixty (60) days of the date of the request.

(3) A licensee who fails to comply with the continuing competence activity requirements of this administrative regulation may be subject to disciplinary action that may include suspension or revocation of license.

Section 8. Other Provisions. (1) A licensee may not carry over continuing competence activity CCUs from one (1) licensure period to the next.

(2) A licensee may not receive credit for completing the same

continuing competence activity more than once.

Section 9. Incorporation by Reference. (1) "Application for Continuing Education Program Approval (Course Providers)", September 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

KEVIN PRIDDY, COTA/L, Board Chair

APPROVED BY AGENCY: November 13, 2016

FILED WITH LRC: November 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2016 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on December 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: Kelly Walls, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, fax 502-564-4818, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Kelly Walls, Kevin Priddy (phone 270-202-1701; kevinkblot@gmail.com)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensees to demonstrate continuing competence.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with KRS 319A.160 and KRS 210.366.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.160(2) for the board to set a required number of continuing education units for license renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures and guidelines for continuing competence units. Additionally, it sets forth the requirements for suicide training programs.

(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 change the regulation by clarifying continuing competence units provided through employer in-services and it outlines the procedures for suicide prevention training requisites based upon new statute requirements of KRS 210.336.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include the new suicide prevention training programs and to clarify continuing competence units obtained through employer in-services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute KRS 319A.160 (2) and KRS 210.366 by defining procedures for obtaining suicide training education and outlining the procedures for obtaining continuing competence units.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying the process of obtaining continuing competence units and the requirements related to suicide prevention training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all licensees regulated by KRS 319A.

(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 change requires licensees to obtain continuing education pertaining to suicide prevention training every six years.

(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 6 hours of CE every six years which annualizes out to no more than \$20.00 per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. All practitioners will obtain evidence based training on the best methods for preventing suicide which can assist licensees in more effective interventions for clients.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A and set forth in this regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied for all licensees will be held to the same 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? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070(3)(a)KRS 319A.070(3)(d), 319A.160;

(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) 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

(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 Department of Agriculture Office of Agriculture Marketing and Product Promotion (Amendment)

302 KAR 39:020. Kentucky Small Farm Wineries Support Fund.

RELATES TO: KRS 260.165, 260.166, 260.167, 260.168, 260.175

STATUTORY AUTHORITY: KRS 260.166(2)(c)3., 260.167(3), 260.175(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.175(3) authorizes the Kentucky Department of Agriculture, in collaboration with the Kentucky Grape and Wine Council (KGWC[KWGC]) and the Department of Tourism, to promulgate administrative regulations to administer the Kentucky Small Farm Wineries Support Fund and requires the establishment of standards for the use and distribution of these funds including reporting requirements. This administrative regulation establishes the necessary standards.

Section 1. Definitions. (1) "Fund" means any portion of the annual deposit from the general fund into the Kentucky Small Farm Wineries Support Fund outlined in KRS 260.175(2).

(2) "KGWC" means[is] the Kentucky Grape and Wine Council established by KRS 260.165.

(3) "Local marketing cost-share program" is defined by[in] KRS 260.175(2)(b).

(4) "Small farm winery" is defined by KRS 241.010(56)[under the provisions of KRS 241.010(44)].

(5) "Wholesaler" means a licensed wholesaler as described in KRS 260.175(2)(d).

Section 2. (1) The Kentucky Small Farm Wineries Support Fund shall be maintained in four (4) unique accounts based on the statutory categories in KRS 260.175(2)(a) - (d).

(2) The KGWC shall approve all fund expenditures based on voting procedures set forth in their bylaws and shall authorize the Kentucky Department of Agriculture to dispense the funds pursuant to the provisions of Sections 3 and 4 of this administrative regulation.

(3) The annual report required by KRS 260.166(2)(f) shall contain a summary of all:

- (a) Program activity;
 - (b) Participants; and
 - (c) Expenditures relating to the fund.
- (4) The Kentucky Department of Agriculture shall assist in the:
- (a) Management of reports;
 - (b) Program documentation; and
 - (c) Approval of participants.

Section 3. The Wine Wholesaler Reimbursement Program. The funds in this program shall be dispersed based on the[following] criteria established in this section.[:]

(1) The reimbursement rate for a wholesaler shall be twenty (20) dollars per case of wine produced by a small farm winery with a valid Kentucky license.

(2) To receive reimbursement, a wholesaler shall:

(a) Apply for participation in the reimbursement program on the "Application" and "Wine Approval Request" portions of the ["Wholesaler Reimbursement Program Application"] prior to delivery of the wine;

(b) Request reimbursement on the "Reimbursement Request"

portion of the [“]Wholesaler Reimbursement Program Application[”] within ninety (90) days after the wine is delivered;

(c) Sell and deliver eligible wine for the same price as was purchased; and

(d) Provide a printed report to the KGWC that includes eligible wine purchase price, sale price, and proof of delivery.

(3) A wholesaler distributing wine pursuant to KRS 260.175(2)(d) shall not:

(a) Be reimbursed for any products of a small farm winery that is participating in an active marketing contract with a licensed wholesaler;

(b) Be required to undertake any marketing or promotional responsibilities for the KGWC approved wine; or

(c) Request or receive any reimbursement until the eligible wine is delivered.

(4) The annual fund shall be divided equally into two (2) biannual program periods.

(5) The availability of funds shall be a combination of the biannual portion and any unencumbered funds from the previous program periods.

(6) The KGWC shall:

(a) Mail a written notice of the new program period to all licensed small farm wineries each June and December, requiring the winery to confirm if it will have products participating in this program;

(b) Calculate a cap for the products of each participating small farm winery in January and July, based on the amount of funds available and the number of licensed wineries who confirm participation in the program period; and[-]

(c) Mail a written notice of the cap for the program period to all small farm wineries that confirm active participation in the program and to all licensed wholesalers.

(7) Only a licensed Kentucky wholesaler may participate in this program.

Section 4. The Kentucky Grape and Wine Marketing Cost-Share Program. The funds in this program shall be dispersed based on the ~~following~~ criteria established in this section.[-]

(1) The primary purpose of the expenditure shall be for the promotion or sale of Kentucky grapes, grape products, or wine.

(2) A small farm winery shall be eligible for reimbursement not to exceed fifty (50) percent of total qualified expenditures.

(3)(a) A small farm winery shall apply for participation in the reimbursement program on the "Application", "Advertising Plan", and "Budget Request" portions of the [“]Small Farm Winery Marketing Cost-Share Program Application[”]; and

(b) All expenditures shall be approved by the KGWC in advance.[-]

(4) Eligible expenditures shall clearly display a small farm winery logo or name and be defined as:

(a) An internet, print, radio, or television advertisement; development of these advertisements, and postage and hosting fees;

(b) A promotional item to be given away;

(c) Billboards and signage with permanent lettering or logo for the purpose of promoting a small farm winery; ~~or~~

(d) Uniform apparel that shall be worn by operators or employees;[-]

(e) Logo design;

(f) Booth rental space and competition entry fees; ~~or~~

(g) Off site retail store point of sale items; or

(h) Other novel or unique items or proposals as approved by a vote of the KGWC.

(5) The following expenditures shall not be eligible for reimbursement from this fund:

(a) Equipment without a primary purpose of advertising grapes or wine;

(b) Blank or modifiable signage, electronics, or electronic media products;

(c) Blank paper products or ink;

(d) Promotional items that do not permanently or clearly display the small farm winery logo or name;

(e) Food or wine products served at special events,

tradeshows, farmers' markets, and festivals; or

(f) Membership dues or registration fees.

(6) The annual fund shall be divided equally into two (2) bi-annual program periods.

(7) The availability of funds shall be a combination of the bi-annual portion and any unencumbered funds from the previous program periods.

(8) The KGWC shall:

(a) Mail a written notice of the new program period to all licensed small farm wineries each June and December requiring the winery to confirm if it will participate in this program;

(b) Calculate a cap for each participating small farm winery in January and July, based on the number of licensed wineries who confirm participation in the program period and the amount of funds available; and[-]

(c) Mail a written notice of the cap for the program period to all small farm wineries that confirm active participation in the program.

(9) The applicant shall submit a request for reimbursement to the KGWC within ninety (90) days of completion of the last approved expenditure on the "Expenditure Report" portion of the [“]Small Farm Winery Marketing Cost-Share Program Application[”];

(10) A new small farm winery shall be eligible for funds in the bi-annual program period following license approval.

(11) The Kentucky Department of Agriculture shall evaluate submitted applications on a monthly basis and submit a report to the KGWC at regular meetings.

(12) The KGWC shall offer recommendations, approval, or denial of applications within two (2) regular meetings of report submission.

(13) Applicants shall submit their previous year's grape yields by variety, and the previous year's number of gallons of wine produced (not bottled or sold) by variety and source (Kentucky produced or sourced out of state). Data submitted shall be considered confidential.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Wholesaler Reimbursement Program Application", 11/16[04/07]; and

(b) "Small Farm Winery Marketing Cost-Share Program Application", 11/16[10/09].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Marketing and Promotions, 111 Corporate Drive[100 Fair Oaks Lane, 5th Floor], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: November 10, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2016, at 10:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for grants to support the Kentucky grape and wine industry.

(b) The necessity of this administrative regulation: This regulation is necessary for transparent and fair distribution of program funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation creates the details for the KGWC programs as created in KRS 260.165.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidelines for participant expenditures, and sets the limit for other reimbursements. Having these limits in the administrative regulations helps limit staff time being used to evaluate non-qualifying requests.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds reporting requirements as a component of receiving a grant.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KGWC votes on the subject.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation adds reporting requirements that will create a data pool for the KGWC to efficiently fund applications based on promotion of Kentucky product in the future.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation adds reporting requirements that will create a data pool for the KGWC to efficiently fund applications based on promotion of Kentucky product in the future. The KGWC desires to promote Kentucky products, and this data pool will help with administration by having a clear snapshot of what is being grown and produced.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 70 wineries are anticipated to be active in 2017, plus the KDA.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participants in the voluntary grant process will need to report the data required in the changes to be eligible for funds.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We cannot be certain of the additional time requirement, but suspect the impact would be only a few additional minutes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligibility for fund should they apply.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Small Farm Wineries Support Fund in KRS 260.175(2)(a) - (d).

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: No fees are established

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.175(2)(a) - (d).

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated, and this is an ongoing program.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated, and this is an ongoing program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120. 40 C.F.R. Part 60[60.1-60.19, 60.40-60.316, 60.330-60.506, 60.540-60.548, 60.560-60.566, 60.580-60.648, 60.660-60.3078, Tables 1-5, 60.4101-60.4420, Table 4], 42 U.S.C. 7411[; EO-2009-538]

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-120, 42 U.S.C. 7411[; EO-2009-308]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution.[EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet.] This administrative regulation establishes the standards of performance for new stationary sources by referencing[adopts] the Standards of Performance for New Stationary Sources (NSPS) codified in 40 C.F.R. Part 60[60.1 through 60.19, 60.40 through 60.316, 60.330 through 60.506, 60.540 through 60.548, 60.560 through 60.566, 60.580 through 60.648, 60.660 through 60.3078, Tables 1-5, and 60.4101 through 60.4420, Table 4]. Delegation of implementation and enforcement authority for the federal NSPS program from the U.S. Environmental Protection Agency to the Commonwealth of Kentucky is provided by 42 U.S.C. 7411(c)(1).

Section 1. Definitions. (1) Except as provided in subsection (2) of this section, terms used in this administrative regulation shall

have the meaning given to them in 40 C.F.R. Part 60.

(2) "Administrator" means the Secretary of the Energy and Environment Cabinet unless a specific provision of 40 C.F.R. Part 60[the Part 60 NSPS] states that the U.S. Environmental Protection Agency retains[enforcement] authority.

[(2) "Part 60 NSPS" means the Standards of Performance for New Stationary Sources codified in 40 C.F.R. 60.1 through 60.19 (Subpart A), 60.40 through 60.316 (Subparts D through EE), 60.330 through 60.506 (Subparts GG through XX), 60.540 through 60.548 (Subpart BBB), 60.560 through 60.566 (Subpart DDD), 60.580 through 60.648 (Subparts FFF through LLL), 60.660 through 60.3078, Tables 1-5, (Subparts NNN through FFFF), and 60.4101 through 60.4420, Table 1 (Subparts HHHH through KKKK).]

Section 2. Applicability. This administrative regulation shall apply to sources subject to 40 C.F.R. Part 60. A source subject to this administrative regulation shall comply with:

(1) 40 C.F.R. 60.1 to 60.19, Table 1 (Subpart A), General Provisions, as published July 1, 2016;

(2)(a) 40 C.F.R. 60.40 to 60.46 (Subpart D), Standards of Performance for Fossil-Fuel-Fired Steam Generators, as published July 1, 2016;

(b) 40 C.F.R. 60.40Da to 60.52Da (Subpart Da), Standards of Performance for Electric Utility Steam Generating Units, as published July 1, 2016;

(c) 40 C.F.R. 60.40b to 60.49b (Subpart Db), Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units, as published July 1, 2016;

(d) 40 C.F.R. 60.40c to 60.48c (Subpart Dc), Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, as published July 1, 2016;

(e) 40 C.F.R. 60.50 to 60.54 (Subpart E), Standards of Performance for Incinerators, as published July 1, 2016;

(f) 40 C.F.R. 60.50a to 60.59a (Subpart Ea), Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and On or Before September 20, 1994, as published July 1, 2016;

(g) 40 C.F.R. 60.50b to 60.59b (Subpart Eb), Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996, as published July 1, 2016;

(h) 40 C.F.R. 60.50c to 60.58c, Tables 1 to 3 (Subpart Ec), Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators, as published July 1, 2016;

(i) 40 C.F.R. 60.60 to 60.66 (Subpart F), Standards of Performance for Portland Cement Plants, as published July 1, 2016;

(j) 40 C.F.R. 60.70 to 60.74 (Subpart G), Standards of Performance for Nitric Acid Plants, as published July 1, 2016;

(k) 40 C.F.R. 60.70a to 60.77a (Subpart Ga), Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011, as published July 1, 2016;

(l) 40 C.F.R. 60.80 to 60.85 (Subpart H), Standards of Performance for Sulfuric Acid Plants, as published July 1, 2016;

(m) 40 C.F.R. 60.90 to 60.93 (Subpart I), Standards of Performance for Hot Mix Asphalt Facilities, as published July 1, 2016;

(n) 40 C.F.R. 60.100 to 60.109 (Subpart J), Standards of Performance for Petroleum Refineries, as published July 1, 2016;

(o) 40 C.F.R. 60.100a to 60.109a, Table 1 (Subpart Ja), Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007, as published July 1, 2016;

(p) 40 C.F.R. 60.110 to 60.113 (Subpart K), Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978, as published July 1, 2016;

(q) 40 C.F.R. 60.110a to 60.115a (Subpart Ka), Standards of

Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984, as published July 1, 2016;

(r) 40 C.F.R. 60.110b to 60.117b (Subpart Kb), Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984, as published July 1, 2016;

(s) 40 C.F.R. 60.120 to 60.123 (Subpart L), Standards of Performance for Secondary Lead Smelters, as published July 1, 2016;

(t) 40 C.F.R. 60.130 to 60.133 (Subpart M), Standards of Performance for Secondary Brass and Bronze Production Plants, as published July 1, 2016;

(u) 40 C.F.R. 60.140 to 60.144 (Subpart N), Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973, as published July 1, 2016;

(v) 40 C.F.R. 60.140a to 60.145a (Subpart Na), Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983, as published July 1, 2016;

(w) 40 C.F.R. 60.150 to 60.156 (Subpart O), Standards of Performance for Sewage Treatment Plants, as published July 1, 2016;

(x) 40 C.F.R. 60.160 to 60.166 (Subpart P), Standards of Performance for Primary Copper Smelters, as published July 1, 2016;

(y) 40 C.F.R. 60.170 to 60.176 (Subpart Q), Standards of Performance for Primary Zinc Smelters, as published July 1, 2016;

(z) 40 C.F.R. 60.180 to 60.186 (Subpart R), Standards of Performance for Primary Lead Smelters, as published July 1, 2016;

(aa) 40 C.F.R. 60.190 to 60.195 (Subpart S), Standards of Performance for Primary Aluminum Reduction Plants, as published July 1, 2016;

(bb) 40 C.F.R. 60.200 to 60.205 (Subpart T), Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants, as published July 1, 2016;

(cc) 40 C.F.R. 60.210 to 60.215 (Subpart U), Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants, as published July 1, 2016;

(dd) 40 C.F.R. 60.220 to 60.225 (Subpart V), Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants, as published July 1, 2016;

(ee) 40 C.F.R. 60.230 to 60.235 (Subpart W), Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants, as published July 1;

(ff) 40 C.F.R. 60.240 to 60.245 (Subpart X), Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities, as published July 1, 2016;

(gg) 40 C.F.R. 60.250 to 60.258 (Subpart Y), Standards of Performance for Coal Preparation and Processing Plants, as published July 1, 2016;

(hh) 40 C.F.R. 60.260 to 60.266 (Subpart Z), Standards of Performance for Ferroalloy Production Facilities, as published July 1, 2016;

(ii) 40 C.F.R. 60.270 to 60.276 (Subpart AA), Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983, as published July 1, 2016;

(jj) 40 C.F.R. 60.270a to 60.276a (Subpart AAa), Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983, as published July 1, 2016;

(kk) 40 C.F.R. 60.280 to 60.285 (Subpart BB), Standards of Performance for Kraft Pulp Mills, as published July 1, 2016;

(ll) 40 C.F.R. 60.280a to 60.288a (Subpart BBa), Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013, as published July 1, 2016;

(mm) 40 C.F.R. 60.290 to 60.296 (Subpart CC), Standards of Performance for Glass Manufacturing Plants, as published July 1,

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(nn) 40 C.F.R. 60.300 to 60.304 (Subpart DD), Standards of Performance for Grain Elevators, as published July 1, 2016;

(oo) 40 C.F.R. 60.310 to 60.316 (Subpart EE), Standards of Performance for Surface Coating of Metal Furniture, as published July 1, 2016;

(pp) 40 C.F.R. 60.330 to 60.335 (Subpart GG), Standards of Performance for Stationary Gas Turbines, as published July 1, 2016;

(qq) 40 C.F.R. 60.340 to 60.344 (Subpart HH), Standards of Performance for Lime Manufacturing Plants, as published July 1, 2016;

(rr) 40 C.F.R. 60.370 to 60.374 (Subpart KK), Standards of Performance for Lead-Acid Battery Manufacturing Plants, as published July 1, 2016;

(ss) 40 C.F.R. 60.380 to 60.386 (Subpart LL), Standards of Performance for Metallic Mineral Processing Plants, as published July 1, 2016;

(tt) 40 C.F.R. 60.390 to 60.398 (Subpart MM), Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations, as published July 1, 2016;

(uu) 40 C.F.R. 60.400 to 60.404 (Subpart NN), Standards of Performance for Phosphate Rock Plants, as published July 1, 2016;

(vv) 40 C.F.R. 60.420 to 60.424 (Subpart PP), Standards of Performance for Ammonium Sulfate Manufacture, as published July 1, 2016;

(ww) 40 C.F.R. 60.430 to 60.435 (Subpart QQ), Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing, as published July 1, 2016;

(xx) 40 C.F.R. 60.440 to 60.447 (Subpart RR), Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations, as published July 1, 2016;

(yy) 40 C.F.R. 60.450 to 60.456 (Subpart SS), Standards of Performance for Industrial Surface Coating: Large Appliances, as published July 1, 2016;

(zz) 40 C.F.R. 60.460 to 60.466 (Subpart TT), Standards of Performance for Metal Coil Surface Coating, as published July 1, 2016;

(aaa) 40 C.F.R. 60.470 to 60.474 (Subpart UU), Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture, as published July 1, 2016;

(bbb) 40 C.F.R. 60.480 to 60.489 (Subpart VV), Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006, as published July 1, 2016;

(ccc) 40 C.F.R. 60.480a to 60.489a (Subpart VVa), Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006, as published July 1, 2016;

(ddd) 40 C.F.R. 60.490 to 60.496 (Subpart WW), Standards of Performance for the Beverage Can Surface Coating Industry, as published July 1, 2016;

(eee) 40 C.F.R. 60.500 to 60.506 (Subpart XX), Standards of Performance for Bulk Gasoline Terminals, as published July 1, 2016;

(fff) 40 C.F.R. 60.530 to 60.539b (Subpart AAA), Standards of Performance for New Residential Wood Heaters, as published July 1, 2016;

(ggg) 40 C.F.R. 60.540 to 60.548 (Subpart BBB), Standards of Performance for the Rubber Tire Manufacturing Industry, as published July 1, 2016;

(hhh) 40 C.F.R. 60.560 to 60.566 (Subpart DDD), Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry, as published July 1, 2016;

(iii) 40 C.F.R. 60.580 to 60.585 (Subpart FFF), Standards of Performance for Flexible Vinyl and Urethane Coating and Printing, as published July 1, 2016;

(jjj) 40 C.F.R. 60.590 to 60.593 (Subpart GGG), Standards of

Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006, as published July 1, 2016;

(kkk) 40 C.F.R. 60.590a to 60.593a (Subpart GGGa), Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006, as published July 1, 2016;

(lll) 40 C.F.R. 60.600 to 60.604 (Subpart HHH), Standards of Performance for Synthetic Fiber Production Facilities, as published July 1, 2016;

(mmm) 40 C.F.R. 60.610 to 60.618 (Subpart III), Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes, as published July 1, 2016;

(nnn) 40 C.F.R. 60.620 to 60.625 (Subpart JJJ), Standards of Performance for Petroleum Dry Cleaners, as published July 1, 2016;

(ooo) 40 C.F.R. 60.630 to 60.636 (Subpart KKK), Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011, as published July 1, 2016;

(ppp) 40 C.F.R. 60.640 to 60.648 (Subpart LLL), Standards of Performance for SO₂ Emissions from Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011, as published July 1, 2016;

(qqq) 40 C.F.R. 60.660 to 60.668 (Subpart NNN), Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations, as published July 1, 2016;

(rrr) 40 C.F.R. 60.670 to 60.676, Tables 1 to 3 (Subpart OOO), Standards of Performance for Nonmetallic Mineral Processing Plants, as published July 1, 2016;

(sss) 40 C.F.R. 60.680 to 60.685 (Subpart PPP), Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants, as published July 1, 2016;

(ttt) 40 C.F.R. 60.690 to 60.699 (Subpart QQQ), Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems, as published July 1, 2016;

(uuu) 40 C.F.R. 60.700 to 60.708 (Subpart RRR), Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, as published July 1, 2016;

(vvv) 40 C.F.R. 60.710 to 60.718 (Subpart SSS), Standards of Performance for Magnetic Tape Coating Facilities, as published July 1, 2016;

(www) 40 C.F.R. 60.720 to 60.726 (Subpart TTT), Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines, as published July 1, 2016;

(xxx) 40 C.F.R. 60.730 to 60.737 (Subpart UUU), Standards of Performance for Calciners and Dryers in Mineral Industries, as published July 1, 2016;

(yyy) 40 C.F.R. 60.740 to 60.748 (Subpart VVV), Standards of Performance for Polymeric Coating of Supporting Substrates Facilities, as published July 1, 2016;

(zzz) 40 C.F.R. 60.750 to 60.759 (Subpart WWW), Standards of Performance for Municipal Solid Waste Landfills, as published July 1, 2016;

(aaaa) 40 C.F.R. 60.760 to 60.769 (Subpart XXX), Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014, as published at 81 F.R. 59368;

(bbbb) 40 C.F.R. 60.1000 to 60.1465, Tables 1 to 5 (Subpart AAAA), Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001, as published July 1, 2016;

(cccc) 40 C.F.R. 60.2000 to 60.2265, Tables 1 to 8 (Subpart CCCC), Standards of Performance for Commercial and Industrial Solid Waste Incineration Units, as published July 1, 2016;

(dddd) 40 C.F.R. 60.2880 to 60.2977, Tables 1 to 4 (Subpart EEEE), Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006, as published July 1, 2016;

(eeee) 40 C.F.R. 60.4200 to 60.4219, Tables 1 to 8 (Subpart IIII), Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, as published July 1, 2016;

(ffff) 40 C.F.R. 60.4230 to 60.4248, Tables 1 to 4 (Subpart JJJJ), Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, as published July 1, 2016;

(gggg) 40 C.F.R. 60.4300 to 60.4420, Table 1 (Subpart KKKK), Standards of Performance for Stationary Combustion Turbines, as published July 1, 2016;

(hhhh) 40 C.F.R. 60.4760 to 60.4930, Tables 1 to 5 (Subpart LLLL), Standards of Performance for New Sewage Sludge Incineration Units, as published July 1, 2016;

(iiii) 40 C.F.R. 60.5360 to 60.5430, Tables 1 to 3 (Subpart OOOO), Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, as published July 1, 2016;

(jjjj) 40 C.F.R. 60.5360a to 60.5432a, Table 1 to 3 (Subpart OOOOa), Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015, as published July 1, 2016;

(kkkk) 40 C.F.R. 60.5472 to 60.5483 (Subpart QQQQ), Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces, as published July 1, 2016; or

(llll) 40 C.F.R. 60.5508 to 60.5580, Tables 1 to 3 (Subpart TTTT), Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units, as published July 1, 2016; and

(3) The applicable methods, procedures, and reporting requirements codified in 40 C.F.R. Part 60, Appendices A to F and I, as published July 1, 2016[60.1 through 60.19 (Subpart A), 60.40 through 60.316 (Subparts D through EE), 60.330 through 60.506 (Subparts GG through XX), 60.540 through 60.548 (Subpart BBB), 60.560 through 60.566 (Subpart DDD), 60.580 through 60.648 (Subparts FFF through LLL), 60.660 through 60.3078, Tables 1-5, (Subparts NNN through FFFF), and 60.4101 through 60.4420, Table 1 (Subparts HHHH through KKKK). These sources shall comply with the following:

(1) The applicable provisions codified in 40 C.F.R. 60.1 through 60.19 (Subpart A), "General Provisions";

(2) The applicable methods, procedures, and reporting requirements codified in 40 C.F.R. Part 60, Appendices A through D and F; and

(3) The applicable Part 60 NSPS].

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 8, 2016

FILED WITH LRC: November 14, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation and the SIP Revision package for the amended administrative regulation will be held on December 22, 2016, at 10:00 a.m. (Eastern Time) in Conference Room 111 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 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 until December 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. This administrative regulation is contained in Kentucky's State Implementation Plan approved by US EPA. The SIP revision package for the amended regulation will be submitted to US EPA once the proposed amendments to this administrative regulation

become effective. 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, Supervisor, Division for Air Quality, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, 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 standards of performance for new stationary sources (NSPS) by referencing the standards of performance for new stationary sources (NSPS), codified in 40 C.F.R. Part 60, pursuant to Section 111 of the Clean Air Act (CAA).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control the emissions of air pollution from stationary sources which have been reasonably determined to endanger public health or welfare. This administrative regulation is necessary to be consistent with the federal regulations codified at 40 C.F.R. Part 60, and for the Cabinet to retain delegation of authority for implementation and enforcement of the standards established under 40 C.F.R. Part 60.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. 42 U.S.C. 7416 requires that state authorities may not adopt or enforce emission standards or limitations that are less stringent than the federal standards. This administrative regulation updates the NSPS to be consistent with the federal standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the Cabinet to continue to implement and enforce the NSPS consistent with the federal standards established in 40 C.F.R. Part 60, pursuant to Section 111 of the CAA. The standards established for stationary sources require emission reductions using control technologies and work practice standards, resulting in cleaner air and protection of human health and the environment.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the existing administrative regulation to include subparts of 40 C.F.R. Part 60 that have been promulgated by U.S. EPA since the last amendment of this administrative regulation. These updates are current through July 1, 2016.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the state standards for new stationary sources to be consistent with the federal standards for new stationary sources established in 40 C.F.R. Part 60. This amendment is necessary for the Cabinet to retain delegation of authority to implement and enforce the federal NSPS program, and to be no less stringent than the federal standards in 40 C.F.R. Part 60.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting standards from new stationary sources that protect public health and welfare. The amendment also conforms to the authorizing statute by being no less stringent than the federal standards in 40 C.F.R. Part 60.

(d) How the amendment will assist in the effective administration of statutes: The amendment adopts the federal NSPS to provide for consistency between state and federal regulations for new stationary sources. The new provisions will be enforceable by the Cabinet.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation. There are no individuals, businesses, organizations, or state and local governments affected by this administrative regulation beyond those affected by the federal 40 C.F.R. Part 60 NSPS requirements. The Division will retain delegation of authority for the implementation and enforcement of these requirements.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will have to meet requirements for operator training and qualification, emissions standards, siting, operating limits, compliance, monitoring, performance testing, and record keeping and reporting as contained in the applicable subpart.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the regulated entities to comply with this amendment as regulated entities are already subject to the federal 40 C.F.R. Part 60 NSPS requirements. This amendment will allow the Cabinet to retain delegation of authority for implementation and enforcement of these requirements. Regulated entities will work with the Cabinet to comply with these requirements instead of U.S. EPA.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will not be subject to enforcement actions. The standards established in 40 C.F.R. Part 60 limit the emissions of air pollutants, protecting public health and welfare.

(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 continuing 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 the amendment to 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 administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied. Standards for new stationary sources differ based on source category and applicability thresholds. However, this administrative regulation adopts the same standards as the federal regulations codified in 40 C.F.R. Part 60.

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 permit sources in accordance with this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.20-100(5), 224.20-120, 42 U.S.C. 7411, 40 C.F.R. Part 60

(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. Part 60, pursuant to 42 U.S.C. 7411.

2. State compliance standards. This administrative regulation establishes performance standards for new stationary sources.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7411 establishes the requirements for the Administrator to develop performance standards for new stationary sources.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation is being amended to adopt the same standards as the federal regulations codified in 40 C.F.R. Part 60.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different requirements are not imposed.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 63[63.1-63.56, 63.70-63.81, 63.100-63.11434], 42 U.S.C. 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100(5),[224.20-100, 224.20-110,] 224.20-120, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the [Environmental and Public Protection] cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes national emission standards for hazardous air pollutants by referencing[adopts] the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.12005[63.11434]. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency (U.S. EPA) to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).

Section 1. Definitions. (1) Except as provided in subsection (2) of this section, terms used in this administrative regulation shall have the meaning given to them in 40 C.F.R. Part 63.

(2) "Administrator" means the Secretary of the Energy and Environment[Environmental and Public Protection] Cabinet unless a specific provision of 40 C.F.R. Part 63[the Part 63-NESHAP] states that the United States Environmental Protection Agency retains[enforcement] authority.

[(2) "Part 63-NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 40 C.F.R. 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.11434, Subparts A, B, D, and F through QQQQQQ.]

Section 2. Applicability. This administrative regulation shall apply to sources subject to 40 C.F.R. Part 63. A source subject to this administrative regulation shall comply with:

(1) 40 C.F.R. 63.1 to 63.16, Table 1 (Subpart A), General Provisions, as published July 1, 2016;

(2) 40 C.F.R. 63.40 to 63.56, Tables 1 to 2 (Subpart B), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(i), as applicable, as published July 1, 2016;

(3) 40 C.F.R. 63.70 to 63.81 (Subpart D), Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants, as applicable, as published July 1, 2016;

(4)(a) 40 C.F.R. 63.100 to 63.107, Tables 1 to 4 (Subpart F), National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry, as published July 1, 2016;

(b) 40 C.F.R. 63.110 to 63.153, Tables 1 to 37, and Figure 1 (Subpart G), National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, as published July 1, 2016;

(c) 40 C.F.R. 63.160 to 63.183, Tables 1 to 4 (Subpart H), National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, as published July 1, 2016;

(d) 40 C.F.R. 63.190 to 63.193 (Subpart I), National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks, as published July 1, 2016;

(e) 40 C.F.R. 63.210 to 63.217 (Subpart J), National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production, as published July 1, 2016;

(f) 40 C.F.R. 63.300 to 63.313, Appendix A (Subpart L), National Emission Standards for Coke Oven Batteries, as published July 1, 2016;

(g) 40 C.F.R. 63.320 to 63.326 (Subpart M), National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as published July 1, 2016;

(h) 40 C.F.R. 63.340 to 63.348, Table 1 (Subpart N), National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as published July 1, 2016;

(i) 40 C.F.R. 63.360 to 63.368 (Subpart O), Ethylene Oxide Emissions Standards for Sterilization Facilities, as published July 1, 2016;

(j) 40 C.F.R. 63.400 to 63.407, Table 1 (Subpart Q), National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers, as published July 1, 2016;

(k) 40 C.F.R. 63.420 to 63.429, Table 1 (Subpart R), National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations), as published July 1, 2016;

(l) 40 C.F.R. 63.440 to 63.459, Table 1 (Subpart S), National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry, as published July 1, 2016;

(m) 40 C.F.R. 63.460 to 63.471, Appendices A to B (Subpart T), National Emission Standards for Halogenated Solvent Cleaning, as published July 1, 2016;

(n) 40 C.F.R. 63.480 to 63.507, Tables 1 to 9 (Subpart U), National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins, as published July 1,

2016;

(o) 40 C.F.R. 63.520 to 63.529, Table 1 (Subpart W), National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production, as published July 1, 2016;

(p) 40 C.F.R. 63.541 to 63.552, Tables 1 to 3 (Subpart X), National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting, as published July 1, 2016;

(q) 40 C.F.R. 63.560 to 63.568 (Subpart Y), National Emission Standards for Marine Tank Vessel Loading Operations, as published July 1, 2016;

(r) 40 C.F.R. 63.600 to 63.611, Tables 1 to 4, and Appendix A (Subpart AA), National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants, as published July 1, 2016;

(s) 40 C.F.R. 63.620 to 63.632, Tables 1 to 5, and Appendix A (Subpart BB), National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants, as published July 1, 2016;

(t) 40 C.F.R. 63.640 to 63.671, Appendix (Subpart CC), National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries, as published July 1, 2016;

(u) 40 C.F.R. 63.680 to 63.698, Tables 1 to 5 (Subpart DD), National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations, as published July 1, 2016;

(v) 40 C.F.R. 63.701 to 63.708, Table 1 (Subpart EE), National Emission Standards for Magnetic Tape Manufacturing Operations, as published July 1, 2016;

(w) 40 C.F.R. 63.741 to 63.759, Table 1, and Appendix A (Subpart GG), National Emission Standards for Aerospace Manufacturing and Rework Facilities, as published July 1, 2016;

(x) 40 C.F.R. 63.760 to 63.777, Appendix (Subpart HH), National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities, as published July 1, 2016;

(y) 40 C.F.R. 63.780 to 63.789, Tables 1 to 3, and Appendices A to B (Subpart II), National Emission Standards for Shipbuilding and Ship Repair (Surface Coating), as published July 1, 2016;

(z) 40 C.F.R. 63.800 to 63.808, Tables 1 to 6 (Subpart JJ), National Emission Standards for Wood Furniture Manufacturing Operations, as published July 1, 2016;

(aa) 40 C.F.R. 63.820 to 63.831, Table 1, and Appendix A (Subpart KK), National Emission Standards for the Printing and Publishing Industry, as published July 1, 2016;

(bb) 40 C.F.R. 63.840 to 63.855, Tables 1 to 4, and Appendix A (Subpart LL), National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants, as published July 1, 2016;

(cc) 40 C.F.R. 63.860 to 63.868, Table 1 (Subpart MM), National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills, as published July 1, 2016;

(dd) 40 C.F.R. 63.880 to 63.888, Table 1 (Subpart NN), National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources, as published at 80 Fed. Reg. 45325, July 29, 2016;

(ee) 40 C.F.R. 63.900 to 63.908 (Subpart OO), National Emission Standards for Tanks - Level 1, as published July 1, 2016;

(ff) 40 C.F.R. 63.920 to 63.929 (Subpart PP), National Emission Standards for Containers, as published July 1, 2016;

(gg) 40 C.F.R. 63.940 to 63.949 (Subpart QQ), National Emission Standards for Surface Impoundments, as published July 1, 2016;

(hh) 40 C.F.R. 63.960 to 63.967 (Subpart RR), National Emission Standards for Individual Drain Systems, as published July 1, 2016;

(ii) 40 C.F.R. 63.980 to 63.999 (Subpart SS), National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process, as published July 1, 2016;

(jj) 40 C.F.R. 63.1000 to 63.1018 (Subpart TT), National Emission Standards for Equipment Leaks - Control Level 1, as

published July 1, 2016;

(kk) 40 C.F.R. 63.1019 to 63.1039, Table 1 (Subpart UU), National Emission Standards for Equipment Leaks - Control Level 2 Standards, as published July 1, 2016;

(ll) 40 C.F.R. 63.1040 to 63.1050 (Subpart VV), National Emission Standards for Oil-Water Separators and Organic-Water Separators, as published July 1, 2016;

(mm) 40 C.F.R. 63.1060 to 63.1067 (Subpart WW), National Emission Standards for Storage Vessels (Tanks) - Control Level 2, as published July 1, 2016;

(nn) 40 C.F.R. 63.1080 to 63.1097, Tables 1 and 2 (Subpart XX), National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, as published July 1, 2016;

(oo) 40 C.F.R. 63.1100 to 63.1114 (Subpart YY), National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards, as published July 1, 2016;

(pp) 40 C.F.R. 63.1155 to 63.1166, Table 1 (Subpart CCC), National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants, as published July 1, 2016;

(qq) 40 C.F.R. 63.1175 to 63.1197, Tables 1 to 2, and Appendix A (Subpart DDD), National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production, as published July 1, 2016;

(rr) 40 C.F.R. 63.1200 to 63.1221, Table 1, and Appendix (Subpart EEE), National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, as published July 1, 2016;

(ss) 40 C.F.R. 63.1250 to 63.1261, Tables 1 to 9 (Subpart GGG), National Emission Standards for Pharmaceuticals Production, as published July 1, 2016;

(tt) 40 C.F.R. 63.1270 to 63.1287, Tables 1 and 2 (Subpart HHH), National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities, as published July 1, 2016;

(uu) 40 C.F.R. 63.1290 to 63.1309, Appendix, and Tables 1 to 3 (Subpart III), National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production, as published July 1, 2016;

(vv) 40 C.F.R. 63.1310 to 63.1336, Tables 1 to 9 (Subpart JJJ), National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins, as published July 1, 2016;

(ww) 40 C.F.R. 63.1340 to 63.1358, Table 1 (Subpart LLL), National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry, as published July 1, 2016;

(xx) 40 C.F.R. 63.1360 to 63.1369, Tables 1 to 4 (Subpart MMM), National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production, as published July 1, 2016;

(yy) 40 C.F.R. 63.1380 to 63.1389, Tables 1 to 2, and Appendices A to C (Subpart NNN), National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing, as published July 1, 2016;

(zz) 40 C.F.R. 63.1400 to 63.1419, Tables 1 to 6 (Subpart OOO), National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins, as published July 1, 2016;

(aaa) 40 C.F.R. 63.1420 to 63.1439, Tables 1 to 8 (Subpart PPP), National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production, as published July 1, 2016;

(bbb) 40 C.F.R. 63.1440 to 63.1459, Table 1, and Figure 1 (Subpart QQQ), National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting, as published July 1, 2016;

(ccc) 40 C.F.R. 63.1500 to 63.1519, Tables 1 to 3, and Appendix A (Subpart RRR), National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as published July 1, 2016;

(ddd) 40 C.F.R. 63.1541 to 63.1551, Table 1 (Subpart TTT),

National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting, as published July 1, 2016;

(eee) 40 C.F.R. 63.1560 to 63.1579, Tables 1 to 44, and Appendix A (Subpart UUU), National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, as published July 1, 2016;

(fff) 40 C.F.R. 63.1580 to 63.1595, Table 1 (Subpart VVV), National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as published July 1, 2016;

(ggg) 40 C.F.R. 63.1620 to 63.1661, Table 1 (Subpart XXX), National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese, as published July 1, 2016;

(hhh) 40 C.F.R. 63.1930 to 63.1990, Table 1 (Subpart AAAA), National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, as published July 1, 2016;

(iii) 40 C.F.R. 63.2130 to 63.2192, Tables 1 to 6 (Subpart CCCC), National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast, as published July 1, 2016;

(jii) 40 C.F.R. 63.2230 to 63.2292, Tables 1A to 10, and Appendix A (Subpart DDDD), National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products, as published July 1, 2016;

(kkk) 40 C.F.R. 63.2330 to 63.2406, Tables 1 to 12 (Subpart EEEE), National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline), as published July 1, 2016;

(lll) 40 C.F.R. 63.2430 to 63.2550, Tables 1 to 12 (Subpart FFFF), National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing, as published July 1, 2016;

(mmm) 40 C.F.R. 63.2830 to 63.2872 (Subpart GGGG), National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production, as published July 1, 2016;

(nnn) 40 C.F.R. 63.2980 to 63.3004, Tables 1 to 2, and Appendices A to B (Subpart HHHH), National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production, as published July 1, 2016;

(ooo) 40 C.F.R. 63.3080 to 63.3176, Tables 1 to 4, and Appendix A (Subpart IIII), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, as published July 1, 2016;

(ppp) 40 C.F.R. 63.3280 to 63.3420, Tables 1 to 2 (Subpart JJJJ), National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating, as published July 1, 2016;

(qqq) 40 C.F.R. 63.3480 to 63.3561, Tables 1 to 7 (Subpart KKKK), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans, as published July 1, 2016;

(rrr) 40 C.F.R. 63.3880 to 63.3981, Tables 1 to 4, and Appendix A (Subpart MMMM), National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products, as published July 1, 2016;

(sss) 40 C.F.R. 63.4080 to 63.4181, Tables 1 to 4 (Subpart NNNN), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances, as published July 1, 2016;

(ttt) 40 C.F.R. 63.4280 to 63.4371, Tables 1 to 5 (Subpart OOOO), National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles, as published July 1, 2016;

(uuu) 40 C.F.R. 63.4480 to 63.4581, Tables 1 to 4, and Appendix A (Subpart PPPP), National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products, as published July 1, 2016;

(vvv) 40 C.F.R. 63.4680 to 63.4781, Tables 1 to 6 (Subpart QQQQ), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products, as published July 1, 2016;

(www) 40 C.F.R. 63.4880 to 63.4981, Tables 1 to 4 (Subpart RRRR), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture, as published July 1, 2016;

(xxx) 40 C.F.R. 63.5080 to 63.5200, Tables 1 to 2 (Subpart SSSS), National Emission Standards for Hazardous Air Pollutants:

Surface Coating of Metal Coil, as published July 1, 2016;

(yyy) 40 C.F.R. 63.5280 to 63.5460, Figure 1, and Tables 1 to 2 (Subpart TTTT), National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations, as published July 1, 2016;

(zzz) 40 C.F.R. 63.5480 to 63.5610, Tables 1 to 10 (Subpart UUUU), National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing, as published July 1, 2016;

(aaaa) 40 C.F.R. 63.5680 to 63.5779, Tables 1 to 8 (Subpart VVVV), National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, as published July 1, 2016;

(bbbb) 40 C.F.R. 63.5780 to 63.5935, Tables 1 to 15, and Appendix A (Subpart WWWW), National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production, as published July 1, 2016;

(cccc) 40 C.F.R. 63.5980 to 63.6015, Tables 1 to 17 (Subpart XXXX), National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing, as published July 1, 2016;

(dddd) 40 C.F.R. 63.6080 to 63.6175, Tables 1 to 7 (Subpart YYYY), National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines, as published July 1, 2016;

(eeee) 40 C.F.R. 63.6580 to 63.6675, Tables 1a to 8, and Appendix A (Subpart ZZZZ), National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, as published July 1, 2016;

(ffff) 40 C.F.R. 63.7080 to 63.7143, Tables 1 to 8 (Subpart AAAAA), National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants, as published July 1, 2016;

(gggg) 40 C.F.R. 63.7180 to 63.7195, Tables 1 to 2 (Subpart BBBB), National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing, as published July 1, 2016;

(hhhh) 40 C.F.R. 63.7280 to 63.7352, Table 1 (Subpart CCCCC), National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, as published July 1, 2016;

(iiii) 40 C.F.R. 63.7480 to 63.7575, Tables 1 to 13 (Subpart DDDDD), National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, as published July 1, 2016;

(jjjj) 40 C.F.R. 63.7680 to 63.7765, Table 1 (Subpart EEEEE), National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries, as published July 1, 2016;

(kkkk) 40 C.F.R. 63.7780 to 63.7852, Table 1 to 4 (Subpart FFFFF), National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities, as published July 1, 2016;

(llll) 40 C.F.R. 63.7880 to 63.7957, Tables 1 to 3 (Subpart GGGGG), National Emission Standards for Hazardous Air Pollutants: Site Remediation, as published July 1, 2016;

(mmmm) 40 C.F.R. 63.7980 to 63.8105, Tables 1 to 10 (Subpart HHHHH), National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing, as published July 1, 2016;

(nnnn) 40 C.F.R. 63.8180 to 63.8266, Tables 1 to 10 (Subpart IIIII), National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants, as published July 1, 2016;

(oooo) 40 C.F.R. 63.8380 to 63.8515, Tables 1 to 10 (Subpart JJJJJ), National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing, as published July 1, 2016;

(pppp) 40 C.F.R. 63.8530 to 63.8665, Tables 1 to 11 (Subpart KKKKK), National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing, as published July 1, 2016;

(qqqq) 40 C.F.R. 63.8680 to 63.8698, Tables 1 to 7 (Subpart LLLLL), National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing, as published July 1, 2016;

(rrrr) 40 C.F.R. 63.8780 to 63.8830, Tables 1 to 7 (Subpart

MMMMM), National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabricating Operations, as published July 1, 2016;

(ssss) 40 C.F.R. 63.8980 to 63.9075, Tables 1 to 7 (Subpart NNNNN), National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production, as published July 1, 2016;

(tttt) 40 C.F.R. 63.9280 to 63.9375, Tables 1 to 7 (Subpart PTTTT), National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands, as published July 1, 2016;

(uuuu) 40 C.F.R. 63.9480 to 63.9570, Table 1 (Subpart QQQQQ), National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities, as published July 1, 2016;

(vvvv) 40 C.F.R. 63.9580 to 63.9652, Tables 1 to 2 (Subpart RRRRR), National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, as published July 1, 2016;

(www) 40 C.F.R. 63.9780 to 63.9824, Tables 1 to 11 (Subpart SSSSS), National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing, as published July 1, 2016;

(xxxx) 40 C.F.R. 63.9880 to 63.9942, Tables 1 to 5 (Subpart TTTTT), National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining, as published July 1, 2016;

(yyyy) 40 C.F.R. 63.9980 to 63.10042, Tables 1 to 9, and Appendices A to B (Subpart UUUUU), National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, as published July 1, 2016;

(zzzz) 40 C.F.R. 63.10382 to 63.10448, Table 1 (Subpart VVVVV), National Emission Standards for Hospital Ethylene Oxide Sterilizers, as published July 1, 2016;

(aaaa) 40 C.F.R. 63.10680 to 63.10692, Table 1 (Subpart YYYYY), National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities, as published July 1, 2016;

(bbbbb) 40 C.F.R. 63.10880 to 63.10906, Tables 1 to 4 (Subpart ZZZZZ), National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources, as published July 1, 2016;

(ccccc) 40 C.F.R. 63.11080 to 63.11100, Tables 1 to 3 (Subpart BBBBB), National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, as published July 1, 2016;

(ddddd) 40 C.F.R. 63.11110 to 63.11132, Tables 1 to 3 (Subpart CCCCC), National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities, as published July 1, 2016;

(eeee) 40 C.F.R. 63.11140 to 63.11145, Tables 1 to 2 (Subpart DDDDD), National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources, as published July 1, 2016;

(ffff) 40 C.F.R. 63.11146 to 63.11152, Table 1 (Subpart EEEEE), National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources, as published July 1, 2016;

(ggggg) 40 C.F.R. 63.11153 to 63.11159, Table 1 (Subpart FFFFF), National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources, as published July 1, 2016;

(hhhhh) 40 C.F.R. 63.11160 to 63.11168, Table 1 (Subpart GGGGG), National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium, as published July 1, 2016;

(iiii) 40 C.F.R. 63.11169 to 63.11180, Table 1 (Subpart HHHHH), National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources, as published July 1, 2016;

(jjjj) 40 C.F.R. 63.11193 to 63.11237, Tables 1 to 8 (Subpart JJJJJ), National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources,

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as published July 1, 2016:

(kkkkk) 40 C.F.R. 63.11393 to 63.11399, Table 1 (Subpart LLLLLL), National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources, as published July 1, 2016;

(lllll) 40 C.F.R. 63.11400 to 63.11406 (Subpart MMMMMM), National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources, as published July 1, 2016;

(mmmmm) 40 C.F.R. 63.11407 to 63.11413, Tables 1 to 2 (Subpart NNNNNN), National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds, as published July 1, 2016;

(nnnnn) 40 C.F.R. 63.11414 to 63.11420, Table 1 (Subpart OOOOOO), National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources, as published July 1, 2016;

(ooooo) 40 C.F.R. 63.11421 to 63.11427, Table 1 (Subpart PPPPPP), National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources, as published July 1, 2016;

(ppppp) 40 C.F.R. 63.11428 to 63.11434, Table 1 (Subpart QQQQQQ), National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources, as published July 1, 2016;

(qqqqq) 40 C.F.R. 63.11435 to 63.11445, Table 1 (Subpart RRRRRR), National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources, as published July 1, 2016;

(rrrrr) 40 C.F.R. 63.11448 to 63.11460, Tables 1 to 2 (Subpart SSSSSS), National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources, as published July 1, 2016;

(sssss) 40 C.F.R. 63.11462 to 63.11473, Table 1 (Subpart TTTTTT), National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources, as published July 1, 2016;

(ttttt) 40 C.F.R. 63.11494 to 63.11503, Tables 1 to 9 (Subpart VVVVVV), National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources, as published July 1, 2016;

(uuuuu) 40 C.F.R. 63.11504 to 63.11512, Table 1 (Subpart WWWWWW), National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations, as published July 1, 2016;

(vvvvv) 40 C.F.R. 63.11514 to 63.11523, Tables 1 to 2 (Subpart XXXXXX), National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories, as published July 1, 2016;

(wwwww) 40 C.F.R. 63.11524 to 63.11532, Table 1 (Subpart YYYYYY), National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities, as published July 1, 2016;

(xxxxx) 40 C.F.R. 63.11544 to 63.11557, Table 1 (Subpart ZZZZZZ), National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries, as published July 1, 2016;

(yyyyy) 40 C.F.R. 63.11559 to 63.11567, Tables 1 to 5 (Subpart AAAAAA), National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing, as published July 1, 2016;

(zzzzz) 40 C.F.R. 63.11579 to 63.11588, Tables 1 to 6 (Subpart BBBBBB), National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry, as published July 1, 2016;

(aaaaa) 40 C.F.R. 63.11599 to 63.11607, Table 1 (Subpart CCCCCC), National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing, as published July 1, 2016;

(bbbbb) 40 C.F.R. 63.11619 to 63.11627, Table 1 (Subpart DDDDDD), National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing, as published July 1, 2016;

(ccccc) 40 C.F.R. 63.11640 to 63.11652, Table 1 (Subpart

EEEEEE), National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category, as published July 1, 2016; or

(ddddd) 40 C.F.R. 63.11860 to 63.12005, Tables 1 to 10 (Subpart HHHHHH), National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production, as published July 1, 2016; and

(5) The applicable test methods, procedures, and other provisions codified in 40 C.F.R. Part 63, Appendices A through E, as published July 1, 2016.

Section 3. Reporting Requirements. A source shall submit all documentation required by this administrative regulation to both the cabinet and U.S. EPA[63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.11434, Subparts A, B, D, and F through QQQQQQ. These sources shall comply with the following:

(1) The applicable provisions codified in 40 C.F.R. 63.1 through 63.16, Subpart A, "General Provisions";

(2) For sources for which a maximum achievable control technology (MACT) determination has not been made, the applicable methods and procedures codified in 40 C.F.R. 63.40 through 63.56, Subpart B, "Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(g) and 112(j)";

(3) For sources that applied for early reduction credit and wish to extend the deadline for compliance demonstration, the applicable provisions codified in 40 C.F.R. 63.70 through 63.81, Subpart D, "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants";

(4) The applicable test methods, procedures, and other provisions codified in 40 C.F.R. Part 63, Appendices A through E; and

(5) The applicable Part 63 NESHAP].

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 8, 2016

FILED WITH LRC: November 14, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation and the SIP Revision package for the amended administrative regulation will be held on December 22, 2016, at 10:00 a.m. (Eastern Time) in Conference Room 111 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 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 until December 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. This administrative regulation is contained in Kentucky's State Implementation Plan approved by US EPA. The SIP revision package for the amended regulation will be submitted to US EPA once the proposed amendments to this administrative regulation become effective. 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, Supervisor, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, 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 standards for national emission standards for hazardous air pollutants by referencing the National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP), codified in 40 C.F.R. Part 63, pursuant to Section 112 of the Clean Air Act (CAA).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control the air emissions of hazardous air pollutants (HAPs) that are known or suspected to cause cancer or other serious health effects. The standards protect public health by requiring major and area sources to control emissions to the level achievable by the maximum achievable control technology (MACT) consistent with Section 112(d) of the CAA. This administrative regulation is necessary for the Cabinet to retain delegation of authority for implementation and enforcement of the standards established under 40 C.F.R. Part 63.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. 42 U.S.C. 7416 requires that state authorities may not adopt or enforce emission standards or limitations that are less stringent than the federal standards. This administrative regulation updates the NESHAPs to be consistent with the federal standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the Cabinet to continue to implement and enforce the NESHAPs consistent with the federal standards established in 40 C.F.R. Part 63, pursuant to Section 112 of the CAA. The standards established for major and area sources require emission reductions using control technologies and work practice standards, resulting in cleaner air and protection of human health and the environment.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the existing administrative regulation to adopt the National Emission Standards for Hazardous Air Pollutants, codified in 40 C.F.R. Part 63, that have been promulgated by U.S. EPA since the last amendment of this administrative regulation. These updates are current through July 1, 2016.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the state emission standards for hazardous air pollutants to be consistent with the federal emission standards established in 40 C.F.R. Part 63. This amendment is necessary for the Cabinet to retain delegation of authority to continue to implement and enforce the federal NESHAP program, and be no less stringent than the federal standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting standards for major and area sources that protect public health and welfare. The amendment also conforms to the content of the authorizing statute by adopting NESHAPs consistent with the federal requirements in 40 C.F.R. Part 63.

(d) How the amendment will assist in the effective administration of statutes: The amendment adopts the federal NESHAPs to provide for consistency between federal and state regulations for major and area source categories. The new NESHAPs will be enforceable by the Cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are no individuals, businesses, organizations, or state and local governments affected by this administrative regulation beyond those affected by the federal 40 C.F.R. Part 63 NESHAP requirements. The Division will retain

delegation of authority for implementation and enforcement of these requirements.

(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: Regulated entities that meet the applicability requirements of a standard under 40 C.F.R. Part 63 will be subject to the regulation and will be required to comply with the applicable subpart. However, these entities are already subject to these requirements at the federal level, so it should require no additional action from the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the regulated entities to comply with this amendment as regulated entities are already subject to the federal 40 C.F.R. Part 63 NESHAP requirements. This amendment will allow the Cabinet to retain delegation of authority for implementation and enforcement of the NESHAPs. Regulated entities will work with the Cabinet to comply with these requirements instead of U.S. EPA.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will not be subject to enforcement actions and hazardous air pollutants will be controlled. Regulated entities will also have the benefit of working with the state instead of U.S. EPA.

(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 continuing 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 the amendment to 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 administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The administrative regulation establishes the HAP thresholds to determine if a regulated source is considered a major or area emitter of HAPs.

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 permit sources in accordance with this administrative regulation.

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), 224.20-120, 42 U.S.C. 7401, 7412, 7414, 7416, and 7601, 40 C.F.R. Part 63

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. Part 63, pursuant to 42 U.S.C. 7412.

2. State compliance standards. This administrative regulation establishes national emission standards for hazardous air pollutants.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7412 requires that the U.S. EPA promulgate NESHAPs for source categories.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation is being amended to adopt the same standards as the federal regulations codified in 40 C.F.R. Part 63.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different requirements are not imposed.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 63:060. List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

RELATES TO: KRS 224.10-100, 224.20-110, 40 C.F.R. Part 63, Part 70, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes[requires] the[Environmental and Public Protection] cabinet to promulgate[prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides the list of hazardous air pollutants pursuant to 42 U.S.C. 7412(b) as amended in 40 C.F.R. Part 63, Subpart C[the Federal Register, 64 FR 30823, June 18, 1999] and the list of source categories and subcategories[, as published in the Federal Register, 57 FR 31591, July 16, 1992].

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given to them in 40 C.F.R. 63.2[401 KAR 63:004].

(1)"Act" means the Clean Air Act promulgated at 42 U.S.C. 7401-7671q, as amended by Pub.L. 101-549, November 15, 1990.

(2) "Area source" means a stationary source of hazardous air pollutants that is not a major source.

(3) "Hazardous air pollutant" means a substance listed in Section 2 of this administrative regulation.

(2) "MACT" means maximum achievable control technology.

(3)[(4)] "Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants, or a lesser quantity which the cabinet may establish on the basis of the potency, persistence, potential for bioaccumulation, or other characteristics or relevant factors pertaining to the pollutant.

(4) "NESHAP" means national emission standards for hazardous air pollutants. (5) "Stationary source" means a building, structure, facility, or installation which emits or may emit an air pollutant.

Section 2. List of Hazardous Air Pollutants. The following chemicals are hazardous air pollutants:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrithloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane

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132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane[epoxybutane]
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)

75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4'-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds ¹
0	Glycol ethers ²

0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers ³
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

Footnotes: For all listings in the table that contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical as part of that chemical's infrastructure.

¹ X'CN where X = H' or any other group where a formal dissociation may occur.

² Glycol ethers include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n-OR'.

Where:

n = 1, 2, or 3;

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

³ Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter one (1) micrometer or less.

⁴ Includes organic compounds with more than one (1) benzene ring and that have a boiling point greater than or equal to 100°C.

⁵ A type of atom that spontaneously undergoes radioactive decay.

Section 3. List of Categories and Subcategories of Hazardous Air Pollutants. The following are major and area source categories and subcategories:

(1)[Før] Major sources:[]

(a) Aerospace industries;

(b) Asphalt processing and asphalt roofing manufacturing;

(c) Auto and light duty truck (surface coating);

(d) Boat manufacturing;

(e) Brick and structural clay products;

(f) Cellulose products manufacturing:

1. Cellulose ethers production:

a. Methyl cellulose;

b. Carboxymethylcellulose; or

c. Cellulose ethers; or

2. Miscellaneous viscose processes:

a. Cellulose food casing;

b. Rayon;

c. Cellulosic sponge; or

d. Cellophane;

(g) Chemical recovery combustion sources at kraft, soda, sulfite and stand-alone semi-chemical pulp mills - MACT II;

(h) Chromium electroplating:

1. Chromic acid anodizing;

2. Decorative acid; or

3. Hard chromium electroplating;

(i) Clay ceramics ceramics manufacturing;

(j) Coke ovens: charging, top side and door leaks;

(k) Coke ovens: pushing, quenching and battery;

(l) Combustion turbines;

(m) Commercial sterilizers;

(n) Dry cleaning:

1. Commercial dry cleaning dry-to-dry;

2. Commercial dry cleaning transfer machines;

3. Industrial dry cleaning dry-to-dry; or

4. Industrial dry cleaning transfer machines;

(o) Engine test cells/stands;

(p) Fabric printing, coating, and dyeing;

(q) Ferroalloys production: silicomanganese and ferromanganese;

(r) Flexible polyurethane foam fabrication operations;

(s) Flexible polyurethane foam production;

(t) Friction materials manufacturing;

(u) Gasoline distribution (Stage 1);

(v) Generic MACT I:

1. Acetal resins production;

2. Acrylic fibers/modacrylic fibers production;

3. Hydrogen fluoride production; or

4. Polycarbonates production;

(w) Generic MACT II:

1. Carbon black production;

2. Spandex production;

3. Cyanide chemicals manufacturing; or

4. Ethylene processes;

(x) Hazardous waste combustors;

(y) Hydrochloric acid production;

(z) Industrial/commercial/institutional boilers and process heaters;

(aa) Industrial process cooling towers;

(bb) Integrated iron and steel manufacturing;

(cc) Iron and steel foundries;

(dd) Large appliance (surface coating);

(ee) Leather finishing operations;

(ff) Lime manufacturing;

(gg) Magnetic tapes (surface coating);

(hh) Manufacturing of nutritional yeast;

(ii) Marine vessel loading operations;

(ij) Metal can (surface coating);

(kk) Metal coil (surface coating);

(ll) Metal furniture (surface coating);

(mm) Mineral wool production;

(nn) Miscellaneous coatings manufacturing;

(oo) Miscellaneous metal parts and products (surface coating);

(pp) Miscellaneous organic chemical manufacturing:

1. Alkyd resins;

2. Ammonium sulfate production-caprolactum by-products;

3. Benzyltrimethylammonium chloride;

4. Carbonyl sulfide;

5. Chelating agents;

6. Chlorinated paraffins;

7. Ethylidene norbornene;

8. Explosives;

9. Hydrazine;

10. Maleic anhydride copolymers;

11. OBPA/1, 3-diisocyanate;

12. Photographic chemicals;

13. Phthalate plasticizers;

14. Polyester resins;

15. Polymerized vinylidene chloride;

16. Polymethyl methacrylate resins;

17. Polyvinyl acetate emulsions;

18. Polyvinyl alcohol;

19. Polyvinyl butyral;

20. Quaternary ammonium compounds;

21. Rubber chemicals; or

22. Symmetrical tetrachloropyridine;

(qq) Municipal solid waste landfills;

(rr) Off-site waste and recovery operations;

(ss) Oil and natural gas production;

(tt) Organic liquids distribution (non-gasoline);

(uu) Paper and other web (surface coating);

(vv) Pesticide active ingredient production:

1. 4-chloro-2-methyl acid production;

2. 2,3 salts and esters production;

3. 4,6-dinitro-o-cresol production;

4. Butadiene furfural cotrimer;

5. Captafol production;

6. Captan production;

7. Chloroneb production;

8. Chlorothalonil production;

9. Dacthal (tm) production;

10. Sodium pentachlorophenolate production; or

11. Tordon (tm) acid production;

(ww) Petroleum refineries - catalytic cracking units, catalytic reforming units, and sulfur recovery units;

(xx) Petroleum refineries - other sources not distinctly listed;
 (yy) Pharmaceuticals productions;
 (zz) Phosphate fertilizers production and phosphoric acid manufacturing;
 (aaa) Plastic parts and products (surface coating);
 (bbb) Plywood and composite wood products;
 (ccc) Polyether polyols production;
 (ddd) Polymers and resins:
 1. Butyl rubber;
 2. Epichlorohydrin elastomers;
 3. Ethylene-propylene rubber;
 4. Hypalon (tm);
 5. Neoprene;
 6. Nitrile butadiene rubber;
 7. Polybutadiene rubber;
 8. Polysulfide rubber; or
 9. Styrene-butadiene rubber and latex;
 (eee) Polymers and resins II:
 1. Epoxy resins; or
 2. Non-nylon polyamides;
 (fff) Polymers and resins III—Amino/phenolic resins;
 (ggg) Polymers and resins IV:
 1. Acrylonitrile-butadiene-styrene;
 2. Methyl methacrylate-acrylonitrile-butadiene-styrene;
 3. Methyl methacrylate-butadiene-styrene terpolymers;
 4. Nitrile resins;
 5. Polyethylene terephthalate;
 6. Polystyrene; or
 7. Styrene-acrylonitrile;
 (hhh) Polyvinyl chloride and copolymers;
 (iii) Portland cement manufacturing;
 (jjj) Primary aluminum;
 (kkk) Primary copper smelting;
 (lll) Primary lead smelting;
 (mmm) Primary magnesium refining;
 (nnn) Printing and publishing (surface coating);
 (ooo) Publicly owned treatment works;
 (ppp) Pulp and paper production (MACT I and III);
 (qqq) Reciprocating internal combustion engines;
 (rrr) Refractory products manufacturing;
 (sss) Reinforced plastic composites production;
 (ttt) Rubber tire manufacturing;
 (uuu) Secondary aluminum production;
 (vvv) Secondary lead smelting;
 (www) Semiconductor manufacturing;
 (xxx) Shipbuilding and ship repair (surface coating);
 (yyy) Site remediation;
 (zzz) Solvent extraction for vegetable oil production;
 (aaaa) Steel pickling - HCl process facilities and hydrochloric acid regeneration plants;
 (bbbb) Synthetic organic chemical manufacturing - hazardous organic NESHAAP -tetrahydrobenzaldehyde manufacture;
 (cccc) Taconite iron ore processing;
 (dddd) Wet-formed fiberglass mat production;
 (eeee) Wood building products (surface coating);
 (ffff) Wood furniture (surface coating); or
 (gggg) Wool fiberglass manufacturing; (Fuel combustion:
 1. Engine test facilities;
 2. Industrial boilers;
 3. Institutional/commercial boilers;
 4. Process heaters;
 5. Stationary internal combustion engines; and
 6. Stationary turbines;
 (b) Nonferrous metals processing:
 1. Primary aluminum production;
 2. Secondary aluminum production;
 3. Primary copper smelting;
 4. Primary lead smelting;
 5. Secondary lead smelting;
 6. Lead acid battery manufacturing; and
 7. Primary magnesium refining;
 (c) Ferrous metals processing:
 1. Coke by-product plants;

2. Coke ovens: charging, top side, and door leaks;
 3. Coke ovens: pushing, quenching, and battery stacks;
 4. Ferroalloys production;
 5. Integrated iron and steel manufacturing;
 6. Nonstainless steel manufacturing-electric arc furnace (EAF) operation;
 7. Stainless steel manufacturing-electric arc furnace (EAF) operation;
 8. Iron foundries;
 9. Steel foundries; and
 10. Steel pickling-HCl process.
 (d) Mineral products processing:
 1. Alumina processing;
 2. Asphalt/coal, tar application metal pipes;
 3. Asphalt concrete manufacturing;
 4. Asphalt processing;
 5. Asphalt roofing manufacturing;
 6. Chromium refractories production;
 7. Clay products manufacturing;
 8. Lime manufacturing;
 9. Mineral wool production;
 10. Portland cement manufacturing;
 11. Taconite iron ore processing; and
 12. Wool fiberglass manufacturing.
 (e) Petroleum and natural gas production and refining:
 1. Oil and natural gas production;
 2. Petroleum refineries-catalytic cracking (fluid and other) units, catalytic reforming units, and sulfur plant units; and
 3. Petroleum refineries-other sources not distinctly listed.
 (f) Liquids distribution:
 1. Gasoline distribution (stage i); and
 2. Organic liquids distribution (nongasoline).
 (g) Surface coating processes:
 1. Aerospace industries;
 2. Auto and light duty truck (surface coating);
 3. Flat wood paneling (surface coating);
 4. Large appliance (surface coating);
 5. Magnetic tapes (surface coating);
 6. Manufacture of paints, coatings, and adhesives;
 7. Metal can (surface coating);
 8. Metal coil (surface coating);
 9. Metal furniture (surface coating);
 10. Miscellaneous metal parts and products (surface coating);
 11. Paper and other webs (surface coating);
 12. Plastic parts and products (surface coating);
 13. Printing, coating, and dyeing of fabrics;
 14. Printing/publishing (surface coating);
 15. Shipbuilding and ship repair (surface coating); and
 16. Wood furniture (surface coating).
 (h) Waste treatment and disposal:
 1. Hazardous waste incineration;
 2. Municipal landfills;
 3. Sewage sludge incineration;
 4. Site remediation;
 5. Solid waste treatment, storage and disposal facilities (tsdf);
 and
 6. Publicly owned treatment works (potw) emissions.
 (i) Agricultural chemicals production:
 1. 2,4-D salts and esters production;
 2. 4-Chloro-2-methylphenoxyacetic acid production;
 3. 4,6-Dinitro-o-cresol production;
 4. Captan production;
 5. Captan production;
 6. Chloroneb production;
 7. Chlorothalonil production;
 8. Dacthal (tm) production;
 9. Sodium pentachlorophenate production; and
 10. Tordon (tm) acid production.
 (j) Fibers production processes:
 1. Acrylic fibers/modacrylic fibers production;
 2. Rayon production; and
 3. Spandex production.
 (k) Food and agriculture processes.

1. Baker's yeast manufacturing;
 2. Cellulose food casing manufacturing; and
 3. Vegetable oil production.
- (l) Pharmaceutical production processes: Pharmaceuticals production:
- (m) Polymers and resins production:
 1. Acetal resins production;
 2. Acrylonitrile-butadiene-styrene production;
 3. Alkyd resins production;
 4. Amino resins production;
 5. Boat manufacturing;
 6. Butadiene-furfural cotrimer (r-11);
 7. Butyl rubber production;
 8. Carboxymethylcellulose production;
 9. Cellophane production;
 10. Cellulose ethers production;
 11. Epichlorohydrin elastomers production;
 12. Epoxy resins production;
 13. Ethylene-propylene elastomers production;
 14. Flexible polyurethane foam production;
 15. Hypalon (tm) production;
 16. Maleic anhydride copolymers production;
 17. Methylcellulose production;
 18. Methyl methacrylate-acrylonitrile-butadiene-styrene production;
 19. Methyl methacrylate-butadiene-styrene terpolymers production;
 20. Neoprene production;
 21. Nitrile-butadiene rubber production;
 22. Nonnylon polyamides production;
 23. Nylon-6 production;
 24. Phenolic resins production;
 25. Polybutadiene rubber production;
 26. Polycarbonates production;
 27. Polyester resins production;
 28. Polyethylene terephthalate production;
 29. Polymerized vinylidene chloride production;
 30. Polymethyl methacrylate resins production;
 31. Polystyrene production;
 32. Polysulfide rubber production;
 33. Polyvinyl acetate emulsions production;
 34. Polyvinyl alcohol production;
 35. Polyvinyl butyral production;
 36. Polyvinyl chloride and copolymers production;
 37. Reinforced plastic composites production;
 38. Styrene-acrylonitrile production; and
 39. Styrene-butadiene rubber and latex production.
- (n) Production of inorganic chemicals.
- (o) Ammonium sulfate production-caprolactam by-products plants;
2. Antimony oxides manufacturing;
 3. Chlorine production;
 4. Chromium chemicals manufacturing;
 5. Cyanuric chloride production;
 6. Fume silica production;
 7. Hydrochloric acid production;
 8. Hydrogen cyanide production;
 9. Hydrogen fluoride production;
 10. Phosphate fertilizers production;
 11. Phosphoric acid manufacturing;
 12. Quaternary ammonium compounds production;
 13. Sodium cyanide production; and
 14. Uranium hexafluoride production.
- (o) Production of organic chemicals: Synthetic organic chemical manufacturing.
- (p) Miscellaneous processes.
1. Aerosol can-filling facilities;
 2. Benzyltrimethylammonium chloride production;
 3. Butadiene dimers production;
 4. Carbonyl sulfide production;
 5. Chelating agents production;
 6. Chlorinated paraffins production;
 7. Chromic acid anodizing;
 8. Commercial dry cleaning (perchloroethylene)-transfer machines;
 9. Commercial sterilization facilities;
 10. Decorative chromium electroplating;
 11. Dodencanedioic acid production;
 12. Dry cleaning (petroleum solvent);
 13. Ethylidene norbornene production;
 14. Explosives production;
 15. Halogenated solvent cleaners;
 16. Hard chromium electroplating;
 17. Hydrazine production;
 18. Industrial dry cleaning (perchloroethylene)-transfer machines;
 19. Industrial dry cleaning (perchloroethylene)-dry-to-dry machines;
 20. Industrial process cooling towers;
 21. Obpa/1,3-diisocyanate production;
 22. Paint stripper users;
 23. Photographic chemicals production;
 24. Phthalate plasticizers production;
 25. Plywood/particle board manufacturing;
 26. Polyether polyols production;
 27. Pulp and paper production;
 28. Rocket engine test firing;
 29. Rubber chemicals manufacturing;
 30. Semiconductor manufacturing;
 31. Symmetrical tetrachloropyridine production;
 32. Tire production; and
 33. Wood treatment.]
- (2)[For] Area sources: [-]
- (a) Acrylic fibers/modacrylic fibers production[Asbestos processing];
- (b) Agricultural chemicals and pesticide manufacturing;
- (c) Aluminum foundries;
- (d) Asphalt processing and asphalt roofing manufacturing;
- (e) Autobody refinishing paint shops;
- (f) Carbon black production;
- (g) Chemical manufacturing: Chromium compounds;
- (h) Chemical preparations;
- (i) Chromic acid anodizing;
- (j) Clay products manufacturing (clay ceramics manufacturing);
- (k)[(e) Commercial dry cleaning (perchloroethylene)-transfer machines;
- (d) Commercial dry cleaning (perchloroethylene)-dry-to-dry machines;
- (e)] Commercial sterilization facilities;
- (l) Copper foundries;
- (m) Cyclic crude and intermediate production;
- (n)[(f)] Decorative chromium electroplating;
- (o) Dry cleaning facilities;
- (p) Electrical and electronic equipment – finishing operations;
- (q) Fabricated metal products;
- (r) Fabricated plate work;
- (s) Fabricated structural metal manufacturing;
- (t) Ferroalloys production: Ferromanganese and Silicomanganese;
- (u) Flexible polyurethane foam fabrication operations;
- (v) Flexible polyurethane foam production;
- (w) Gas distribution stage 1;
- (x)[(g)] Halogenated solvent cleaners;[and]
- (y)[(h)] Hard chromium electroplating;
- (z) Hazardous waste incineration;
- (aa) Heating equipment, except electric;
- (bb) Hospital sterilizers;
- (cc) Industrial boilers fired by coal, wood and oil;
- (dd) Industrial inorganic chemical manufacturing;
- (ee) Industrial machinery and equipment – finish operations;
- (ff) Industrial organic chemical manufacturing;
- (gg) Inorganic pigments manufacturing;
- (hh) Institutional/commercial boilers fired by coal, wood and oil;
- (ii) Iron and steel forging;
- (jj) Iron foundries;
- (kk) Lead acid battery manufacturing;

(ll) Medical waste incinerators;
(mm) Mercury cell chlor-alkali plants;
(nn) Miscellaneous organic NESHAP;
(oo) Municipal landfills;
(pp) Municipal waste combustors (MWC);
(qq) Nonferrous foundries;
(rr) Oil and natural gas production;
(ss) Paint strippers;
(tt) Paints and allied products manufacturing;
(uu) Pharmaceutical production;
(vv) Plastic materials and resins manufacturing;
(ww) Plastic parts and products (surface coating);
(xx) Plating and polishing;
(yy) Polyvinyl chloride and copolymers production;
(zz) Portland cement;
(aaa) Prepared feeds materials;
(bbb) Pressed and blown glass and glassware manufacturing;
(ccc) Primary copper (not subject to MACT);
(ddd) Primary metal products manufacturing;
(eee) Primary nonferrous metals (Zn, Cd and Be);
(fff) Public owned treatment works;
(ggg) Secondary copper smelting;
(hhh) Secondary lead smelting;
(iii) Secondary nonferrous metals;
(jii) Sewage sludge incineration;
(kkk) Stainless and nonstainless steel manufacturing electric arc furnace;
(lll) Stationary internal combustion engines;
(mmm) Steel foundries;
(nnn) Synthetic rubber manufacturing;
(ooo) Valves and pipe fittings; or
(ppp) Wood preserving.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 8, 2016

FILED WITH LRC: November 14, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation and the SIP Revision package for the amended administrative regulation will be held on December 22, 2016, at 10:00 a.m. (Eastern Time) in Conference Room 111 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 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 until December 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. This administrative regulation is contained in Kentucky's State Implementation Plan approved by US EPA. The SIP revision package for the amended regulation will be submitted to US EPA once the proposed amendments to this administrative regulation become effective. 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, Supervisor, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, 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 lists the compounds considered by the U.S. Environmental Protection Agency (EPA) to be hazardous air pollutants (HAPs) under Section 112 of the Clean Air Act. It also identifies the major and area source categories.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because it provides a consolidated, up-to-date list of compounds considered hazardous air pollutants in accordance with Section 112 of the Clean Air Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the list of hazardous air pollutants regulated under Section 112 of the Clean Air Act.

(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 statute by consolidating the list of hazardous air pollutants.

(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 changes the existing administrative regulation by updating the list of hazardous air pollutants and the list of major and area source categories to be consistent with U.S. EPA.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update the list of hazardous air pollutants to be consistent with 42 U.S.C. 7112(b) and 40 C.F.R. Part 63, Subpart C, and to update the list of major and area source categories. This amendment is necessary for the Cabinet to retain delegation of authority for the federal NESHAP program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by identifying a list of hazardous air pollutants consistent with federal law.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statute by updating the list of hazardous air pollutants and source categories to be consistent with U.S. EPA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are no individuals, business, organizations, or state and local governments affected by this administrative regulation. This amendment updates the list of HAPs and source categories.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will not have to take any action to directly comply with this administrative regulation. Regulated entities will be able to use this administrative regulation to determine if they emit hazardous air pollutants in quantities that trigger regulatory requirements under other administrative regulations promulgated by the cabinet.

(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 lists of source categories and hazardous air pollutants. Entities will not have to take any action to directly comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, regulated entities will know exactly which emissions count as hazardous air pollutants, and will assist them in identifying other applicable administrative regulations.

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

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(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 the amendment to 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 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, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied. This administrative regulation contains the list of HAPs and source categories.

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 regulate sources of hazardous air pollutants based on the list of hazardous air pollutants contained in 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 224.10-100(5), 42 U.S.C. 7412(b), 40 C.F.R. Part 63, Subpart C

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 the regulation of hazardous air pollutants 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 the regulation of hazardous air pollutants for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7412(b) establishes the initial list of hazardous air pollutants. U.S. EPA promulgated the federal regulations in 40 C.F.R. Part 63, Subpart C pursuant to 42 U.S.C. 7412(b) to amend the list.

2. State compliance standards. This administrative regulation establishes the list of hazardous air pollutants and source

categories consistent with Section 112 of the Clean Air Act.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7412 lists compounds that U.S. EPA has recognized as hazardous air pollutants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation adopts the list in 42 U.S.C. 7412(b), as amended in 40 C.F.R. Part 63, Subpart C.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

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 call" means an onsite remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

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

(23) "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.

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

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

(26) "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 a roadside service call 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.]

(4) 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 all 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, provided 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.

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(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 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, Secretary

JOHN MARK HACK, Commissioner

D. ANN DANIELO, Office of Legal Services

APPROVED BY AGENCY: October 18, 2016

FILED WITH LRC: October 27, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 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 through December 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, email Ann.Dangelo@ky.gov.

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 add a definition for "service call," 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 amendment 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 9:010. Quota retail license limits for counties.

RELATES TO: KRS 241.060, 241.065,[241.075;] 243.030, 243.240, 243.250

STATUTORY AUTHORITY: KRS 241.060(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2)[(1)] authorizes the[Alcoholic Beverage Control] board to limit the number of licenses of each kind or class to be issued in this state or any political subdivision. This administrative regulation establishes the number of quota retail package licenses and quota retail drink licenses available in wet counties[promulgate administrative regulations relative to the applications for and revocations of licenses. KRS 241.060(2) authorizes the board to limit the number of licenses to be issued in any county of the Commonwealth. This administrative regulation establishes the basis of this limitation and establishes the manner in which the population of a county is to be ascertained for purposes of the number of licenses in a county].

Section 1. Quota Retail Package Licenses.[(1) Except as provided in 804 KAR 9:040 or in subsection (2) of this section,] The number of quota retail package licenses issued by the department[Alcoholic Beverage Control Board] in any wet county[of the Commonwealth] shall not exceed[a number equal to] one (1) license for every 2,300 persons resident in the county and one (1) license for any remainder after this ratio division, except that:

(1)[(2)] A wet county containing a city of the first class shall be subject to the limitations established in KRS 241.065; and

(2) No fewer than two (2) quota retail package licenses shall be available for issuance by the department in any wet county.

Section 2. Quota Retail Drink Licenses.[(1) (a) Except as provided in paragraph (b) of this subsection or in subsection (2) of this section,] The number of quota retail drink licenses issued by the department[Alcoholic Beverage Control Board] in any wet county meeting the requirements of KRS 243.230(1)(a)[of the Commonwealth] shall not exceed a number equal to one (1) license for every 2,500 persons resident in the county and one (1) license for any remainder after this ratio division, except that:

(1)[(b)] A wet county containing a city of the first class shall be

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subject to the limitations established in KRS 241.065;

(2) No fewer than two (2) quota retail drink licenses shall be available for issuance by the department in any wet county meeting the requirements of KRS 243.230(1)(a); and

(3) The department[Alcoholic Beverage Control Board] may issue non-quota type 2[quota] retail drink licenses to an applicant[in excess of the number provided in subsection (1) of this section if the license is for an outlet] located within a premises that has been issued an Entertainment Destination Center License under 804 KAR 4:370.

~~[(3) Licenses issued under the exceptions established in subsection (2) of this section shall not be transferred to other premises.]~~

Section 3. Quota Retail License Vacancies. (1) The population quotas established in Sections 1 and 2 of this administrative regulation shall be based on a wet county's annual population estimates[(1) the estimates of population for Kentucky counties] prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky,[shall be used] in every year except a federal decennial census year[to determine the number of licenses prescribed by this administrative regulation]. The United States Government federal decennial census figures of population shall be used in a census year.

(2) If a quota retail license vacancy is created by application of Sections 1 or 2 of this administrative regulation, license expiration, surrender, or revocation, or it occurs for any other reason, the department shall within sixty (60) days arrange for the newspaper used for county legal notices to advertise the vacancy and provide information about applying for it.

(3) The department shall accept applications for a quota retail license vacancy not later than thirty (30) days following the date on which the public notice required by subsection (2) of this section is published.

(4) A licensee that holds a quota retail license shall assume the business risk that the number of quota retail licenses might be increased[(a) On or before January 1 of each year, the Alcoholic Beverage Control Board shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for those counties in which license quotas may need to be reviewed by the board.

(b) Upon receipt of these estimates from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, the Alcoholic Beverage Control Board shall, within thirty (30) days, send a specific notice to the newspaper with the largest circulation in each county where the estimate justifies a change in that county's quota, and issue a release of this information to the general press.

(c) The Department of Alcoholic Beverage Control shall accept applications for new quota licenses for a period of thirty (30) days following the date of publication in the newspaper of each county affected].

Section 4. Quota Retail License Reductions. (1) This administrative regulation shall not prohibit license renewal or approved license transfer by the department of an existing quota retail license issued in a wet county.

(2) If quota retail licenses have been issued in a wet county that exceed the quotas established in Sections 1 or 2 of this administrative regulation, the number of quota retail licenses in the county shall be reduced by the department upon license expiration, surrender, or revocation[This administrative regulation shall not prohibit renewal of licenses. The present quota shall be reduced, in conformance with this administrative regulation, as licenses are revoked or surrendered].

Section 5. No Separate City Quota in Wet County. If a dry county in which a wet city is located becomes wet, the county quotas established by Sections 1 or 2 of this administrative regulation shall supersede and replace any separate city quotas set by 804 KAR 9:040 or 804 KAR 9:050.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 14, 2016

FILED WITH LRC: November 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2016 at 9:00 am 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 at least 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 December 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, Staff Attorney, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479, email Melissa.McQueen@ky.gov.

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 establishes quota license limits quota retail package licenses and quota retail drink licenses in wet counties and provides a process for filling quota retail license vacancies and reducing the number of quota retail licenses in counties that exceed established quota limits due to reduced populations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish quota license limits in wet counties, and to explain the process for filling quota retail license vacancies and reducing quota retail license numbers in counties that are over the established quota limits due to population reductions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. KRS 241.060(2) authorizes the board to limit the number of licenses to be issued in any county of the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the number of quota retail package licenses and quota retail drink licenses available in a wet county and provides the process for filling quota retail license vacancies and reducing quota retail license numbers in counties that exceed established quota limits due to population reductions.

(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 uses better language that provides clarity on setting quota retail license limits, prevents monopoly situations for better consumer choice and prices, better explains the processes used by the department when a quota retail license vacancy occurs, and further explains how quota retail license numbers are reduced in counties where the quota limits are exceeded due to population reductions.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide better clarity about the above administrative regulation purposes and to prevent monopoly situations in counties with small populations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to

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promulgate administrative regulations. KRS 241.060(2) authorizes the board to limit the number of licenses to be issued in any county of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the processes used by the department in issuing quota retail licenses in wet counties, how quota retail license vacancies are created, and how the number of quota retail licenses are reduced when a county's population decreases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect any county that chooses to go wet. The department of Alcoholic Beverage Control will also be affected by this administrative regulation amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The department of Alcoholic Beverage Control, as well as county local ABC administrators will have to periodically check the population of the county and determine the correct number of quota licenses available based upon the current population.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not expected to be any costs associated with complying with this administrative regulation amendment as these procedures are already being done by the affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The number of available licenses will increase or decrease based upon the county's population.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed to implement and enforce this administrative regulation amendment.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases 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 administrative regulation amendment applies equally to all 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? Wet counties will be affected by this administrative regulation amendment. The Department of Alcoholic Beverage Control is impacted by this administrative regulation amendment.

(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. KRS 241.060(2) authorizes the board to limit the number of licenses to be issued in any county of the Commonwealth.

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

(a) How much revenue will this administrative regulation

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

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

(c) How much will it cost to administer this program for the first year? There are no costs to administer this administrative regulation amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this administrative regulation 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: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

902 KAR 20:091. Facilities specifications, operation and services; community mental health center.

RELATES TO: KRS 17.500, 198B.260, 202A.011(4), 202B.010(6), 205.6313, 210.370, 210.410, 210.450, 216B.010, 216B.015, 216B.030, 216B.105, 216B.990, 222.211, 309.080, 309.130, 311.560(4), 314.011(8), 314.042(8), 319.056, 319.064, 319C.010, 320.210(2), 335.080, 335.100, 335.300, 335.500, 439.3401, 645.020(5), 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 210.450(1), 216B.010, 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Kentucky Cabinet for Health and Family Services to regulate health facilities and services. KRS 210.450(1) requires the secretary to promulgate administrative regulations to establish[pre]scribing standards for qualification of personnel, quality of professional service, and personnel management operations. This administrative regulation establishes licensure requirements for the operation and services, and facility specifications of a community mental health center. In addition, this administrative regulation establishes standards for community mental health centers that elect to provide primary care services pursuant to KRS 210.410 and KRS 205.6313.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and

practicing in accordance with KRS 314.042:

(g) A psychiatric nurse as defined by subsection (22) of this section;

(h) A physician assistant licensed under KRS 311.840 to 311.862;

(i) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(j) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(k) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Center" means a community mental health center.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Certified prevention specialist" means an individual who is currently certified as a certified prevention specialist by the Kentucky Certification Board for Prevention Professionals.

(6) "Client" means an individual described by KRS 210.410(2).

(7) "Community mental health center" means a program established pursuant to KRS Chapter 210.

(8) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(9)[(2) "Clinical psychologist" means a clinical psychologist certified or licensed pursuant to KRS 319.050(7), 319.056(2), (4), or 319.064(5).

(3) "Crisis stabilization unit" means a community-based facility operated by or under contract with a center to provide emergency services as described in Section 8 of this administrative regulation to [no more than twelve (12)] clients who require overnight stays.

(10)[(4)] "Designated regional service area" means the geographical area to be served by the community mental health center.

(11) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(12) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(13) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(14) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(15)[(6)] "Licensed marriage and family therapist" means an individual licensed in accordance with KRS 335.300(2).

(6) "Licensed professional clinical counselor" means and individual licensed in accordance with KRS 335.500(3).

(7) "Licensee" means the governing body legally responsible for the community mental health center.

(16) "Mechanical restraint" means any device attached or adjacent to a client's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(17) "Mental health associate" means an individual who meets the mental health associate requirements established in the Community Mental Health Center Behavioral Health Services Manual incorporated by reference in 907 KAR 1:044, Section 13.

(18) "Patient" means a client, as described by KRS 210.410(2), or any other individual who seeks primary care services from a community mental health center.

(19) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision

requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(20)[(8)] "Plan of care" means a written plan that delineates the services to be provided to a client, and includes the short- and long-term goals of the plan.

(21) "Professional equivalent" means an individual who meets the professional equivalent requirements established in the Community Mental Health Center Behavioral Health Services Manual incorporated by reference in 907 KAR 1:044, Section 13.

(22)[(9)] "Psychiatric nurse" means a registered nurse who:

(a) Has a master's of science degree in nursing with a specialty in psychiatric or mental health nursing;

(b) Is a graduate of a four (4) year educational program with a bachelor of science degree in nursing and a minimum of one (1) year of experience in a mental health setting;

(c) Is a graduate of a three (3) year educational program with two (2) years of experience in a mental health setting; or

(d) Is a graduate of a two (2) year educational program with an associate degree in nursing and three (3) years of experience in a mental health setting.

(23) "Time out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his or her behavior[(40) "Qualified social worker" means a social worker with a master's degree from an accredited school of social work who is licensed or exempt from licensure pursuant to KRS Chapter 335.

(11) "Time-out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his behavior].

Section 2. Scope of Operation and Services. (1) A community mental health center;

(a) Shall provide a comprehensive range of accessible and coordinated behavioral health (mental health and substance abuse services) and [mental retardation] services for individuals with an intellectual or developmental disability, including direct or indirect [mental health or mental retardation] services[;] to the population of a designated regional service area, as required by KRS 210.370 to 210.480; and

(b) May provide primary care services:

1. As permitted by KRS 210.410; and

2. In accordance with the requirements established in Section 7 of this administrative regulation.

(2) A center's services, including primary care services if provided, shall be available to the client population described by KRS 210.410(2).

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for:

1. The center;

2. The establishment of administrative policy; and

3. Compliance with federal, state, and local law pertaining to the operation of the center.

(b) To obtain or renew a license to operate a center, the licensee shall comply with the requirements of this administrative regulation and the requirements of relevant statutes and administrative regulations.

(2) Executive director. The licensee shall designate an executive director, qualified by training and experience, who shall be responsible for:

(a) The total program of the center and its affiliates in accordance with the center's written policies; and

(b) Evaluation of the program as it relates to the client's needs.

(3) Policies. The licensee shall establish written policies for the administration and operation of the center, which shall be available to staff and which shall include:

(a) A description of the organizational structure specifying the;

1. Responsibility, function, and interrelations of each organizational unit[;] and

2.[the] Lines of administrative and clinical authority;

(b) The appropriate method and procedure for storage, dispensing, and administering of a drug or biological agent;

(c) Client grievance procedure;

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(d) Confidentiality and use of client records in accordance with federal, state, and local statutes and regulations, including subsection (4) of this section; and

(e) Personnel policy, including:

1. A job description and qualifications for each personnel category;

2. Wage scale, hours of work, vacation and sick leave;

3. A plan for orientation of personnel to the policies and objectives of the center, ~~and for~~ on-the-job training, if necessary, and ongoing in-service training programs related to the employee's job activities; and

4. ~~Annual~~Periodic evaluation of employee performance.

(4) Client records. A client record shall be maintained for each individual receiving services.

(a) Each entry shall be current, dated, signed, and indexed according to the service received.~~[-]~~

(b) Ownership.

1. Client records shall be the property of the center.

2. The original client record shall not be removed from the center except by court order or subpoena.

3. Copies of a client record or portions of the record may be used and disclosed as established by paragraph (d) of this subsection.

(c) A client record shall be retained for at least ~~six (6)~~five (5) years or, in the case of a minor, three (3) years after the client reaches the age of majority, whichever is longer.

(d) Confidentiality and security: use and disclosure.

1. The center shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

2. The center may use and disclose client records. Use and disclosure shall be as established or required by:

a. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

b. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

3. A center may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

~~(e); (c) Each client record shall be kept in a locked file and treated as confidential. Information contained in a client record shall:~~

1. ~~Be disclosed to an authorized person; and~~

2. ~~Not be disclosed to an unauthorized person;~~

~~(d) Each client record shall contain:~~

1. An identification sheet;

2. Information on the purpose for seeking a service;

3. A history of findings and treatments rendered;

4. Screening information pertaining to the problem;

5. Staff notes on services provided;

6. Pertinent medical, psychiatric, and social information;

7. Disposition;

8. Assigned status;

9. Assigned ~~personnel~~[therapists]; and

10. A termination ~~summary~~[study] recapitulating findings and events during treatment, clinical impressions, and condition on termination.

Section 4. Staff Requirements. (1)~~(5) Personnel.~~ A community mental health center shall employ the following full-time personnel:

(a) An executive director as required by Section 3(2) of this administrative regulation who:

1. May serve in a dual role as the center's program director;

2. Shall meet the education requirements established by the center's governing board for the executive director, or have a master's degree in business administration or a human services

field or a bachelor's degree in a human services field, including:

a. Social work;

b. Sociology;

c. Psychology;

d. Guidance and counseling;

e. Education;

f. Religion;

g. Business administration;

h. Criminal justice;

i. Public administration;

j. Child care administration;

k. Christian education;

l. Divinity;

m. Pastoral counseling;

n. Nursing;

o. Public health; or

p. Another human service field related to working with children with severe emotional disabilities or clients with severe mental illness; and

3.a. Shall have two (2) years of prior supervisory experience in a human services program for an executive director with a master's degree;

b. Shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program for an executive director with a bachelor's degree; or

c. Shall meet the experience requirements established by the center's governing board for the executive director;

~~(b)[4-]~~ A program director who:

1. Shall be a:

a. Psychiatrist;

b. Certified~~or licensed~~ psychologist with autonomous functioning, licensed psychological practitioner, or licensed psychologist;

c. Psychiatric nurse;

d. Licensed professional clinical counselor;

e. Licensed marriage and family therapist; or

f. Licensed clinical~~Qualified~~ social worker or certified social worker;

2. May serve as~~[- 2. The program director may be]~~ the executive director; and

3. Shall be responsible for maintenance of the center's therapeutic milieu;

~~(c) A medical director(b)1. A board-certified or board-eligible psychiatrist] who shall:~~

1. Be a board certified or board eligible psychiatrist licensed in the state of Kentucky;

2.~~[a-]~~ Be responsible for treatment planning; and

3.~~[b- Provide psychiatric service as indicated by client needs;~~ and

e.] Supervise and coordinate the provision of psychiatric services by the center;

~~(d) A licensed psychologist or licensed psychological practitioner pursuant to KRS 319.050, 319.056, or 319.064;~~

~~(e) A sufficient number of personnel to provide services as described in Section 5 of this administrative regulation; and~~

~~(f) A records librarian or a designated staff person who shall assure that client records are maintained and that information is immediately retrievable.~~

(2) Background checks.

(a) The executive director and all personnel of a center shall:

1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;

2. Not have a criminal conviction or plea of guilty to a:

a. Sex crime as specified in KRS 17.500;

b. Violent crime as specified in KRS 439.3401;

c. Criminal offense against a minor as specified in KRS 17.500;

or

d. Class A felony; and

3. Not be listed on the following:

a. Central registry established by 922 KAR 1:470;

b. Nurse aide or home health aide abuse registry established

by 906 KAR 1:100; or

c. Caregiver misconduct registry established by 922 KAR 5:120.

(b) A center may use the Kentucky national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

(c) A center shall perform annual criminal record and registry checks as described in paragraph (a) of this subsection on a random sample of at least fifteen (15) percent of all personnel who have not been subject to the annual background check during the previous three (3) year period.

(d) A center may use the Kentucky national background check program established by 906 KAR 1:190 to satisfy the annual background check requirements of paragraph (c) of this subsection upon implementation of the continuous assessment service, also referred to as rap back. [2. This position may be filled by more than one (1) psychiatrist if the total hours worked are equivalent to one (1) full-time position;

(e) A clinical psychologist who shall provide evaluation and screening services for the client and individual or group therapy;

(d) A licensed professional clinical counselor who shall provide evaluation and screening services for the client and individual or group therapy;

(e) A licensed marriage and family therapist who shall provide evaluation and screening services for the client and individual or group therapy;

(f) A psychiatric nurse who shall provide or supervise nursing service for psychiatric care;

(g) A qualified social worker who shall provide social services as required; and

(h) A person who shall assure that client records are maintained and that information is immediately retrievable.]

Section 5[4]. Services. (1) The center shall provide services in the designated regional service area directly or through contract.

(2) Direct services. The center shall provide services as described in subsection (4) of this section and offer a sufficiently wide range of treatment to meet client needs, which may include behavioral health services described in subsection (5) of this section[including:

(a) Individual therapy;

(b) Family therapy;

(c) Group therapy;

(d) Play therapy;

(e) Behavior modification; and

(f) Chemotherapy].

(3) Plan of care.

(a) Each client receiving direct treatment under the auspices of a community mental health center shall have an individual plan of care signed by an independently licensed behavioral health professional[a clinically licensed or certified professional provider of the treatment].

(b) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.

(4) The center shall provide:

(a) Partial hospitalization or psychosocial rehabilitation services pursuant to KRS 210.410(1)(c)[A therapeutic program for a person who requires less than twenty-four (24) hour a day care, and more than outpatient care (i.e., partial hospitalization or day care)]. A psychiatrist shall be present on a regularly scheduled basis to provide consultant services to staff;

(b) 1. Inpatient services pursuant to KRS 210.410(1)(a) through affiliation with a licensed[community] hospital for a person requiring full-time inpatient care; or

2. If the[-A] center[that] does not have an affiliation contract in effect, documentation off[shall be considered to be in compliance with this requirement if the center documents] a good faith effort to enter into an affiliation contract;

(c) Outpatient services pursuant to KRS 210.410(1)(b)[service] on a regularly scheduled basis with arrangements made for a nonscheduled visit during a time of increased stress or crisis. The

outpatient service shall provide diagnosis and evaluation of a psychiatric problem and a referral to other services or agencies as indicated by the client's needs;

(d) Emergency services pursuant to KRS 210.410(1)(d)[service] for the immediate evaluation and care of a person in a crisis situation on a twenty-four (24) hour a day, seven (7) day a week basis. All components of the emergency service shall be coordinated into a unified program that enables a client receiving an emergency service to be readily transferred to another service of the center as client needs dictate; and

(e) Consultation and education services pursuant to KRS 210.410(1)(e) for individuals,[for an individual and various] community agencies, and groups to increase the visibility, identifiability, and accessibility of the center and to promote services for intellectual disabilities and mental health disorders, substance use disorders, or co-occurring disorders[through the distribution of relevant mental health knowledge].

(5) Rehabilitative mental health and substance use services, which may be provided by a center in accordance with a plan of care, include the following:

(a) Screening that shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, professional equivalent, mental health associate, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice to determine the:

1. Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and

2. Need for an assessment;

(b) Assessment that shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, mental health associate, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice who gathers information and engages in a process with the client, thereby enabling the professional to:

a. Establish the presence or absence of a mental health, substance use, or co-occurring disorder;

b. Determine the client's readiness for change;

c. Identify the client's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the client in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing that shall:

1. Be performed by a licensed psychologist, licensed psychological associate, licensed psychological practitioner, or an individual who meets the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing; and

2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention that:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

2. Shall consist of clinical intervention and support services necessary to provide:

a. Integrated crisis response;

b. Crisis stabilization interventions; or

c. Crisis prevention activities;

3. Shall be provided:

a. On-site at the center;

b. As an immediate relief to the presenting problem or threat;

and

- c. In a face-to-face, one-on-one encounter;
- 4. May be provided as a telehealth consultation;
- 5. May include:
 - a. Verbal de-escalation;
 - b. Risk assessment; or
 - c. Cognitive therapy;
- 6. Shall be provided by a:
 - a. Behavioral health professional;
 - b. Behavioral health professional under clinical supervision;
 - c. Professional equivalent;
 - d. Mental health associate;
 - e. Certified alcohol and drug counselor;
 - f. Licensed clinical alcohol and drug counselor; or
 - g. Licensed clinical alcohol and drug counselor associate;
- 7. Shall be followed by a referral to non-crisis services, if applicable; and
- 8. May include:
 - a. Further service prevention planning, including:
 - (i) Lethal means reduction for suicide risk; or
 - (ii) Substance use disorder relapse prevention; or
 - b. Verbal de-escalation, risk assessment, or cognitive therapy;
 - (e) Mobile crisis services that shall:
 - 1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
 - 2. Be provided for a duration of less than twenty-four (24) hours;
 - 3. Not be an overnight service;
 - 4. Be a multi-disciplinary team based intervention that ensures access to acute mental health and substance use services and supports to:
 - a. Reduce symptoms or harm; or
 - b. Safely transition an individual in an acute crisis to the appropriate, least restrictive level of care;
 - 5. Involve all services and supports necessary to provide:
 - a. Integrated crisis prevention;
 - b. Assessment and disposition;
 - c. Intervention;
 - d. Continuity of care recommendations; and
 - e. Follow-up services;
 - 6. Be provided face-to-face in a home or community setting by a:
 - a. Behavioral health professional;
 - b. Behavioral health professional under clinical supervision;
 - c. Professional equivalent;
 - d. Mental health associate;
 - e. Certified alcohol and drug counselor;
 - f. Licensed clinical alcohol and drug counselor; or
 - g. Licensed clinical alcohol and drug counselor associate; and
 - 7. Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;
 - (f) Day treatment that shall:
 - 1. Be a nonresidential, intensive treatment program designed for youth who:
 - a. Have a substance use disorder, mental health disorder, or co-occurring disorder;
 - b. Are under twenty-one (21) years of age; and
 - c. Are at high risk of out-of-home placement due to a behavioral health issue;
 - 2. Consist of an organized, behavioral health program of treatment and rehabilitative services for substance use disorder, mental health disorder, or a co-occurring disorder;
 - 3. Have unified policies and procedures that address:
 - a. The program's philosophy;
 - b. Admission and discharge criteria;
 - c. Admission and discharge process;
 - d. Staff training; and
 - e. Integrated case planning;
 - 4. Include the following:
 - a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
 - b. Behavior management and social skill training;

- c. Independent living skills that correlate to the age and development stage of the client; and
- d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;
- 5. Be provided as follows:
 - a. In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);
 - b. On school days and during scheduled school breaks;
 - c. In coordination with the child's individual educational plan or Section 504 plan if the child has an individual educational plan or Section 504 plan;
 - d. By personnel that includes the following practicing within his or her scope of practice:
 - (i) Behavioral health professional;
 - (ii) Behavioral health professional under clinical supervision;
 - (iii) Professional equivalent;
 - (iv) Mental health associate;
 - (v) Certified alcohol and drug counselor;
 - (vi) Licensed clinical alcohol and drug counselor;
 - (vii) Licensed clinical alcohol and drug counselor associate; or
 - (viii) Peer support specialist; and
 - e. According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and
- 6. Not include a therapeutic clinical service that is included in a child's individualized education plan;
- (g) Peer support that shall:
 - 1. Be provided by a peer support specialist;
 - 2. Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;
 - 3. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; and
 - 4. Be identified in the client's plan of care;
 - (h) Intensive outpatient program services that shall:
 - 1. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;
 - 2. Be provided at least three (3) hours per day at least three (3) days per week;
 - 3. Include the following:
 - a. Individual outpatient therapy;
 - b. Group outpatient therapy;
 - c. Family outpatient therapy unless contraindicated;
 - d. Crisis intervention; or
 - e. Psycho-education during which the client or client's family member shall be:
 - (i) Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and
 - (ii) Taught how to cope with the client's diagnosis or condition in a successful manner;
 - 4. Include a treatment plan that shall:
 - a. Be individualized; and
 - b. Focus on stabilization and transition to a lower level of care;
 - 5. Be provided by the following practicing within his or her scope of practice:
 - a. Behavioral health professional;
 - b. Behavioral health professional under clinical supervision;
 - c. Professional equivalent;
 - d. Mental health associate; or
 - e. Certified alcohol and drug counselor;
 - 6. Include access to a board-certified or board-eligible psychiatrist for consultation;
 - 7. Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and
 - 8. Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;
 - (i) Individual outpatient therapy that shall:
 - 1. Be provided to promote the:

a. Health and well-being of the client; or
b. Recovery from a substance related disorder;
2. Consist of a face-to-face therapeutic intervention with the client provided in accordance with the client's plan of care, which may be provided as a telehealth consultation;
3. Be aimed at:
a. Reducing adverse symptoms;
b. Reducing or eliminating the presenting problem of the client;
and
c. Improving functioning;
4. Not exceed three (3) hours per day; and
5. Be provided by the following personnel practicing within his or her scope of practice:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Licensed behavior analyst;
d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
e. Professional equivalent;
f. Mental health associate;
g. Certified alcohol and drug counselor;
h. Licensed clinical alcohol and drug counselor; or
i. Licensed clinical alcohol and drug counselor associate;
(j) Group outpatient therapy that shall:
1. Be provided to promote the:
a. Health and well-being of the client; or
b. Recovery from a substance related disorder;
2. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care, and which may be provided as a telehealth consultation;
3. Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a:
a. Spouse;
b. Significant other;
c. Parent or person with custodial control;
d. Child;
e. Sibling;
f. Stepparent;
g. Stepchild;
h. Step-brother;
i. Step-sister;
j. Father-in-law;
k. Mother-in-law;
l. Son-in-law;
m. Daughter-in-law;
n. Brother-in-law;
o. Sister-in-law;
p. Grandparent; or
q. Grandchild;
4. Focus on the psychological needs of the client as evidenced in the client's plan of care;
5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
6. Not include:
a. Physical exercise;
b. A recreational activity;
c. An educational activity; or
d. A social activity;
7. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;
8. Ensure that the group has a deliberate focus and defined course of treatment;
9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and
10. Be provided by one (1) or more of the following personnel practicing within his or her scope of practice, and who shall maintain individual notes regarding each client within the group in the client's record:
a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;
c. Licensed behavior analyst;
d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
e. Professional equivalent;
f. Mental health associate;
g. Certified alcohol and drug counselor;
h. Licensed clinical alcohol and drug counselor; or
i. Licensed clinical alcohol and drug counselor associate;
(k) Family outpatient therapy that shall:
1. Consist of a face-to-face behavioral health therapeutic intervention, which may be provided as a telehealth consultation, and shall be provided through scheduled therapeutic visits between the therapist, the client unless the corresponding current procedural terminology code establishes that the recipient is not present, and at least one (1) member of the client's family;
2. Address issues interfering with the relational functioning of the family;
3. Seek to improve interpersonal relationships within the client's home environment;
4. Be provided to promote the health and well-being of the client or recovery from a substance use disorder;
5. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and
6. Be provided by the following personnel practicing within his or her scope of practice:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Professional equivalent;
d. Mental health associate;
e. Certified alcohol and drug counselor;
f. Licensed clinical alcohol and drug counselor; or
g. Licensed clinical alcohol and drug counselor associate;
(l) Collateral outpatient therapy that shall consist of a face-to-face behavioral health consultation on behalf of a client under the age of twenty-one (21) and may be provided as a telehealth consultation:
1. With a:
a. Parent;
b. Caregiver;
c. Person who has custodial control;
d. Household member;
e. Legal representative;
f. School staff person; or
g. Treating professional;
2. Provided by the following personnel practicing within his or her scope of practice:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Licensed behavior analyst;
d. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
e. Professional equivalent;
f. Mental health associate;
g. Certified alcohol and drug counselor;
h. Licensed clinical alcohol and drug counselor; or
i. Licensed clinical alcohol and drug counselor; and
3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;
(m) Service planning that shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, or mental health associate to:
1. Assist a client in creating an individualized plan for services needed for maximum reduction of the effects of a mental health disorder;
2. Restore a client's functional level to the client's best possible functional level; and
3. Develop a service plan that:

a. Shall be directed by the client; and
b. May include:
(i) A mental health advance directive being filed with a local hospital;
(ii) A crisis plan; or
(iii) A relapse prevention strategy or plan;
(n) Screening, brief intervention, and referral to treatment for substance use disorders that shall:
1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;
2. Consist of:
a. Using a standardized screening tool to assess the individual for risky substance use behavior;
b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice; and
c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and
3. Be provided by the following personnel practicing within his or her scope of practice:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Professional equivalent;
d. Mental health associate;
e. Certified alcohol and drug counselor;
f. Licensed clinical alcohol and drug counselor;
g. Licensed clinical alcohol and drug counselor associate; or
h. Certified prevention specialist;
(o) Assertive community treatment for mental health disorders that shall:
1. Include:
a. Assessment;
b. Treatment planning;
c. Case management;
d. Psychiatric services;
e. Medication prescribing and monitoring;
f. Individual and group therapy;
g. Peer support;
h. Mobile crisis services;
i. Mental health consultation;
j. Family support; and
k. Basic living skills;
2. Be provided by a multidisciplinary team of at least four (4) professionals, including:
a. A psychiatrist;
b. A nurse;
c. A case manager;
d. A peer support specialist; and
e. Any other behavioral health professional, behavioral health professional under clinical supervision, professional equivalent, or mental health associate; and
3. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;
(p) Comprehensive community support services that shall:
1. Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;
2. Consist of using a variety of psychiatric rehabilitation techniques to:
a. Improve daily living skills;
b. Improve self-monitoring of symptoms and side effects;
c. Improve emotional regulation skills;
d. Improve crisis coping skills; and
e. Develop and enhance interpersonal skills; and
3. Be provided by a:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Community support associate;
d. Licensed behavior analyst;
e. Licensed assistant behavior analyst working under the

supervision of a licensed behavior analyst;
f. Professional equivalent; or
g. Mental health associate;
(q) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a severe emotional disability that shall:
1. Include services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;
2. Establish the client's own rehabilitative goals within the person-centered plan of care;
3. Be delivered using a variety of psychiatric rehabilitation techniques focused on:
a. Improving daily living skills;
b. Self-monitoring of symptoms and side effects;
c. Emotional regulation skills;
d. Crisis coping skills; and
e. Interpersonal skills; and
4. Be provided individually or in a group by a:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Peer support specialist;
d. Professional equivalent; or
e. Mental health associate;
(r) Partial hospitalization that shall:
1. Be provided by the following practicing within his or her scope of practice:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Professional equivalent;
d. Mental health associate; or
e. Certified alcohol and drug counselor;
2. Be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24) hour, intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to substance use disorder, mental health disorder, or co-occurring disorder;
3. Be provided to an adult or a child;
4. Ensure that admission criteria for partial hospitalization is based on an inability to adequately treat the individual through community-based therapies or intensive outpatient services;
5. Consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication prescribing and monitoring;
6. Typically be provided for at least four (4) hours per day and focused on one (1) primary presenting problem, which may include substance use, sexual reactivity, or another problem; and
7. Include the following personnel for the purpose of providing medical care if necessary:
a. An advanced practice registered nurse;
b. A physician assistant or physician available on site; and
c. A board-certified or board-eligible psychiatrist available for consultation;
(s) Residential treatment services for substance use disorders as described in Section 6 of this administrative regulation;
(t) Targeted case management services that shall:
1. Include services to one (1) or more of the following target groups:
a. An adult or a child with substance use disorder;
b. An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;
c. A child with a severe emotional disability; or
d. An adult with severe mental illness;
2. Be provided by a case manager who meets the requirements of 908 KAR 2:260; and
3. Include the following assistance:
a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;
b. Development of a specific care plan that shall be based on information collected during the assessment and revised if needed

upon reassessment:

c. Referral and related activities, which may include:

(i) Scheduling appointments for the client to help the individual obtain needed services; or

(ii) Activities that help link the client with medical, social, educational providers, or other programs and services that address identified needs and achieve goals specified in the care plan;

d. Monitoring, which shall be face-to-face and occur no less than once every three (3) months to determine that:

(i) Services are furnished according to the client's care plan;

(ii) Services in the care plan are adequate; and

(iii) Changes in the needs or status of the client are reflected in the care plan; and

e. Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

(i) Access services;

(ii) Identify needs and supports to assist the client in obtaining services; and

(iii) Identify changes in the client's needs; or

(u) Pregnant women substance use prevention services or substance use case management services.

(6) Quality assurance and utilization review.

(a) The center shall have an on-going, written quality assurance and[a] utilization[and] review program that:

1. Includes effective mechanisms for reviewing and evaluating client care and, if applicable, patient care in order to identify problems or opportunities to improve care;

2. Provides for appropriate responses to findings;

3. Assigns responsibility for monitoring and evaluating client and, if applicable, patient care;

4. Delineates the scope of care provided by the center;

5. Identifies the aspects of care that the center provides;

6. Identifies indicators and appropriate clinical criteria that can be used to monitor these aspects of care;

7. Collects and organizes data for each indicator;

8. Contains written procedures for taking appropriate corrective action;

9. Assesses the effectiveness of the actions taken to correct problems and documents the improvement in care; and

10. Communicates relevant information to other individuals, departments, or services as to the quality assurance program[plan for the evaluation of the service needs of each client].

(b) The need for continuing services[a service element for each individual] shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition[with sufficient frequency] to ensure that proper arrangements have been made for:

1. Discharge;

2. [, for] Transfer;[to other elements of service,] or

3. Referral to another service provider, if appropriate.

(7) Medications.

(a) 1. If a center uses electronic prescribing, the center shall maintain a paper copy of each prescription.

2. If a center does not use electronic prescribing, the center shall document each prescription on a form designated specifically for medications.[A treatment involving medication or chemotherapy shall be administered under the direction of a licensed physician or other qualified practitioner, acting within the scope of his practice, and:

(a) Medication or chemotherapy used in treatment shall be recorded in the staff notes on a special medications chart in the client record;]

(b) Documentation[A copy] of the prescription shall be kept in the client record[;]

(c) Blood or another laboratory test or examination shall be performed in accordance with accepted medical practice.[on each individual receiving medication prescribed or administered by the center;]

(d) Drug supplies shall be stored under proper sanitary, temperature, light, and moisture conditions.[;]

(e) Medication kept by the center shall be properly labeled.[;]

(f) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist

or another person licensed to transfer the medication.[; and]

(g) Medication kept in the center shall be kept in a locked cabinet.

1. A controlled substance shall be kept under double lock (e.g., in a locked box in a locked cabinet).

2. There shall be a controlled substances record, in which is recorded:

a. The name of the patient;

b. The date, time, dosage, balance remaining, and method of administration of each controlled substance;

c. The name of the prescribing physician or other ordering practitioner acting within the limits of his statutory scope of practice; and

d. The name of the nurse who administered it, or staff who supervised the self-administration.

3. Except for medication to be self-administered in a crisis stabilization unit, access to the locked cabinet shall be restricted to a designated medication nurse or other authorized personnel. Medication to be self-administered in a crisis stabilization unit shall be made available to the patient at the time of administration.

Section 6. Residential Treatment Services for Substance Use Disorders. (1) If a center licensed under this administrative regulation provides residential services to clients with a substance use disorder, the center shall obtain separate licensure as a residential alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.

(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a center that provides residential services for substance use disorders shall:

(a) Provide intensive treatment and skills building in a structured and supportive environment;

(b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

(c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;

(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;

(e) Provide services under the medical direction of a physician; and

(f) Provide continuous nursing services in which a registered nurse shall be:

1. On-site during traditional first shift hours, Monday through Friday;

2. Continuously available by phone after hours; and

3. On-site as needed in follow-up to telephone consultation after hours.

Section 7. Primary Care Services. (1) Basic services. The center may provide a variety of preventive, medical diagnostic, laboratory, x-ray, treatment, and therapeutic (physical, occupational, and speech therapy) services by appropriately licensed or certified health professionals to meet the usual physical health care needs of:

(a) The center's clients as described by KRS 210.410(2) to help ensure continuity of care; and

(b) Other individuals seeking primary care services from the center.

(2) Referrals. If a center provides primary care services to its clients, the center shall provide appropriate referrals for clients who require services that are above the level of basic primary care services not provided by the center.

(3) Policies.

(a) Administrative policies. A center that provides primary care services shall have written administrative policies in addition to the requirement established in Section 3(3) of this administrative regulation, including:

1. A description of organizational structure for the delivery of primary care services, which may include therapeutic services, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and

other providers:

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of primary care and therapeutic services directly provided by the center, which may include the provision of services in a home- or community-based setting;

5. A description of the administrative and patient health records and reports; and

6. A policy to specify the provision of emergency medical services.

(b) Patient care policies.

1. Patient care policies shall be developed by the center's medical director required by subsection (4)(b) of this section and other professional staff for all medical aspects of the center's program, including written protocols for standing orders, rules of practice, and medical directives that apply to services provided by the center.

2. The protocols shall be signed by the medical director.

3. A system shall be established to ensure that, if feasible, the patient shall be always cared for by the same health professional or health team, to assure continuity of care.

(c) Patient rights policies. The center shall adopt written policies regarding the rights and responsibilities of patients. These patient rights policies shall assure that each patient shall be:

1. Informed of these rights and of all rules and requirements of 902 KAR Chapter 20 governing patient conduct and responsibilities, including a procedure for allowing the patient to voice a grievance or recommend changes in policies and services. Upon the patient's request, a grievance or recommendation shall be conveyed within a reasonable time to a decision making level within the organization with the authority to take corrective action;

2. Informed of services available at the center;

3. Informed of his or her medical condition, unless medically contraindicated as documented in his or her health record;

4. Afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

5. Encouraged and assisted to understand and exercise his or her patient rights;

6. Assured confidential treatment of his or her records and shall be afforded the opportunity to approve or refuse release of the records to any individual not involved in the patient's care, except as required by applicable law or third-party payment contract; and

7. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.

(4) Personnel.

(a) Primary care provider team. Each center that provides primary care services shall be staffed with at least:

1. One (1) full-time advanced practice registered nurse or physician assistant;

2. One (1) physician who:

a. Except in extraordinary circumstances as documented in the center's records, shall be present no less than once in every two (2) week period to provide medical direction, medical care services, consultation, and supervision; and

b. Shall be available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral. If a center is staffed with a full-time physician who provides medical care services on-site, the requirement for at least one (1) full-time advanced practice registered nurse or physician assistant shall be waived; and

3. Core staff of appropriately licensed or certified health professionals as necessary to carry out services provided.

(b) Medical Director. A medical director responsible for oversight of a center's primary care services shall:

1. Be a licensed physician;

2. Be responsible for all physical health aspects of the center;

3. Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311; and

4. If the medical director responsible for the physical health aspects of the center is not a board certified or board eligible

psychiatrist licensed in Kentucky, coordinate care and treatment decisions with the center's psychiatrist for all primary care services delivered to the center's clients.

(c) Physicians. A physician employed by or under contract with the center to perform services as described in paragraph (a)2 of this subsection shall be:

1. Qualified to practice general medicine, including as a general practitioner, family practitioner, obstetrician – gynecologist, pediatrician, or internist; and

2. A member of the medical staff or hold courtesy staff privileges at one (1) or more hospitals with which the center has a formal transfer agreement.

(d) In-service training.

1. All center personnel who provide primary care services shall participate in ongoing in-service training programs relating to their respective job activities.

2. The training programs shall include:

a. Thorough job orientation for new personnel;

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

c. On-the-job training, if necessary.

(5)(a) The confidentiality and retention of client records shall be maintained in accordance with Section 3(4) of this administrative regulation.

(b) The center shall maintain a health record for each patient. The health record shall include:

1. The patient's medical and social history, including data obtained from other providers;

2. A description of each primary care visit or contact, including the condition or reason necessitating the visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, including the reason for the referral, to whom the patient was referred, and any information obtained from the referral source.

(c) Transfer of records. The center 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, transfer health records or an abstract if requested.

(6) Linkage agreements.

(a) The center shall have linkages through written agreements with providers of other levels of care that may be medically indicated to supplement the services available in the center. These linkages shall include:

1. Hospitals; and

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for:

1. Appropriate referral and acceptance of patients from the center;

2. Appropriate coordination of discharge planning with center staff; and

3. The discharge summary for each patient referred to be requested by the center.

(c) The written transfer agreements shall include designation of responsibility for:

1. Transfer of information;

2. Provision of transportation;

3. Sharing of services, equipment, and personnel;

4. Provision of total care or portions thereof in relation to center and agency capability; and

5. Patient record confidentiality pursuant to all applicable federal and state law.

(d) A linkage agreement shall not be required to transfer health records to any other treating health care facility or provider.

(7) Quality assurance program. The center shall have an ongoing, written quality assurance program established in accordance with Section 5(6)(a) of this administrative regulation.

Section 8[5]. Crisis Stabilization. (1) Emergency services provided in a crisis stabilization unit shall include the following:

- (a) A mental status evaluation and physical health questionnaire of the client upon admission;
- (b) A treatment planning process;
- (c) Procedure for crisis intervention; and
- (d) Discharge and aftercare planning processes.

(2) A program shall have a written policy concerning the operation of a crisis stabilization unit including:

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

- a. Every four (4) clients during normal waking hours; and
- b. Every six (6) clients during normal sleeping hours;

2. Administrative oversight of the program shall be provided by a staff member who shall be:

- a. A person licensed or certified to provide mental health services independent of clinical supervision;
- b. A qualified mental health professional as defined in KRS 202A.011(12); or
- c. A person qualified to be program director under Section 4(1)(b)[3(5)(a)] of this administrative regulation.

3. The center shall provide a training program for direct care staff pertaining to the care of a client in a crisis stabilization unit.

(b) Criteria to assure that each client in a crisis stabilization program shall be:

1. In either one (1) of two (2) separate programs, child or adult, separated by physical location. A children's program may serve a resident up to age twenty-one (21) if it is more developmentally appropriate for that resident;

2. In need of short-term behavior management and at risk of placement in a higher level of care;

3. Able to take care of his own personal needs, if an adult;

4. Medically able to participate in services; and

5. Served in the least restrictive environment available in the community.

(c) Referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the crisis stabilization unit or for problems identified during the admission assessment.

(d) Rights of a crisis stabilization client, to include:

1. A description of the client's rights and the means by which these rights are protected and exercised.

2. At the point of admission, the program shall provide the statement of rights and responsibilities to the:

a. Client; and

b. In addition to the client, client's[his] parents, [if he is a child, his] guardian, or other legal representative if the client is a minor or incapacitated [with a clearly written and readable statement of rights and responsibilities].

3. The statement shall:

a. Be written in language that is understandable;

b. Be read to the client or if the client is a minor, client's[and his] parents, [if he is a child, his] guardian, or other legal representative if requested or if either cannot read; and

c. [shall] Cover the following:

(i)[a.] The right to treatment, regardless of race, religion, or ethnicity;

(ii)[b.] The right to recognition and respect of personal dignity in the provision of all treatment and care;

(iii)[c.] The right to be provided treatment and care in the least restrictive environment possible;

(iv)[d.] The right to an individualized plan of care;

(v)[e.] The right of the client, including the client's [and his] parents or guardian if the client is a minor, [if he is a child, or his legal representative,] to participate in treatment planning;

(vi)[f.] The nature of care, procedures, and treatment provided [that he shall receive];

(vii)[g.] The right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used; and

(viii)[h.] The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the client refuses treatment, to seek appropriate

legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.

4.[3.] The statement of rights and responsibilities [of clients shall be written in language which is understandable to the client, and his parents, if he is a child, his guardian or other legal representative, and] shall be posted in appropriate areas of the facility.

5.[4.] The written policies and procedures [policy and procedure] concerning client [the clients'] rights shall assure and protect the client's [client] personal privacy within the constraints of his or her plan of care, including [These rights to privacy shall include]:

a. Visitation by family or significant others in a suitable area of the facility; and

b. Telephone communications with family or significant others at a reasonable frequency.

6.[5.] If a privacy right is limited, a full explanation shall be given to the client or the client's parent or guardian if the client is a minor [and his parents, if he is a child, or his guardian or other legal representative, shall receive a full explanation]. A limitation to a privacy right shall be documented in the client's record.

7. Information shall be provided to [6.] the client, or the client's parent or guardian if the client is a minor, regarding [and his parents, if he is a child, his guardian, or other legal representative, shall be informed of] the use and disposition of a product of special observation and audio visual techniques, which may include the following [such as]:

a. One (1) way vision mirror;

b. Audio recording;

c. Video tape recording;

d. Television;

e. Movie; or

f. Photograph.

8.a.[7.] Written policy and procedure developed in consultation with professional and direct-care staff shall provide for behavior management of a child client, including the use of a time-out room.

b. [The policy and procedure for use of a time-out room shall be approved by the Department for Mental Health and Mental Retardation.] Behavior management techniques shall be explained fully to each client and the client's parent [his parents], or [his] guardian, or other legal representative if the client is a child or otherwise incapacitated.

9.[8.] The facility shall prohibit cruel and unusual behavioral management measures, including corporal punishment, the use of a seclusion room, and mechanical restraint [as defined in 902 KAR 20:320].

10.[9.] Written policy shall prohibit a client from administering a disciplinary measure upon another client and shall prohibit a person other than professional or direct-care staff from administering a disciplinary measure to a child client.

(e) If therapeutic holds are used [The use of therapeutic holds] as a safe behavioral management technique, the facility shall have a [The] policy that shall describe:

1. Criteria for appropriate use of therapeutic holds;

2. Documentation requirements; and

3. The requirement for completion of a training course approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities [of Mental Health and Mental Retardation,] prior to using therapeutic holds.

(f) The requirement that a licensed psychiatrist shall be available to evaluate, provide treatment and participate in treatment planning on a regular basis.

(g) The procedure for proper management of pharmaceuticals, consistent with the requirements of Section 4(6) of this administrative regulation.

(h) Except for a program accredited by the Joint Commission [for Accreditation of Health Organizations] or the Commission on Accreditation of Rehabilitation Facilities, general procedures that address the following:

1. Procedures to be followed by staff in the event of a medical emergency of a client;

2. Proper nutrition;

3. Emergency preparedness;
4. Security; and
5. School attendance for children.

(3) Facility requirements for a crisis stabilization unit.

(a) A living unit shall be located within a single building and shall include:

1. Bedrooms.
 - a. More than four (4) clients shall not sleep in a bedroom.
 - b. A bedroom shall be equipped with a bed for each client.
 - c. A bed shall:
 - (i) Be at least thirty-six (36) inches wide and at least five (5) feet in length;
 - (ii) ~~and shall~~ Be long and wide enough to accommodate the client's size;
 - (iii) ~~and shall~~ Have a mattress cover, two (2) sheets, a pillow, and bed covering as is required to keep the client comfortable;
 - (iv) ~~and shall~~ Be equipped with a support mechanism and a clean mattress; and
 - (v) ~~and shall~~ Be placed so that a client shall not experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.

(i) Be at least thirty-six (36) inches wide and at least five (5) feet in length;

(ii) ~~and shall~~ Be long and wide enough to accommodate the client's size;

(iii) ~~and shall~~ Have a mattress cover, two (2) sheets, a pillow, and bed covering as is required to keep the client comfortable;

(iv) ~~and shall~~ Be equipped with a support mechanism and a clean mattress; and

(v) ~~and shall~~ Be placed so that a client shall not experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.

d. ~~g.~~ There shall be separate sleeping quarters for males and females.

e. ~~h.~~ A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the licensure agency and the Department of Housing, Buildings and Construction.

2. Bathrooms.

a. For every eight (8) residents, each living unit shall have at least one (1):

(i) Wash basin with hot and cold water;

(ii) ~~one (1)~~ Flush toilet; and

(iii) ~~one (1)~~ Bath or shower with hot and cold water ~~for every eight (8) resident clients~~.

b. If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.

3. Living area.

a. The living area shall provide comfortable seating for all clients housed within the living unit.

b. Each living unit shall be equipped with a:

(i) Working sink; and

(ii) ~~and~~ Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

c. A living unit shall house a maximum of sixteen (16) ~~twelve (12)~~ clients.

Section 9[6]. Facility Specifications. (1) A facility housing a community mental health center or a crisis stabilization unit shall be a general purpose building of safe and substantial construction and shall be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation. The following shall apply if relevant and as adopted by the respective agency authority:

(a) Requirements for fire safety pursuant to 815 KAR 10:060; and

(b) Requirements for making a building or facility accessible to and usable by an individual with disabilities, pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(3) A facility shall be currently approved by the Department of Housing, Buildings and Construction in accordance with 815 KAR 10:060, before relicensure is granted by the licensure agency.

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016, at 9:00 a.m. in Conference Suite

B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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 December 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 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes (phone (502) 564-2888, stephanie.brammer@ky.gov) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for the licensure of community mental health centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for the licensure of community mental health centers which provide behavioral health services to treat, support, and encourage individuals with mental health disorder, substance use disorder, or a co-occurring disorder to achieve and maintain the highest possible level of health and self-sufficiency. This administrative regulation also sets forth standards for community mental health centers which elect to provide primary care services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations that establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements necessary for the operation of community mental health centers.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates 902 KAR 20:091 to set forth standards for community mental health centers which elect to provide primary care services pursuant to KRS 210.410 and KRS 205.6313. This amendment also aligns the list of behavioral health services that may be provided by community mental health centers with the list of Medicaid coverable behavioral health services established by 907 KAR 1:044, Section (4), updates confidentiality requirements for compliance with HIPAA and applicable federal regulations, clarifies the credentials required of a center's executive director, clarifies the background check requirements for center employees, and makes technical changes to help ensure compliance with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update 902 KAR 20:091 for compliance with KRS 210.410 and 205.6313, as well as expand the list of behavioral health services which may be provided in community mental health centers. In addition, this amendment is being filed concurrently with the following Kentucky Medicaid administrative regulations: 907 KAR 1:045E, Reimbursement provisions and requirements regarding community mental health center services, and 907 KAR 1:046E, Community mental health center primary care services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 210.410 and 205.6313 by including standards for community mental health centers which elect to provide primary care services, and conforms to KRS 222.211 which allows community mental health centers to be utilized for the delivery of substance abuse treatment services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by allowing community mental health centers to provide primary care services, which may also include therapeutic services (physical, occupational, and speech therapy).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are fourteen (14) community mental health centers 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: Under this amendment, community mental health centers may provide primary care services and any of the behavioral health services identified in the expanded list of services allowable in community mental health care centers. Additionally, the centers must comply with the background check requirements established via this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Undeterminable; however, community mental health centers may obtain background checks on staff for twenty (20) dollars per check. At least one center is currently securing background checks under the Cabinet's state and FBI fingerprint check program established by 906 KAR 1:190.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Community mental health centers will be able to increase revenue by providing primary care services in addition to behavioral health services. Moreover, this amendment will help increase patient access to primary care services in addition to a wide array of behavioral health services.

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

(a) Initially: There is no additional cost to the Office of Inspector General for implementing this administrative regulation.

(b) On a continuing basis: There is no additional cost to the Office of Inspector General for implementing 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: The source of funding used for the implementation and enforcement of this administrative regulation will be from agency funds and state general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be 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? There are fourteen (14) community mental health centers in the state.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and

Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function. KRS 210.410 requires community mental health centers to provide mental health programs and programs for individuals with an intellectual disability as well as allows the centers to provide primary care services. KRS 222.211(1) allows the cabinet to utilize community mental health centers and other existing facilities and services to assure the provision of prevention, intervention, and treatment services for juveniles and adults to address the problems of tobacco addiction and alcohol and other drug abuse within individuals, families, and communities.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost to the Office of Inspector General for implementing this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to the Office of Inspector General for implementing this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Audits and Investigations (Amendment)

902 KAR 55:015. Schedule I substances.

RELATES TO: KRS 218A.010-218A.050, 21 C.F.R. 1308.11

STATUTORY AUTHORITY: KRS 194A.050, 218A.020, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of the individual citizens of the commonwealth, to operate programs and fulfill the cabinet's responsibilities, or to implement federal law. KRS 218A.250 requires the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 218A. KRS 218A.020 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations in order to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation establishes Schedule I drugs. This administrative regulation differs from the federal regulation, 21 C.F.R. 1308.11, because it designates substances that are substantially similar to synthetic cannabinoids as Schedule I controlled substances.

Section 1. Opiates. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical

designation:

- (1) Alpacetylmethadol (except Levo-alpacetylmethadol LAAM);
- (2) Acetyl-alpha-methylfentanyl, N-1-(1-methyl-2-phenethyl)-4-piperidinyl-N-phenylacetamide;
- (3) Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (4) Alpha-methylthiofentanyl, N-1-methyl-2-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide;
- (5) Benzylfentanyl, N-1-benzyl-4-piperidyl-N-phenylpropanamide;
- (6) Beta-hydroxyfentanyl, N-1-(2-hydroxy-2-phenethyl)-4-piperidinyl-N-phenylpropanamide;
- (7) Beta-hydroxy-3-methylfentanyl, N-1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide;
- (8) Difenoixin;
- (9) 3-Methylfentanyl, N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide;
- (10) 3-methylthiofentanyl N-3-methyl-1-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide;
- (11) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
- (12) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide;
- (13) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);
- (14) Thienylfentanyl, N-1-(2-thienyl) methyl-4-piperidyl-N-phenyl-propanamide;
- (15) Thiofentanyl N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinylpropan-amide;[and]
- (16) Tilidine; and
- (17) U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide).

Section 2. Opium Derivatives. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Drotebanol; and
- (2) Etorphine (except hydrochloride salt).

Section 3. Hallucinogenic Substances. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers if the existence of these salts: isomers, including the optical position and geometric isomers; and salts of isomers is possible within the specific chemical designation:

- (1) alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine,3-(2-aminobutyl)indole);
- (2) 4-bromo-2, 5-dimethoxy-amphetamine (4-bromo-2,5-DMA,4-bromo-2,5-dimethoxy-alpha-methylphenethylamine);
- (3) 2, 5-dimethoxyamphetamine (2,5-DMA);
- (4) 2, 5-dimethoxy-4-ethylamphetamine (DOET);
- (5) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, PCE);
- (6) 3, 4-methylenedioxy-methamphetamine (MDMA);
- (7) 4-methoxyamphetamine (PMA, 4-methoxy-alphamethylphen-ethylamine, paramethoxyamphetamine);
- (8) 3, 4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);
- (9) N-hydroxy-3, 4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-hydroxy MDA);
- (10) Parahexyl (Synhexyl, 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo b,d pyran);
- (11) Pyrrolidine analog of phencyclidine (1-(1-

phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

- (12) Thiophene analog of phencyclidine (1-(1-(2-thienyl)cyclohexyl)piperidine, TCP, TCPy);
- (13) 1-1-(2-thienyl) cyclohexylpyrrolidine (TCPy);
- (14) 2-(2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5H-NBOMe);
- (15) 2-(4-iodo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5I-NBOMe);
- (16) 2-(4-bromo-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5B-NBOMe); and
- (17) 2-(4-chloro-2,5-dimethoxyphenyl)-N-((2-methoxyphenyl)methyl)ethanamine (2,5C-NBOMe).

Section 4. Depressants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone; and
- (2) Methaqualone.

Section 5. Stimulants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Aminorex (aminoxaphen, 2-amino-5-phenyl-2-oxazoline, 4,5-dihydro-5-phenyl-2-oxazolamine);
- (2) Cathinone (2-amino-1-phenyl-1-propanone, alpha-aminopro-piophenone, 2-aminopropiophenone, and norephedrone);
- (3) (±) cis-4-methylaminorex ((±) cis-4,5-dihydro-4methyl-5-phenyl-2-oxazolamine);
- (4) N,N-dimethylamphetamine (N,N-alpha-trimethyl-benzeneetha-namine, N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers;
- (5) N-ethylamphetamine;
- (6) Fenethylamine;
- (7) Methcathinone (2-(methylamino)-propiofenone, alpha (methylamino)-propiofenone, alpha (methylamino)-propiofenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophe-none, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463 and UR1431), its salts, optical isomers and salts of optical isomers;
- (8) Paramethoxymethamphetamine (PMMA); and
- (9) Paramethoxyamphetamine (PMA).

Section 6. Synthetic Cannabinoids. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any substance, compound, mixture, or preparation which contains any quantity of any synthetic cannabinoid and is not an FDA approved drug, including the following:

- (1) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144);
- (2) (1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (XLR-11);
- (3) 1-(5-fluoropentyl)-1H-indazol-3-yl(naphthalen-1-yl)methanone (THJ-2201);
- (4) 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone (THJ-018);
- (5) (1-(5-fluoropentyl)-1H-benzoimidazol-2-yl)(naphthalen-1-yl)methanone (AM2201-benzimidazole analog, FUBIMINA);
- (6) Indole-3-carboxylate esters: Any compound containing a 1H-indole-3-carboxylate ester structure with the ester oxygen bearing a naphthyl, quinolinyl, isoquinolinyl, or adamantyl group and substitution at the one (1) position of the indole ring by an alkyl,

haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not further substituted on the naphthyl, quinoliny, isoquinoliny, adamantyl, or benzyl groups to any extent. Examples of this structural class include PB-22 and 5F-PB-22; and

(7) Indazole-3-carboxamides: Any compound containing a 1H-indazole-3-carboxamide structure with substitution at the nitrogen of the carboxamide by a naphthyl, quinoliny, isoquinoliny, adamantyl, or 1-amino-1-oxoalkan-2-yl group and substitution at the one (1) position of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indazole ring to any extent and whether or not further substituted on the naphthyl, quinoliny, isoquinoliny, adamantyl, 1-amino-oxoalkan-2-yl, or benzyl groups to any extent. Examples of this structural class include AB-FUBINACA and AB-CHMINACA.

Section 7. Control of Substances Scheduled under Federal Law. If a substance not identified in Section 1 through Section 6 of this administrative regulation is temporarily scheduled or designated as a Schedule I controlled substance under the federal Controlled Substances Act, the substance shall be considered to be controlled at the state level as a Schedule I controlled substance.

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 9, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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 December 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 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes (phone (502) 564-2888, stephanie.brammer@ky.gov) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky's list of Schedule I controlled substances.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 218A.020 which authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in the schedules set forth in KRS Chapter 218A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation designates Schedule I controlled substances at the state level.

(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 designating Schedule I controlled substances at the

state level.

(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 designates U-47700 (3,4-dichloro-N-[2-(dimethylamino) cyclohexyl]-N-methyl-benzamide) as a Schedule I controlled substance in Kentucky. This amendment also adds a new Section 7 to clarify that any drug temporarily scheduled or designated at the federal level as a Schedule I controlled substance shall also be considered to be controlled at the state level as a Schedule I controlled substance.

(b) The necessity of the amendment to this administrative regulation: U-47700 is a synthetic opioid that is nearly eight times more potent than morphine. According to the Drug Enforcement Administration, at least 15 confirmed fatalities resulting from the use of U-47700 occurred nationwide in 2015 and 2016. In addition, *U.S. News and World Report* indicated in a June 6, 2016 article entitled "U-47700 Has States on Edge" that at least 50 deaths nationwide have been linked to U-47700. Kentucky's Office of Drug Control Policy reports that U-47700 is responsible for at least one overdose death in the state. By filing this administrative regulation as an emergency and identical ordinary regulation, Kentucky joins other states, including Florida, Virginia, Ohio, Georgia, and Wyoming, in making U-47700 illegal at the state level due to the drug's significant risk to public health. This amendment is further necessary to align Kentucky's Schedule I controlled substances with the federal schedule.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 218A.040 authorizes the Cabinet for Health and Family Services to place a substance in Schedule I if the Cabinet finds that the substance has high potential for abuse, has no accepted medical use in treatment in the United States, or lacks accepted safety for use in treatment under medical supervision. U-47700 is a synthetic opioid that has been found to meet this criteria and has further been linked to fatal overdoses. Therefore, this amendment conforms to the content of KRS 218A.040.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by designating U-47700 as a Schedule I controlled substance in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact state and local law enforcement agencies and the Department of Corrections.

(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: Kentucky's state and local law enforcement agencies will be able to charge individuals found to be in possession of, or trafficking in the synthetic opioid U-47700 or any other new drug placed into Schedule I by the DEA.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will impact the Department of Corrections (DOC) due to costs associated with incarceration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This action is necessary to stop the spread of U-47700 and avoid an imminent hazard to public safety.

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

(a) Initially: The Cabinet will not incur additional costs to implement the changes made by this amendment. However, there may be additional incarcerations related to the changes made by this administrative regulation. The expense of housing inmates may vary widely by jail. Each additional inmate will increase facility costs by an estimated average of \$31.34 per day.

(b) On a continuing basis: The Cabinet will not incur additional costs on a continuing basis to implement the changes made by this amendment. However, there may be additional incarcerations related to the changes made by this administrative regulation. The expense of housing inmates may vary widely by jail. Each additional inmate will increase facility costs by an estimated average of \$31.34 per day.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local governments will expend funds to arrest, prosecute, and incarcerate convicted defendants for trafficking or possessing U-47700 or any new drug placed into Schedule I by the DEA. However, this administrative regulation will accomplish a ban on U-47700 immediately before it gains a foothold in Kentucky. U-47700 is responsible for at least one fatal overdose in the state. Although the DEA has confirmed at least 15 fatalities resulting from the use of U-47700 nationwide in 2015 and 2016, *U.S. News and World Report* indicated in a June 6, 2016 article entitled "U-47700 Has States on Edge" that at least 50 deaths nationwide have been linked to U-47700.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

(c) How much will it cost to administer this program for the first year? There may be additional incarcerations related to the changes made by this administrative regulation. While the expense of housing inmates may vary widely by jail, each additional inmate will increase facility costs by an estimated average of \$31.34 per day.

(d) How much will it cost to administer this program for subsequent years? There may be additional incarcerations related to the changes made by this administrative regulation. While the expense of housing inmates may vary widely by jail, each additional inmate will increase facility costs by an estimated average of \$31.34 per day.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

21 C.F.R. Section 1308.11 establishes the federal listing of Schedule I controlled substances.

2. State compliance standards. KRS 218A.020 authorizes the Cabinet for Health and Family Services to add, delete, or reschedule substances enumerated in the schedules set forth in KRS Chapter 218A.

3. Minimum or uniform standards contained in the federal mandate. The federal schedules of controlled substances are established in 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? On September 7, 2016, the DEA issued a Notice of Intent to temporarily schedule the synthetic opioid, 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700), into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. The action was based on a finding by the DEA that the placement of U-47700 into schedule I of the Controlled Substances Act was necessary to avoid an imminent hazard to the public safety. A final order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to schedule I controlled substances under the Controlled Substances Act on the manufacture, distribution, possession, importation, exportation, research, and conduct of, instructional activities of this synthetic opioid. The DEA's announcement may be downloaded from the following link: https://www.dea diversion.usdoj.gov/fed_regs/rules/2016/fr0907.htm This administrative regulation does not impose a more stringent standard than the federal mandate as the DEA's temporary placement of U-47700 into Schedule I has the effect of making this drug illegal at the federal level.

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

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

907 KAR 1:045. Reimbursement provisions and requirements regarding community mental health center services.

RELATES TO: KRS 205.520(3), 210.370

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, 42 C.F.R. 447.325, 42 U.S.C. 1396a-d

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. This administrative regulation establishes the reimbursement provisions and requirements regarding community mental health center services provided to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. Definitions. (1) "Community board for mental health or individuals with an intellectual disability" means a board established pursuant to KRS 210.380.

(2) "Community mental health center" or "CMHC" means a facility that[which] meets the community mental health center requirements established in 902 KAR 20:091.

(3) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(4)[(2)] "Department" means the Department for Medicaid Services or its designee.

(5)[(3)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(6)[(4)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(7) "Federal indirect rate" means the rate approved by the United States Department for Health and Human Services (HHS) for grantee institutions to be used to calculate indirect costs as a percentage of direct costs.

(8) "Federal Register" means the official journal of the United States federal government that publishes government agency rules and public notices.

(9) "Healthcare Common Procedure Coding System code" means a billing code:

(a) Recognized by Medicare; and

(b) Monitored by the Centers for Medicare and Medicaid Services.

(10) "Injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not excluded as a non-covered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(11) "Interim reimbursement" means a reimbursement:

(a) In effect for a temporary period of time; and

(b) That does not represent final reimbursement for services provided during the period of time.

(12)[(5)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(13) "Medicaid allowable costs" means the costs:

(a) Associated with the Medicaid-covered services covered pursuant to 907 KAR 1:046 and 907 KAR 1:044;

1. Rendered to recipients who are not enrollees; and

2. Not rendered as a 1915(c) home and community based waiver services provider; and

(b) Determined to be allowable costs by the department.

(14) "Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association that:

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many specialties.

(15) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16) "Medicare Economic Index" means a measure of inflation:

(a) Associated with the costs of physicians' practices; and

(b) Published in the Federal Register.

(17) "Outreach services" means provider programs:

(a) Specifically designed to:

1. Engage recipients for the purposes of supporting Medicaid or Children's Health Insurance Program (CHIP) enrollment efforts;

2. Assist recipients with finding healthcare or coverage options; and

3. Promote preventive services for recipients; and

(b) That are directly assigned or allocated to a cost report line that is not cost settled by the department.

(18) "Payment plan request" means a request to pay an amount owed to the department over a period of time approved by the department.

(19) "Primary care services" means services covered as established in 907 KAR 1:046.

(20)[(6)] "Provider" is defined by KRS 205.8451(7).

(21) "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

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

(23) "State fiscal year" means the period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year.

Section 2. General Reimbursement Provisions. (1) The department shall reimburse a participating in-state community mental health center under this administrative regulation for services:

(a) If the services are:

1. Covered pursuant to:

a. 907 KAR 1:044; or

b. 907 KAR 1:046;

2. Not provided by the CMHC acting as a 1915(c) home and community based waiver services provider, as those services are reimbursed based on the home and community based waiver;

3. Provided to recipients who are not enrolled with a managed care organization; and

4. Medically necessary; and

(b) Based on the community mental health center's Medicaid allowable costs.

(2) The department's reimbursement shall include reimbursing:

(a) On an interim basis during the course of a cost report period; and

(b) A final reimbursement for the state fiscal year that results from a reconciliation of the interim reimbursement amount paid to the CMHC compared to the CMHC's Medicaid allowable cost by cost center for the state fiscal year.

Section 3. Interim Reimbursement for Primary Care Services and Injectable Drugs.

(1) The department's interim reimbursement to a CMHC for primary care services shall depend upon the type of primary care service.

(2)(a)1. The department's interim reimbursement for physician services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Physician Fee Schedule for the given service.

2. If no reimbursement for a given physician service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

(b)1. The department's interim reimbursement for laboratory services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Laboratory Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule for the given service.

2. If no reimbursement for a given laboratory service exists on the current Kentucky-specific Medicare Laboratory Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

(c)1. The department's interim reimbursement for radiological services shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the service exists on the current Kentucky-specific Medicare Physician Fee Schedule for the given service.

2. If no reimbursement for a given radiological service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for services pursuant to 907 KAR 3:010.

(d)1. The department's interim reimbursement for occupational therapy service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee

Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

2. If no reimbursement for a given occupational therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

(e)1. The department's interim reimbursement for physical therapy service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

2. If no reimbursement for a given physical therapy service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

(f)1. The department's interim reimbursement for speech-language pathology service shall be the reimbursement established for the service on the current Kentucky-specific Medicare Physician Fee Schedule unless no reimbursement for the given service exists on the current Kentucky-specific Medicare Physician Fee Schedule.

2. If no reimbursement for a given speech-language pathology service exists on the current Kentucky-specific Medicare Physician Fee Schedule, the department shall reimburse on an interim basis for the service as it reimburses for the service pursuant to 907 KAR 8:045.

(3) The department's interim reimbursement for the cost of injectable drugs administered in a CMHC shall be the reimbursement methodology established in 907 KAR 3:010 for injectable drugs.

Section 4. Interim Reimbursement for Behavioral Health Services through June 30, 2018. (1)(a) To establish interim rates for behavioral health services effective for dates of service through June 30, 2018, the department shall use the CMHC rates paid effective July 1, 2015.

(b) To establish interim rates for behavioral health services effective for dates of service July 1, 2018, and each subsequent July 1, the department shall use a CMHC's most recently submitted cost report that meets the requirements established in paragraph (c) of this subsection.

(c) The cost report shall comply with all requirements established in Section 5(1) of this administrative regulation.

(2) The department shall:

(a) Review the cost report referenced in subsection (1) of this section; and

(b) Establish interim rates for Medicaid-covered behavioral health services:

1. To be effective July 1, 2018;

2. Based on Medicaid allowable costs as determined by the department through its review;

3. Intended to result in a reimbursement for Medicaid-covered behavioral health services:

a. Provided to recipients who are not enrollees; and

b. That equals the department's estimate of behavioral health services' costs for the CMHC for the period; and

4. That shall be updated effective July 1, 2019, and each July 1 thereafter, based on the most recently received cost report referenced in subsection (1) of this section.

(3) Interim rates for behavioral health services effective July 1 each calendar year shall have been trended and indexed from the midpoint of the cost report period to the midpoint of the rate year using the Medicare Economic Index.

(4) To illustrate the timeline referenced in subsection (2)(b) of this section, a cost report submitted by a CMHC to the department on December 31, 2017, shall be used by the department to establish behavioral health services' interim rates effective July 1, 2018.

(5)(a) A behavioral health services interim rate shall not be subject to retroactive adjustment except as specified in this section.

(b) The department shall adjust a behavioral health services interim rate during the state fiscal year if the rate that was established appears likely to result in a substantial cost settlement that could be avoided by adjusting the rate.

(c)1. If the cost report from a CMHC has not been audited or desk-reviewed by the department prior to establishing interim rates for the next state fiscal year, the department shall use the cost report under the condition that interim rates shall be subject to adjustment as established in subparagraph 2. of this paragraph.

2. A behavioral health services interim rate based on a cost report that has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

3. An unaudited cost report shall be subject to an adjustment to the audited amount after the auditing has occurred.

(d) Upon receipt of the cost report filed December 31, 2017, the department shall review the cost report to determine if the interim rates established in accordance with subsection (1)(a) of this section need to be revised to more closely reflect the costs of services for the interim period.

Section 5. Final Reimbursement Beginning with the State Fiscal Year that Begins July 1, 2018. (1)(a) For the state fiscal year spanning July 1, 2017, through June 30, 2018, and for subsequent state fiscal years, by December 31 following the end of the state fiscal year, a CMHC shall submit a cost report to the department:

1. In a format that has been approved by the Centers for Medicare and Medicaid Services;

2. That has been audited by an independent auditing entity; and

3. That states all of the:

a. CMHC's Medicaid allowable direct costs for:

(i) Medicaid-covered services rendered to eligible recipients during the cost report period; and

(ii) Medicaid-covered injectable drugs rendered to eligible recipients during the cost report period;

b. CMHC's costs associated with:

(i) Medicaid-covered services rendered to enrollees during the cost report period; and

(ii) Medicaid-covered injectable drugs rendered to enrollees during the cost report period;

c. Costs of the community board for mental health or individuals with an intellectual disability under which the CMHC operates for the cost report period; and

d. CMHC's costs associated with services rendered to individuals:

(i) That were reimbursed by an insurer or party other than the department or a managed care organization; and

(ii) During the cost report period.

(b) To illustrate the timeline referenced in paragraph (a) of this subsection, an independently audited cost report stating costs associated with services and injectable drugs provided during the state fiscal year spanning July 1, 2017, through June 30, 2018, shall be submitted to the department by December 31, 2018.

(2) By October 1 following the department's receipt of a CMHC's completed cost report submitted to the department by the prior December 31, the department shall:

(a) Review the cost report referenced in subsection (1) of this section; and

(b) Compare the Medicaid allowable costs to the department's interim reimbursement for Medicaid-covered services and injectable drugs rendered during the same state fiscal year.

(3)(a) After the department compares a CMHC's interim reimbursement with the CMHC's Medicaid allowable costs for the period, if the department determines that the interim reimbursement:

1. Was less than the CMHC's Medicaid allowable costs for the period, the department shall send a payment to the CMHC equal to the difference between the CMHC's total interim reimbursement and the CMHC's Medicaid allowable costs; or

2. Exceeded the CMHC's Medicaid allowable costs for the period, the:

a. Department shall send written notification to the CMHC requesting the amount of the overpayment; and

b. CMHC shall, within thirty (30) days of receiving the department's written notice, send a:

(i) Payment to the department equal to the excessive amount; or

(ii) Payment plan request to the department.

(b) A CMHC shall not implement a payment plan unless the department has approved the payment plan in writing.

(c) If a CMHC fails to comply with the requirements established in paragraph (a)2 of this subsection, the department shall:

1. Suspend payment to the CMHC; and
2. Recoup the amount owed by the CMHC to the department.

Section 6. Final Reimbursement for the Cost Report Period Spanning November 1, 2016, through June 30, 2017. The provisions established in Section 5 of this administrative regulation shall apply to final reimbursement for the period beginning November 1, 2016, through June 30, 2017, except that the cost report period shall begin November 1, 2016, and end June 30, 2017.

Section 7. New Services. (1) Reimbursement regarding a projection of the cost of a new Medicaid-covered service or expansion shall be made on a prospective basis in that the costs of the new service or expansion shall be considered when actually incurred as an allowable cost.

(2)(a) A CMHC may request an adjustment to an interim rate after reaching the mid-year point of the new service or expansion.

(b) An adjustment shall be based on actual costs incurred.

Section 8. Auditing and Accounting Records. (1)(a) The department shall perform a desk review of each cost report to determine whether an audit is necessary and, if so, the scope of the audit.

(b) If the department determines that an audit is not necessary, the cost report shall be settled without an audit.

(c) A desk review or audit shall be used to verify costs to be used in setting the interim behavioral health services rate, to adjust interim behavioral health services rates that have been set based on unaudited data, or for final settlement to cost.

(2)(a) A CMHC shall maintain and make available any records and data necessary to justify and document:

1. Costs to the CMHC;
2. Services provided by the CMHC;
3. The cost of injectable drugs provided, if any, by the CMHC;
4. Cost allocations utilized including overhead statistics and supportive documentation;
5. Any amount reported on the cost report; and
6. Chart of accounts.

(b) The department shall have unlimited on-site access to all of a CMHC's fiscal and service records for the purpose of:

1. Accounting;
2. Auditing;
3. Medical review;
4. Utilization control; or
5. Program planning.

(3) A CMHC shall maintain an acceptable accounting system to account for the:

- (a) Cost of total services provided;
- (b) Charges for total services rendered; and
- (c) Charges for covered services rendered to eligible recipients.

(4) An overpayment discovered as a result of an audit or desk review shall be settled through recoupment or withholding.

Section 9. Allowable and Non-allowable Costs. (1) The following shall be allowable costs:

(a) Services' or drugs' costs associated with the services or drugs;

(b) Depreciation as follows:

1. A straight line method shall be used;
2. The edition of the American Hospital Association's useful life guidelines currently used by the Centers for Medicare and Medicaid Services' Medicare program shall be used;

3. The maximum amount for expensing an item in a single cost report shall be \$5,000; and

4. Only the depreciation of assets actually being used to provide services shall be recognized;

(c) Interest costs;

(d) Costs incurred for research purposes, which shall be allowable to the extent that they are related to usual patient services and are not covered by separate research funding;

(e) Costs of motor vehicles used by management personnel up to \$25,000;

(f) Costs for training or educational purposes for licensed professional staff outside of Kentucky excluding transportation costs to travel to the training or education;

(g) Costs associated with any necessary legal expense incurred in the normal administration of the CMHC;

(h) The cost of administrative staff salaries, which shall be limited to the average salary for the given position as established for the geographic area on www.salary.com;

(i) The cost of practitioner salaries, which shall be limited to the median salary for the southern region as reported in the Medical Group Management Association (MGMA) Physician Compensation and Production Survey Report, if available.

1. A per visit amount using MGMA median visits shall be utilized.

2. The most recently available MGMA publication that relates to the cost report period shall be used;

(j) Indirect costs, which shall be:

1. Calculated utilizing the approved federal indirect rate, if the provider has an approved federal indirect rate.

a. A provider shall include in indirect costs on line 1 of the cost report the same category of costs identified as indirect within the approved federal indirect rate supporting documentation.

b. Direct costs shall be those costs identified as direct within the approved federal indirect rate.

c. The Federal indirect rate shall be applied to the same category of expenses identified as direct during the Federal rate determination; or

2. If the provider does not have a federal indirect rate, those costs of an organization that are not specifically identified with a particular project, service, program, or activity but nevertheless are necessary to the general operation of the organization and the conduct of the activities it performs. The actual allowable cost of indirect services as reported on the cost report shall be allocated to direct cost centers based on accumulated cost if a Federal indirect rate is not available; and

(k) Services provided in leased or donated space outside the walls of the facility.

(2) To be allowable, costs shall comply with reasonable cost principles established in 42 C.F.R. 413.

(3) The allowable cost for a service or good purchased by a facility from a related organization shall be in accordance with 42 C.F.R. 413.17.

(4)(a) The following shall not be allowable costs:

1. Bad debt;
2. Charity;
3. Courtesy allowances;
4. Political contributions;

5. Costs associated with an unsuccessful lawsuit against the department or the Cabinet for Health and Family Services;

6. Costs associated with any legal expense incurred related to a judgment granted as a result of an unlawful activity or pursuit;

7. The value of services provided by non-paid workers;

8. Travel or related costs or expenses associated with non-licensed staff attending;

a. A convention;

b. A meeting;

c. An assembly; or

d. A conference;

9. Costs related to lobbying;

10. Costs related to outreach services; or

11. Costs incurred for transporting recipients to services.

(b) Outreach services' costs shall either be directly assigned or allocated to a cost report line that is not cost-settled by the

department.

(5) A discount or other allowance received regarding the purchase of a good or service shall be deducted from the cost of the good or service for cost reporting purposes, including in-kind donations.

(6)(a) Maximum allowable costs shall be the maximum amount that may be allowed as reasonable cost for the provision of a service or drug.

(b) To be considered allowable, a cost shall:

1. Be necessary and appropriate for providing services; and
2. Not exceed usual and customary charges.

(7) For direct and indirect personnel costs, 100 percent time reporting methods shall be utilized to group/report expenses to each cost category. Detailed documentation shall be available upon request

[as established in this subsection.

(a) The payment rate that was in effect on June 30, 2002, for the community mental health center for community mental health center services shall remain in effect and there shall be no cost settling.

(b) Allowable costs shall not:

1. Exceed customary charges which are reasonable; or
2. Include:

a. The costs associated with political contributions;

b. Travel or related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities);

c. The costs of motor vehicles used by management personnel which exceed \$20,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel); or

d. Legal fees for unsuccessful lawsuits against the cabinet.

(c) Costs (excluding transportation costs) for training or educational purposes outside the state shall be allowable costs.

(2) To be reimbursable, a service shall:

- (a) Meet the requirements of 907 KAR 1:044, Section 4(2); and
- (b) Be medically necessary].

Section 10. Units of Service[3. Implementation of Payment System]. (1) Interim[(a)] payments for behavioral health services, physician services, physical therapy services, occupational therapy services, speech-language pathology services, laboratory services, or radiological services shall be based on units of service.

(2) A unit for a behavioral health service, a physician service, a physical therapy service, a speech-language pathology service, an occupational therapy service, a laboratory service, or radiological service shall be the amount indicated for the corresponding:

1. CPT code; or

2. Healthcare Common Procedure Coding System code

[(b) One (1) unit for each service shall be defined as follows:

Service	Unit of Service
Individual Outpatient Therapy	15 minutes
Group Outpatient Therapy	15 minutes
Family Outpatient Therapy	15 minutes
Collateral Outpatient Therapy	15 minutes
Psychological Testing	15 minutes
Therapeutic Rehabilitation	15 minutes
Medication Prescribing and Monitoring	15 minutes
Physical Examinations	15 minutes
Screening	15 minutes
Assessment	15 minutes
Crisis Intervention	15 minutes
Service Planning	15 minutes
Screening, Brief Intervention, and Referral to Treatment	15 minutes
Mobile Crisis Services	1 hour
Assertive Community Treatment	Per Diem
Intensive Outpatient Program Services	Per Diem
Residential Crisis Stabilization Services	Per Diem
Residential Services for Substance Use Disorders	Per Diem

Partial Hospitalization	Per Diem
Day Treatment	1 hour
Comprehensive Community Support Services	15 minutes
Peer Support Services	15 minutes

(2) An initial unit of service which lasts less than fifteen (15) minutes may be billed as one (1) unit.

(3) Except for an initial unit of a service, a service that is:

(a) Less than one-half (1/2) of one (1) unit shall be rounded down; or

(b) Equal to or greater than one-half (1/2) of one (1) unit shall be rounded up.

(4) An individual provider shall not exceed four (4) units of service in one (1) hour.

(5) An overpayment discovered as a result of an audit shall be settled through recoupment or withholding.

(6) A community mental health center shall maintain an acceptable accounting system to account for the:

(a) Cost of total services provided;

(b) Charges for total services rendered; and

(c) Charges for covered services rendered eligible recipients.

(7) A community mental health center shall make available to the department all recipient records and fiscal records:

(a) At the end of each fiscal reporting period;

(b) Upon request by the department; and

(c) Subject to reasonable prior notice by the department.

(8) Payments due a community mental health center shall be made at least once a month.

Section 4. Nonallowable Costs. The department shall not reimburse:

(1) Under the provisions of this administrative regulation for a service that is not covered by 907 KAR 1:044; or

(2) For a community mental health center's costs found unreasonable or nonallowable in accordance with the Community Mental Health Center Reimbursement Manual].

Section 11[5]. Reimbursement of Out-of-state Providers. Reimbursement to a participating out-of-state community mental health center shall be the lesser of the:

(1) Charges for the service;

(2) Facility's rate as set by the state Medicaid Program in the other state; or

(3) The state-wide average of payments for in-state community mental health centers[Upper limit for that type of service in effect for Kentucky providers].

Section 12[6]. Appeal Rights. A community mental health center may appeal a Department for Medicaid Services decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 13[7]. Not Applicable to Managed Care Organization. A managed care organization shall not be required to reimburse for community mental health center services in accordance with this administrative regulation.

Section 14[8]. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor,

275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing December 14, 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 December 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

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov); phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding community mental health center services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding community mental health center services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assist in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding community mental health center services.

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

(a) How the amendment will change this existing administrative regulation: The amendment introduces a new cost-based reimbursement methodology and establishes reimbursement for primary care services (in concert with a companion administrative regulation – 907 KAR 1:046, Coverage provisions and requirements regarding community mental health center primary care service services.) Via the cost-based model, the Department for Medicaid Services (DMS) will ultimately reimburse for all services (behavioral health as well as primary care services) rendered during a given year based on Medicaid allowable costs after a thorough review of cost data reported by each CMHC to determine such costs for each CMHC. As a given CMHC's costs for a year is reported after the year concludes and DMS must review the cost data before determining the CMHC's total Medicaid allowable costs for the year, DMS reimburses each CMHC on an interim basis during the course of the year. After completing the review and determination of a CMHC's Medicaid allowable costs for a year, DMS will compare its interim reimbursement paid to the CMHC during the course of the year to the CMHC's actual Medicaid allowable costs for the year. If DMS's interim reimbursement to the CMHC exceeded the CMHC's Medicaid allowable costs, the CMHC will send the overpayment amount to DMS. If DMS's interim reimbursement was less than the CMHC's Medicaid allowable costs for the year, DMS will issue a lump sum payment to the CMHC equaling the amount owed. DMS's interim reimbursement for behavioral health services will initially be the reimbursement it currently pays CMHCs for behavioral health services, but after the first full twelve-month cost report has been

audited and approved (and going forward) interim behavioral health reimbursement will be rates based on the most recently audited and approved cost report. DMS's interim reimbursement for physician services, laboratory services, and radiological services will be the reimbursement stated on the Kentucky-specific Medicare Physician Fee Schedule for the given service. If no reimbursement exists on the fee schedule for a given service, DMS will reimburse (again, on an interim basis) for the service in the manner that it reimburses for physician's services pursuant to 907 KAR 3:010, Reimbursement for physician's services. DMS's interim reimbursement for occupational therapy, physical therapy, and speech-language pathology services will be the reimbursement stated on the Kentucky-specific Medicare Physician Fee Schedule for the given service. If no reimbursement exists on the fee schedule for a given service, DMS will reimburse (again, on an interim basis) for the service in the manner that it reimburses for physician's services pursuant to 907 KAR 3:010, Reimbursement for physician's services. DMS's interim reimbursement for the cost of injectable drugs administered in a CMHC will be DMS's reimbursement for such pursuant to its physician's services reimbursement administrative regulation (907 KAR 3:010). The reimbursement established in this administrative regulation only applies to services rendered to Medicaid "fee-for-service" recipients. These are Medicaid recipients who are not enrolled with a managed care organization. Managed care organizations are not required to reimburse for CMHC services in accordance with this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment establishing a new cost-based reimbursement methodology results from a mandate from the Centers for Medicare and Medicaid Services (CMS). DMS's reimbursement of primary care services is necessary to comply with legislation (HB 527) enacted during the 2014 Regular Session of the General Assembly which was codified into KRS 205.6313.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by revising Medicaid reimbursement for community mental health centers in a manner that complies with a federal mandate and with a state mandate.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by revising Medicaid reimbursement for community mental health centers in a manner that complies with a federal mandate and with a state mandate.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Community mental health centers will be affected by the administrative regulation. There are centers located across Kentucky under the governance of fourteen regional boards.

(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. In order to be reimbursed by the Department for Medicaid Services CMHCs will have to annually submit cost report information to DMS stating all of the CMHCs Medicaid allowable costs, costs associated with care provided to recipients who are enrolled with a managed care organization, costs experienced by the Community Board for Mental Health or Individuals with an Intellectual Disability which oversees the CMHC; and costs associated with services covered by another payor/party. As mandated by the Centers for Medicare and Medicaid Services (CMS) the Medicaid "fee-for-service" costs of the CMHC must be clearly demarcated from the board's costs as well as the costs associated with care to recipients enrolled in an MCO.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). CMHCs will experience administrative costs

associated with tracking and reporting costs data (including employing or contracting with personnel capable of accurately tracking and reporting the data).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). CMHCs will benefit by receiving a cost-based reimbursement from DMS for services to Medicaid recipient who are not enrolled with a managed care organization.

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

(a) Initially: Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action. DMS does not anticipate a substantial change in costs associated with implementing the new cost-based reimbursement methodology mandated by CMS, but won't know the full impact until after receiving cost reports from CMHCs in the future. DMS spent an aggregate (state and federal funds combined) of \$9.67 million on CMHC services during the state fiscal year that ended June 30, 2015.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6313 mandates that the Medicaid Program pay community mental health centers for primary service services at the same rates it pays primary care providers for such services.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the primary care provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313.

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

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

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

(c) How much will it cost to administer this program for the first year? Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action. DMS does not anticipate a substantial change in costs associated with implementing the new cost-based reimbursement methodology mandated by CMS, but won't know the full impact until after receiving cost reports from CMHCs in the future. DMS spent an aggregate (state and federal funds combined) of \$9.67 million on CMHC services during the state fiscal year that ended June 30, 2015.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Commissioner's Office (Amendment)

907 KAR 4:020. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

RELATES TO: KRS 205.510-205.647[205.645], 205.6481-205.6497, 42 C.F.R. 432, 433, 435, 436, 457, 42 U.S.C. 1397aa-jj

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3) 205.6485, 42 U.S.C. 1397aa-jj[-EQ-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY:[EQ-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] KRS 194A.030(2) requires the Cabinet for Health and Family Services, Department for Medicaid Services, to administer Title XIX of the Federal Social Security Act, 42 U.S.C. 1396 to 1396v. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to

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qualify for the receipt of federal funds. KRS 205.6485 authorizes the cabinet to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP eligibility criteria, covered services, application requirements, grievance and appeal rights for recipients, and the requirements for providers who wish to participate with the Commonwealth to provide health care coverage to KCHIP members through an expansion of the Title XIX Medicaid Program.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.

(2) "Child" means an individual under the age of nineteen (19) years.

(3) "Creditable coverage" is defined in KRS 304.17A-005(8)(7)(a)1-3 and 5-10.

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

(5) "Excepted benefits" is defined in KRS 304.17A-005(14)(11).

(6) "Health insurance" is defined in KRS 304.5-040.

(7) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP if the child:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is an alien who meets the requirement established in 907 KAR 20:005;

(c) Meets the technical[and income] requirements of 907 KAR 20:005;

(d) 1:011, Section 2(3)(h) and meets the following requirements:

4.] Provides to the department the information required in Section 4 of this administrative regulation;

(e) 2.] Meets the continuing eligibility requirements[requirement] established in 907 KAR 20:010, Section 2[1:605, Section 3];

(f) 3.] Meets the relative responsibility requirements established in [of] 907 KAR 20:040[1:660];

(g) [and 4.] Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100; and

(h) [- or (b)] Is an optional targeted low-income child as defined in 42 U.S.C. 1397j(b) who[and meets the following requirements]:

1. Has family income that[which] does not exceed 159[450] percent of the federal poverty guidelines[;] updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2); and

2. Does not have creditable coverage and[but] may be covered by excepted benefits.

(2) Eligibility for KCHIP shall be determined by the department. Upon receipt of eligibility information defined in subsection (1) of this section, the department shall determine if a child is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397aa to jj.

Section 3. Covered Services. (1) Health services shall be considered medically necessary in accordance with:

(a) 907 KAR 3:130; and

(b) 42 C.F.R. 440.230.

(2) Amount and duration of benefits covered by KCHIP shall be as established in Title 907 KAR[Chapters 1 and 3].

(3) A medical service shall be covered through KCHIP Phase II if an individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(4) Preventive and remedial public health services shall be provided to KCHIP Phase II members in accordance with 907 KAR 1:360.

(5) KCHIP Phase II shall be the payor of last resort.

Section 4. KCHIP Application Requirements. The following

information shall be required from a child or responsible party for KCHIP enrollment:

(1) A child's demographics that[which] shall include:

(a) Name;

(b) [-] Address;

(c) [-] Sex;

(d) [-] Date of birth;

(e) [-] Race; [-] and

(f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a child for whom information is being submitted;

(3) [-] An employer type and address, if any; [- and]

(4) Frequency of income;

(5) [(3)] Name and address of a health insurance provider who:

(a) currently provides creditable coverage; [- or

(b) Provided creditable coverage during the six (6) months prior to the date the information in this section is submitted to the department];

(6) [(4)] Creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(7) [(5)] Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(8) [(6)] Name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(9) [(7)] Signature, date, and telephone number of a person submitting the information for a child.

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP shall meet the requirements of:

(1) 907 KAR 1:671; and

(2) [-] 907 KAR 1:672; and if a KenPAC provider, 907 KAR 1:329].

Section 6. Grievance, Hearing, and Appeal Rights. (1) If dissatisfied with an action taken by the department as to the application of Sections 1 through 5 of this administrative regulation, a child, the child's parent, or the child's guardian shall be entitled to a grievance, hearing, or appeal with the department, to be conducted in accordance with:

(a) 907 KAR 1:560, if pertaining to initial eligibility; [-] or

(b) 907 KAR 1:563, if pertaining to a covered service.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a child, the child's parent, or the child's guardian shall be in accordance with:

(a) KRS 211.461 through 211.466; and

(b) 907 KAR 17:010[907-KAR-1:563].

(3) A KCHIP Phase II [-] eligible child or a responsible party shall be informed [-] in writing [-] of the right[his rights] to and procedures for due process by the cabinet:

(a) At the time[When] information to obtain KCHIP Phase II approval is submitted;

(b) If there is a change in eligibility status; or

(c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following[-] on a continuing basis:

(1) [-] Access to services;

(2) [-] Continuity of care;

(3) [-] Health outcomes; [-] and

(4) Services arranged or provided as established in 907 KAR Chapter 17[1:705].

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 9, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor,

275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing December 14, 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 December 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

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov); phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Children's Health Insurance Program (KCHIP) eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights. KCHIP offers health care coverage to children whose parents' income exceeds the income thresholds for the Medicaid Program but is under 159 percent of the federal poverty level.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the KCHIP eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the eligibility requirement of not having had creditable coverage within six (6) months of applying for KCHIP coverage - essentially having to wait six (6) months before being KCHIP eligible - and contains various drafting and formatting revisions.

(b) The necessity of the amendment to this administrative regulation: Removing the six (6) month waiting requirement is necessary to enhance children's access to health care via KCHIP and avoid a scenario where a child ends up needing health care during the six (6) month window. Drafting and formatting revisions are necessary to comply with current KRS Chapter 13A standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by enhancing children's access to health care via KCHIP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by enhancing children's access to health care via KCHIP.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects individuals eligible for KCHIP coverage (children with family

income below 150 percent of the federal poverty level). Currently, over 54,000 children receive health care coverage through KCHIP.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children eligible for KCHIP coverage will benefit from not having to wait six (6) months to qualify for coverage.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional cost as a result of the amendment.

(b) On a continuing basis: DMS anticipates no additional cost as a result of the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 457.805

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. A state's waiting period for eligibility cannot exceed ninety (90) days.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter or additional requirements, but rather removes the waiting period currently established in administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 457.805.

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? Local government owned Medicaid providers could experience minimal (indeterminable) revenue as a result of children being eligible for KCHIP coverage sooner.

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no additional cost in the first year as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional cost in subsequent years as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(Amendment)

907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

RELATES TO: KRS 205.6481 – 205.6497 [Chapter 45A, 205.510-205.645], 42 U.S.C. 1397aa

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1397aa; EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Kentucky Children's Health Insurance Program.] KRS 205.6485 authorizes the cabinet, by administrative regulations, to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated health care services to children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, grievance and appeal rights, and the requirements for delivery of health services for providers who wish to participate with the Commonwealth to provide health care coverage for KCHIP Phase III members through the provision of a separate health insurance program under Title XXI.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services or its designee.

(2) "Child" means an individual under the age of nineteen (19) years.

(3) "Creditable coverage" is defined in KRS 304.17A-005(8)(a)(i)-(a)(iii) and 5-10.

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

(5) "Excepted benefits" is defined in KRS 304.17A-005(14).

(6) "Health insurance" is defined in KRS 304.5-040.

(7) "KCHIP" means the Kentucky Children's Health Insurance Program in accordance with 42 U.S.C. 1397aa through 42 U.S.C. 1397jj.

Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP Phase III if the child:

(a) Is a resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403;

(b) Is an alien who meets the requirements established in 907 KAR 20:005; 1:014(5)(12)(a);

(c) Is not an inmate of a public institution or a patient in an institution for mental diseases [disorders];

(d) Is not eligible for Medicaid pursuant to 907 KAR 20:005 or 907 KAR 20:100 [1:014]; and

(e) Is a targeted low-income child as defined in 42 U.S.C. 1397jj(b) who:

1. Has family income that [which] does not exceed 213 [200] percent of the federal poverty guidelines[,] updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2);

2. Does not have creditable coverage and may be covered by excepted benefits;

3. ~~Did not have creditable coverage within six (6) months prior to applying for KCHIP, unless the coverage was terminated for other than voluntary reasons or the coverage was Medicaid;~~

4. ~~Provides to the department the information required in Section 4(4) of this administrative regulation;~~

4. ~~Meets the continuing eligibility requirements established in 907 KAR 20:010, Section 2~~ [1:605, Section 3]; and

5. ~~Meets the relative responsibility requirements established in~~ [907 KAR 20:040] [1:660].

(2)(a) Eligibility for KCHIP Phase III shall be determined by the department.

(b) Upon receipt of the eligibility information listed [defined] in subsection (1) of this section, the department shall determine if a child is eligible for benefits pursuant to 42 U.S.C. 1396 or 1397bb.

Section 3. Covered Services. (1) Health services shall be considered as medically necessary in accordance with [if services are]:

(a) 907 KAR 3:130 [Reasonable and necessary to diagnose and provide preventive, palliative, curative, or restorative treatment for physical or mental conditions];

(b) ~~In accordance with professionally recognized standards of health care generally accepted at the time services are provided;~~ and

(b) ~~[(c) In accordance with] 42 C.F.R. 440.230.~~

(2) Covered services shall exclude:

(a) EPSDT special services as defined in 907 KAR 11:034 [1:034], Section 7;

(b) Human service transportation delivery as defined in 603 KAR 7:080; and

(c) Locally authorized medical transportation as defined in 907 KAR 1:060, Section 4.

(3) The amount and duration of benefits covered by KCHIP Phase III shall be as established in Title 907 KAR [Chapters 4 and 3] excluding the services identified in subsection (2) of this section.

(4) A medical service shall be covered through KCHIP Phase III if the individual is determined eligible for KCHIP benefits in accordance with Section 2 of this administrative regulation.

(5) Preventive and remedial public health services shall be provided to KCHIP Phase III members in accordance with 907 KAR 1:360.

(6) KCHIP Phase III shall be the payor of last resort.

Section 4. KCHIP Phase III Approval Process. The following information shall be required from a child or responsible party for KCHIP Phase III enrollment:

(1) A child's demographics that [which] shall include:

(a) Name;

(b) ~~[-]~~ Address;

(c) ~~[-]~~ Sex;

- (d)[.] Date of birth;
- (e)[.] Race[.] and
- (f) Social Security number;

(2) Monthly gross earned income, if any, of a parent and a child for whom information is being submitted, an employer type and address, if any, and frequency of income;

(3) The name and address of a health insurance provider who currently provides creditable coverage;~~[or who provided creditable coverage during the six (6) months prior to the date the information in this section is submitted to the department;]~~

(4) The creditable coverage policy number, policy holder's name, Social Security number, and individuals covered by the plan;

(5) Unearned income, if any, received weekly, biweekly, bimonthly, quarterly, or annually;

(6) The name and age of a child or disabled adult for whom care is purchased in order for a parent or responsible person to work; and

(7) The signature, date, and telephone number of the person submitting the information for a child.

Section 5. Provider Participation Requirements. A provider's enrollment, disclosure, and documentation for participation in KCHIP Phase III shall meet the requirements established in:

- (1)[of] 907 KAR 1:671; and
- (2)[.] 907 KAR 1:672[.] and 907 KAR 1:320[.]

Section 6. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with an action taken by the cabinet, the child, the child's[his] parent, or the child's guardian shall be entitled to a complaint, grievance, or appeal with the cabinet[.] to be conducted in accordance with:

- (a) 907 KAR 1:560; or
- (b) 907 KAR 1:563.

(2) If a service is provided by a managed care organization, a dispute resolution between a provider and a child, the child's[his] parent, or the child's guardian shall be in accordance with:

- (a) KRS 211.461 through 211.466; and
- (b) 907 KAR 17:010[907 KAR 1:563].

(3) A KCHIP Phase III[.] eligible child or a responsible party shall be informed[.] in writing[.] of the right[his rights] to and procedures for due process by the cabinet:

- (a) At the time information to obtain KCHIP Phase III approval is submitted;
- (b) If there is a change in eligibility status; or
- (c) As required by federal and state laws.

Section 7. Quality Assurance and Utilization Review. The department shall evaluate the following[.] on a continuing basis:

- (1)[.] Access to services;
- (2)[.] Continuity of care;
- (3)[.] Health outcomes[.] and
- (4) Services arranged or provided as established in 907 KAR Chapter 17[1:705].

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: November 9, 2016
FILED WITH LRC: November 15, 2016 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing December 14, 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 December 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

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Children's Health Insurance Program (KCHIP) Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights. The KCHIP Phase III program offers health care coverage to children whose parents' income exceeds the income thresholds for the Medicaid Program but is under 213 percent of the federal poverty level.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the KCHIP Phase III eligibility criteria, quality assurance and utilization review, covered services, the approval process, and grievance and appeal rights.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the eligibility requirement of not having had creditable coverage within six (6) months of applying for KCHIP Phase III coverage - essentially having to wait six (6) months before being KCHIP Phase III eligible - and contains various drafting and formatting revisions.

(b) The necessity of the amendment to this administrative regulation: Removing the six (6) month waiting requirement is necessary to enhance children's access to health care via the KCHIP Phase III program and avoid a scenario where a child ends up needing health care during the six (6) month window. Drafting and formatting revisions are necessary to comply with current KRS Chapter 13A standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by enhancing children's access to health care via the KCHIP Phase III program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by enhancing children's access to health care via the KCHIP Phase III program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects individuals eligible for KCHIP Phase III coverage (children with family income below 200 percent of the federal poverty level). Currently, over 28,000 children receive health care coverage through the KCHIP Phase III Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children eligible for KCHIP Phase III coverage will benefit from not having to wait six (6) months to qualify for health care coverage.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional cost as a result of the amendment.

(b) On a continuing basis: DMS anticipates no additional cost as a result of the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 457.805

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. A state's waiting period for eligibility cannot exceed ninety (90) days.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter or additional requirements, but rather removes the waiting period currently established in administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 457.805.

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? Local government owned Medicaid providers could experience minimal (indeterminable) revenue as a result of children being eligible for KCHIP Phase III coverage sooner.

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no additional cost in the first year as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional cost in subsequent years as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(Amendment)

907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: KRS 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 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 15.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.

(2) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(3)[(2)] "Approved behavioral health services provider" means a practitioner who[provider that] is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i)[(h)] A licensed professional clinical counselor;

(j)[(i)] A licensed marriage and family therapist;

(k)[(j)] A licensed psychological associate working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

(l) A certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

(m)[(k)] A marriage and family therapy associate working under the supervision of a billing supervisor;

(n)[(l)] A certified social worker working under the supervision of a billing supervisor;

(o)[(m)] A licensed professional counselor associate working under the supervision of a billing supervisor;

(p)[(n)] A licensed professional art therapist;[or]
 (q)[(e)] A licensed professional art therapist associate working under the supervision of a billing supervisor;
 (r) A licensed clinical alcohol and drug counselor;
 (s) A licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or
 (t) A certified alcohol and drug counselor working under the supervision of a billing supervisor.
 (4)[(3)] "Behavioral health multi-specialty group[practitioner]" means a group of more than one (1) individually licensed behavioral health practitioners of varying practitioner types who form a business entity to:
 (a) Render health services; and
 (b) Bill the Medicaid Program for services rendered to Medicaid recipients[An approved behavioral health services provider; or
 (b) A certified alcohol and drug counselor].
 (5)[(4)] "Behavioral health practitioner under supervision" means an individual who is:
 (a) 1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist who is a billing supervisor;
 2. A licensed professional counselor associate;
 3. A licensed clinical alcohol and drug counselor associate;
 4. A certified social worker;
 5.[4.] A marriage and family therapy associate;
 6.[5.] A licensed professional art therapist associate;
 7.[6.] A licensed assistant behavior analyst;
 8.[7.] A physician assistant;[or]
 9. A certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;
 or
 10.[8.] A certified alcohol and drug counselor; and
 (b) Employed by or under contract with the same billing provider as the billing supervisor.
 (6) "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:
 (a) Render health services; and
 (b) Bill the Medicaid Program for services rendered to Medicaid recipients.
 (7)[(5)] "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to 902 KAR 20:430.
 (8)[(6)] "Billing provider" means the individual who, group of individual providers that, or organization that:
 (a) Is authorized to bill the department or a managed care organization for a service; and
 (b) Is eligible to be reimbursed by the department or a managed care organization for a service.
 (9)[(7)] "Billing supervisor" means an individual who is:
 (a) 1. A physician;
 2. A psychiatrist;
 3. An advanced practice registered nurse;
 4. A licensed clinical alcohol and drug counselor;
 5. A licensed psychologist;
 6.[5.] A licensed clinical social worker;
 7.[6.] A licensed professional clinical counselor;
 8.[7.] A licensed psychological practitioner;
 9. A certified psychologist with autonomous functioning;
 10.[8.] A licensed marriage and family therapist;
 11.[9.] A licensed professional art therapist; or
 12.[10.] A licensed behavior analyst; and
 (b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.
 (8) "Certified alcohol and drug counselor" is defined by KRS 309.080(2)[means an individual who meets the requirements established in KRS 309.083].
 (10) "Certified prevention specialist" means an individual who is currently certified as a certified prevention specialist by the Kentucky Certification Board for Prevention Professionals.
 (11) "Certified psychologist" means an individual who is a

certified psychologist pursuant to KRS 319.056.
 (12) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.
 (13)[(9)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.
 (14) "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 10:160.
 (15)[(10)] "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.
 (16)[(11)] "Department" means the Department for Medicaid Services or its designee.
 (17)[(12)] "Electronic signature" is defined by KRS 369.102(8).
 (18)[(13)] "Enrollee" means a recipient who is enrolled with a managed care organization.
 (19)[(14)] "Face-to-face" means occurring:
 (a) In person; or
 (b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication.
 (20)[(15)] "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.
 (21)[(16)] "Federal financial participation" is defined by 42 C.F.R. 400.203.
 (22)[(17)] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.
 (23) "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.
 (24) "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.
 (25)[(18)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).
 (26)[(19)] "Licensed behavior analyst" is defined by KRS 319C.010(6).
 (27) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).
 (28) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).
 (29)[(20)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.
 (30)[(21)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).
 (31)[(22)] "Licensed professional art therapist" is defined by KRS 309.130(2).
 (32)[(23)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).
 (33)[(24)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).
 (34)[(25)] "Licensed professional counselor associate" is defined by KRS 335.500(4).
 (35)[(26)] "Licensed psychological associate" means an individual who:
 (a) 1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and
 2. Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or
 (b) Is a certified psychologist.
 (36)[(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].
 (37)[(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.

~~(38) [(29)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by [in] 42 C.F.R. 438.2.~~

~~(39) [(30)] "Marriage and family therapy associate" is defined by KRS 335.300(3).~~

~~(40) "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.~~

~~(41) [(31)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.~~

~~(42) [(32)] "Peer support specialist" means an individual who meets the peer specialist qualifications established in 908 KAR 2:220.~~

~~(33)] "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.~~

~~(43) [(34)] "Physician" is defined by KRS 205.510(11).~~

~~(44) [(35)] "Physician assistant" is defined by KRS 311.840(3).~~

~~(45) [(36)] "Provider" is defined by KRS 205.8451(7).~~

~~(46) [(37)] "Provider abuse" is defined by KRS 205.8451(8).~~

~~(47) "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.~~

~~(48) [(38)] "Provider group" means a group of more than one (1) individually licensed practitioners who form a business entity to:~~

~~(a) Render health services; and~~

~~(b) Bill the Medicaid Program for services rendered to Medicaid recipients.~~

~~(39)] "Recipient" is defined by KRS 205.8451(9).~~

~~(49) [(40)] "Recipient abuse" is defined by KRS 205.8451(10).~~

~~(50) "Recipient's representative" means:~~

~~(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or~~

~~(b) A legal guardian.~~

~~(51) "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).~~

~~(52) [(41)] "Registered nurse" is defined by KRS 314.011(5).~~

~~(53) [(42)] "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.~~

~~(54) [(43)] "Section 504 plan" means a plan developed:~~

~~(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and~~

~~(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.~~

~~(55) [(44)] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.~~

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing December 14, 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 December 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

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services (treatment of mental health disorders as well as of substance use disorders) provided by independently enrolled behavioral health professionals, behavioral health service organizations, behavioral health provider groups, behavioral health multi-specialty groups, chemical dependency treatment centers, and residential crisis stabilization units. Medicaid programs are federally-mandated to cover behavioral health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in 907 KAR Chapter 15.

(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 adds the following definitions: "certified psychologist", "certified psychologist with autonomous functioning", "chemical dependency treatment center", "Level I psychiatric residential treatment facility", "Level II psychiatric residential treatment facility", "licensed assistant behavior analyst", "licensed behavior analyst, licensed clinical alcohol and drug counselor", "licensed clinical and alcohol and drug counselor associate", "psychiatric hospital", and "recipient's representative". The amendment also adds "certified psychologist with autonomous functioning", "licensed professional clinical counselor", "certified psychologist", "licensed clinical alcohol and drug counselor", "licensed clinical alcohol and drug counselor associate" and "certified alcohol and drug counselor" to the definition of "an approved behavioral health service provider." Further, the amendment adds "certified psychologist with autonomous functioning" to the list of "billing supervisors". Finally, the amendment revises the definitions of "licensed psychological practitioner" and "peer support specialist".

(b) The necessity of the amendment to this administrative regulation: Inserting the new definitions is necessary to update terminology used in recently promulgated administrative regulations subsequent to the adoption of 907 KAR 15:005. The amendments are also necessary to comport with legislation that created two new licensed practitioners - "licensed clinical alcohol drug counselors" and "licensed clinical alcohol drug counselor associates".

(c) How the amendment conforms to the content of the authorizing statutes: The amendments will conform to the content of the authorizing statutes by defining terms utilized in Medicaid program behavioral health administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by defining terms utilized in behavioral health administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following Medicaid-enrolled providers will be affected by this administrative regulation: individual Medicaid- behavioral health providers, behavioral health provider groups and multi-specialty groups, behavioral health services organizations, chemical dependency treatment centers, and residential crisis stabilization units. There are currently over 2,200 such individuals or entities enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required by this administrative regulation as it only contains definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to terms being defined.

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

(a) Initially: No cost is necessary to initially implement this administrative regulation.

(b) On a continuing basis: No continuing cost is necessary to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Medicaid independent behavioral health services (including substance use disorder services) and reimbursement.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? None.

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

(c) How much will it cost to administer this program for the first year? No cost is necessary to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(Amendment)

907 KAR 15:010. Coverage provisions and requirements regarding behavioral health services provided by individual behavioral health[independent] providers, behavioral health provider groups, and behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program, [or] practitioners working for or under the supervision of the individual behavioral health[independent] providers, individual behavioral health professionals, and practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall[be]:

(a) Be medically necessary;

(b) Meet the coverage requirements established in Section 3 of this administrative regulation;

(c) Be provided to a recipient by:

1. An individual behavioral health provider who:

a. Is enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

b. Except as established in Section 2(1) of this administrative regulation, currently participates in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

c. Is:

(i) A physician;

(ii) A psychiatrist;

(iii) An advanced practice registered nurse;

(iv) A physician assistant;

(v) A licensed psychologist;

(vi) A licensed psychological practitioner;

(vii) A certified psychologist with autonomous functioning;

(viii) A licensed clinical social worker;

(ix) A licensed professional clinical counselor;

(x) A licensed marriage and family therapist;
 (xi) A licensed professional art therapist; or
 (xii) A licensed clinical alcohol and drug counselor;
 2. Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is working for:
 a. A behavioral health provider group that is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or
 b. A behavioral health multi-specialty group that is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
 3. A behavioral health practitioner under supervision working for:
 a. An individual behavioral health professional listed in subparagraph 1.c. of this paragraph who is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
 b. A behavioral health provider group that is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or
 c. A behavioral health multi-specialty group that is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
 4. A certified psychologist working under the supervision of a board-approved licensed psychologist who is:
 a. (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
 b. Working for a behavioral health provider group that is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or
 c. Working for a behavioral health multi-specialty group that is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
 5. An adult peer support specialist, family peer support specialist, youth peer support specialist, or registered alcohol and drug peer support specialist working for:
 a. Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
 b. A behavioral health provider group that is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. A behavioral health multi-specialty group that is:
 (i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
 (ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671[(b) Provided:
 1. To a recipient; and
 2. By a:
 a. Provider who meets the provider participation requirements established in Section 2 of this administrative regulation; or
 b. Practitioner working under the supervision of a provider who meets the provider participation requirements established in Section 2 of this administrative regulation]; and
 (d) Be[(e)] billed to the department by the;
 1. Individual[Billing] provider who provided the service or under whose supervision the service was rendered[provided by an authorized practitioner] in accordance with Section 3 of this administrative regulation;
 2. Behavioral health provider group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation; or
 3. Behavioral health multi-specialty group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation.
 (2)(a) Face-to-face[Direct] contact between a provider or practitioner and a recipient shall be required for each service except for:
 1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;
 2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;
 3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which corresponding current procedural terminology code establishes that the recipient is not present; or
 4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present[a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care].
 (b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.
 (3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.
 (4) A service shall be:
 (a) Stated in a recipient's[treatment] plan of care; and
 (b) Provided in accordance with a recipient's[treatment] plan of care[-]; and
 (c) Provided on a regularly scheduled basis except for a screening, assessment, or crisis intervention].
 (5) A provider shall establish a plan of care for each recipient receiving services from the provider.

Section 2. Provider Participation. (1)[To be eligible to provide services under this administrative regulation, a provider shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

(2) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2) [(3)] A provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

Section 3. Covered Services. (1) Except as specified in the

requirements stated for a given service, the services covered may be provided for a:

- (a) Mental health disorder;
- (b) Substance use disorder; or
- (c) Co-occurring mental health and substance use disorders.

(2) The following services shall be covered under this administrative regulation in accordance with the [corresponding following] requirements established in this section of this administrative regulation:

(a) A screening provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A certified psychologist with autonomous functioning;
10. A licensed clinical and alcohol drug counselor; or
11. A behavioral health practitioner under supervision except

for a licensed assistant behavior analyst [licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist; or

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];

(b) An assessment provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A certified psychologist with autonomous functioning [licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];

10. A licensed [professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;

16. A licensed behavior analyst;

11. [or 17.] A licensed clinical alcohol and drug counselor; or

12. A behavioral health practitioner under [licensed assistant behavior analyst working under the] supervision [of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service];

(c) Psychological testing provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner; [or]
3. A licensed psychological associate working under the supervision of a board-approved licensed psychologist who is a [if the licensed psychologist is the] billing supervisor [provider for the service];

4. A certified psychologist with autonomous functioning; or

5. A certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

(d) [Crisis intervention provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist; or

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;

(e) Service planning provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A certified psychologist with autonomous functioning;
10. A licensed [psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist;

~~11. [15- A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

~~16-] A licensed behavior analyst; or~~

~~12. A behavioral health practitioner [17- A licensed assistant behavior analyst working] under [the] supervision except for a:~~

~~a. Certified alcohol and drug counselor; or~~

~~b. Licensed clinical alcohol and drug counselor associate [of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service];~~

~~(e) [(f)] Individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A certified psychologist with autonomous functioning [licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];~~

~~10. A licensed [professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];~~

~~11- A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12- A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13- A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14- A licensed] professional art therapist;~~

~~11. [15-] A licensed [professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

~~16- A licensed] behavior analyst;~~

~~12. A licensed clinical alcohol and drug counselor; or~~

~~13. A behavioral health practitioner [17- A licensed assistant behavior analyst working] under [the] supervision [of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service];~~

~~(f) [(g)] Family outpatient therapy provided by:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A certified psychologist with autonomous functioning [licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];~~

~~10. A licensed professional [counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];~~

~~11- A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12- A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the~~

~~service;~~

~~13- A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14- A licensed professional] art therapist; or~~

~~11. [or 15-] A behavioral health practitioner [licensed professional art therapist associate working] under [the] supervision except for a licensed assistant behavior analyst [of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];~~

~~(g) [(h)] Group outpatient therapy provided by:~~

~~1- A licensed psychologist;~~

~~2- A licensed professional clinical counselor;~~

~~3- A licensed clinical social worker;~~

~~4- A licensed marriage and family therapist;~~

~~5- A physician;~~

~~6- A psychiatrist;~~

~~7- An advanced practice registered nurse;~~

~~8- A licensed psychological practitioner;~~

~~9- A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10- A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11- A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12- A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13- A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14- A licensed professional art therapist;~~

~~15- A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

~~16- A licensed behavior analyst; or~~

~~17- A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service;~~

~~(i) Collateral outpatient therapy provided by:~~

~~1- A licensed psychologist;~~

~~2- A licensed professional clinical counselor;~~

~~3- A licensed clinical social worker;~~

~~4- A licensed marriage and family therapist;~~

~~5- A physician;~~

~~6- A psychiatrist;~~

~~7- An advanced practice registered nurse;~~

~~8- A licensed psychological practitioner;~~

~~9- A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10- A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11- A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12- A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13- A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14- A licensed professional art therapist;~~

~~15- A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;~~

16. A licensed behavior analyst; or
 17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service;
 (j) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A licensed psychological practitioner;
 9. A certified psychologist with autonomous functioning[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];
 10. A licensed professional[counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;
 14. A licensed professional art therapist;
 11. A licensed clinical alcohol and drug counselor; or
 12. A behavioral health practitioner[or 15. A licensed professional art therapist associate working] under[the] supervision except for[of] a licensed assistant behavior analyst[licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];
 (h)[(k)] Day treatment provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A licensed psychological practitioner;
 9. A certified psychologist with autonomous functioning[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];
 10. A licensed professional[counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;
 14. A licensed professional art therapist;
 11. A licensed behavior analyst;
 12. A behavioral health practitioner[or
 15. A licensed professional art therapist associate working] under[the] supervision[of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];
 13. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the

supervision of an approved behavioral health services provider; or
 14. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider; or
 (i)[(h)] Comprehensive community support services provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A licensed psychological practitioner;
 9. A certified psychologist with autonomous functioning[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];
 10. A licensed professional[counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;
 14. A licensed professional art therapist;
 11.[15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];
 16.] A licensed behavior analyst;
 12.[or
 17.] A behavioral health practitioner[licensed assistant behavior analyst working] under[the] supervision except for[of] a:
 a. Certified alcohol and drug counselor[licensed behavior analyst if the licensed behavior analyst is the billing provider for the service]; or
 b. Licensed clinical alcohol and drug counselor associate; or
 13. A community support associate;
 (j)[(m)] Peer support, except as established in subsection (3)(a) of this section, provided by:
 1. An adult[A] peer support specialist working under the supervision of an approved behavioral health service provider;[or]
 2. A youth peer support specialist working under the supervision of an approved behavioral health service provider;
 3. A family peer support specialist working under the supervision of an approved behavioral health services provider; or
 4. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider;
 (k)[(n)] Parent or family peer support provided by a family peer support specialist working under the supervision of an approved behavioral health service provider;
 (e)] Intensive outpatient program services, except as established in subsection (3)(b) of this section, provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A licensed psychological practitioner;
 9.[A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];
 10. A licensed professional counselor associate working under

the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13.] A behavioral health practitioner[physician assistant working] under[the] supervision[of a physician if the physician is the billing provider for the service]; or

10.[14.] A licensed professional art therapist;[or

12. A licensed professional art therapist associate;] or

(1)[(p)] Therapeutic rehabilitation program services provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A certified psychologist with autonomous functioning[licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service];

10. A licensed professional[counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service

14. A licensed professional] art therapist;

11.[or

15.] A behavioral health practitioner[licensed professional art therapist associate working] under[the] supervision except for[of] a:

a. Certified alcohol and drug counselor;

b. Licensed clinical alcohol and drug counselor associate; or

c. Licensed assistant behavior analyst; or

12. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider[licensed professional art therapist if the licensed professional art therapist is the billing provider for the service].

(3)(a) Peer support shall only be covered if provided by a behavioral health:

1. Provider group; or

2. Multi-specialty group.

(b) Intensive outpatient program services shall only be covered if provided by a behavioral health:

1. Provider group; or

2. Multi-specialty group.

(4)(a) A screening shall:

1. Determine[Be the determination of] the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder; and

3. Establish the need for an in-depth assessment.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall:

1. Include:

a.[1.] A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b.[2.] Interpretation and a written report of testing results; and

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a. On-site at the provider's office;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient;

4. May include:

a. Further service prevention planning including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy; and

5. Shall be followed by a referral to noncrisis services if applicable.

(e) 1. Service planning shall[involve]:

a. Involve assisting a recipient in creating an individualized plan for services needed for maximum reduction of a mental health disorder[an intellectual disability];[and]

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the recipient;[and]

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being[wellbeing] of the recipient[individual]; and[or]

b. Recipient's recovery from a substance related disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified[treatment] plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

(g)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the recipient[individual]; and[or]

(ii) Recipient's recovery from a substance use disorder, mental health disorder, or co-occurring related disorders; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per individual unless additional time is medically necessary.

(h)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and well-being[wellbeing] of the recipient[individual]; and[or]

(ii) Recipient's recovery from a substance related disorder, mental health disorder, or co-occurring mental health and substance use disorders;

c.~~[b.]~~ Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified~~[treatment]~~ plan of care;

d.~~[e.]~~ Be provided to a recipient in a group setting:

(i) Of unrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f.~~[d.]~~ Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g.~~[e.]~~ Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h.~~[f.]~~ Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(i)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's~~[treatment]~~ plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age~~[-and]~~

c. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(j) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an

individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

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

b. Engaging a recipient~~[.]~~ who demonstrates risky substance use behavior~~[.]~~ in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to~~[-]~~:

(i) Therapy; or

(ii) Other additional mental health disorder, substance use disorder, or co-occurring disorders services~~[to address substance use]~~ if the recipient is determined to need other additional services to address the recipient's substance use.

(k) 1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. A mental health disorder~~[An emotional disability or neurobiological or]~~ substance use disorder, or co-occurring mental health and substance use disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment~~[services]~~ shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services~~(substance use disorder, mental health, or co-occurring mental health and substance use disorder)~~;

b.~~[Have unified policies and procedures that:~~

(i) ~~Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and~~

(ii) ~~Have been approved by the recipient's local education authority and the day treatment provider;~~

c.~~]~~ Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills[skill] training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c.~~[d.]~~ Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individual educational plan if the recipient has an individual educational plan;

(iv) Under the supervision of an approved behavioral health services provider; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a provider shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(l)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training~~[, cueing, or supervision]~~ as identified in the recipient's~~[treatment]~~ plan of care; and

c. Consist of using a variety of psychiatric rehabilitation techniques to[include]:

(i) Improve~~[Reminding a recipient to take medications and monitoring symptoms and side effects of medications;~~

- (ii) Teaching parenting skills;
- (iii) Teaching community resource access and utilization;
- (iv) Teaching emotional regulation skills;
- (ii) Improve[(v) Teaching] crisis coping skills;
- (iii) Develop and enhance[(vi) Teaching how to shop;
- (vii) Teaching about transportation;
- (viii) Teaching financial management;
- (ix) Developing and enhancing interpersonal skills;
- (iv) Improve[or
- (x) Improving] daily living skills; and
- (v) Improve self-monitoring of symptoms and side effects.

2. To provide comprehensive community support services, a provider shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services in accordance with subsection (2)(i)(2)(m)) of this section and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

(m)1. Peer support services shall:

a. Be[~~social and~~] emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220[is employed by a provider group] and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders[disorder] to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders[disorder] in order to bring about a desired social or personal change;

(ii) A parent who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(iii) A family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change; or

(iv) A registered alcohol and drug peer support specialist who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d.[~~Be provided by a self-identified consumer who has been trained and certified in accordance with 908 KAR 2:220 or 908 KAR 2:240;~~

e.] Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;[and]

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's[treatment] plan of care; and

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services a provider shall:

a. Have demonstrated;

(i) The capacity to provide[the core elements of] peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ;

(i) Adult peer support specialists, family peer support specialists, or youth peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; or

(ii) Registered alcohol and drug peer support specialists; and

c. Use an approved behavioral health services provider to supervise adult peer support specialists, family peer support specialists, or youth peer support specialists.

(n)1. [Parent or family peer support services shall:

a. ~~Be emotional support that is provided by a parent or family member, who is employed by a provider group, of a child who has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder to a parent or family member with a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;~~

b. ~~Be an evidence-based practice;~~

c. ~~Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;~~

d. ~~Be provided by a self-identified parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services who has been trained and certified in accordance with 908 KAR 2:230;~~

e. ~~Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and~~

f. ~~Be identified in each recipient's treatment plan.~~

2. To provide parent or family peer support services a provider shall:

a. ~~Have demonstrated the capacity to provide the core elements of parent or family peer support services for the behavioral health population being served including the age range of the population being served;~~

b. ~~Employ family peer support specialists who are qualified to provide family peer support services in accordance with 908 KAR 2:230; and~~

c. ~~Use an approved behavioral health services provider to supervise family peer support specialists.~~

(o)1.] Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health or substance use disorder;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy;

(ii) Group outpatient therapy;

(iii) Family outpatient therapy unless contraindicated;

(iv) Crisis intervention; or

(v) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a provider shall:

a. Be employed by a provider group; and

b. Have:

(i) Access to a board-certified or board-eligible psychiatrist for consultation;

(ii) Access to a psychiatrist, other physician, or advanced practice registered nurse for medication management;

(iii) Adequate staffing to ensure a minimum recipient-to-staff ratio of fifteen (15) recipients to one (1) staff person;

(iv) The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(v) The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

(vi) The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

(vii) Demonstrated experience in serving individuals with behavioral health disorders;

(viii) The administrative capacity to ensure quality of services;

(ix) A financial management system that provides documentation of services and costs; and

(x) The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of ten (10) to one (1).

~~(o) 1.1.(p) 1.-A] Therapeutic rehabilitation program services shall be:~~

a. A rehabilitative service for an:

(i) Adult with a ~~severe~~[serious] mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a ~~severe~~[serious] emotional disability; and

b. Designed to maximize the reduction of ~~a mental health disorder~~[an intellectual disability] and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the ~~[person-centered service]~~ plan of care.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping ~~skills~~[skill]; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

~~[(4)(a) The following requirements shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health disorder and substance use disorder:~~

~~1. The licensing requirements established in 908 KAR 1:370;~~

~~2. The physical plant requirements established in 908 KAR 1:370;~~

~~3. The organization and administration requirements established in 908 KAR 1:370;~~

~~4. The personnel policy requirements established in 908 KAR 1:370;~~

~~5. The quality assurance requirements established in 908 KAR 1:370;~~

~~6. The clinical staff requirements established in 908 KAR 1:370;~~

~~7. The program operational requirements established in 908 KAR 1:370; and~~

~~8. The outpatient program requirements established in 908 KAR 1:370.~~

~~(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.]~~

(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinic impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

~~[(8)(a) The term "billing provider" used in this administrative~~

regulation shall include:

- ~~1. The individual provider that is referenced; or~~
- ~~2. A provider group that includes the individual provider that is referenced.~~
- ~~(b) As an example of paragraph (a) of this subsection, a licensed psychologist who is a billing provider shall include:~~
 - ~~1. The licensed psychologist as an individual provider; or~~
 - ~~2. A provider group of licensed psychologists that includes the licensed psychologist.~~
- ~~(c) The services established in this administrative regulation shall be provided by a provider enrolled in the Medicaid Program as:~~
 - ~~1. An individual provider; or~~
 - ~~2. A provider group.]~~

Section 4. Additional Limits and Noncovered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

- (a) A service provided to:
1. A resident of:
 - a. A nursing facility; or
 - b. An intermediate care facility for individuals with an intellectual disability;
 2. An inmate of a federal, local, or state:
 - a. Jail;
 - b. Detention center; or
 - c. Prison;
 3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;
- (b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the ~~[independent]~~ provider;
- (c) A consultation or educational service provided to a recipient or to others;
- (d) Collateral therapy for an individual aged twenty-one (21) years or older;
- (e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";
- (f) Travel time;
- (g) A field trip;
- (h) A recreational activity;
- (i) A social activity; or
- (j) A physical exercise activity group.
- (2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except regarding collateral outpatient therapy as specified in Section 3(4)(i)[3(3)(k)] of this administrative regulation.
- (b) A third party contract shall not be covered under this administrative regulation.
- (3)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.
- (b) The requirement established in paragraph (a) of this subsection shall not apply to:
1. Crisis intervention;
 2. A screening; or
 3. An assessment.
- (4) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.
- (5) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:
- (a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or
 - (b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an individual~~[independent]~~ behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization~~[local health department]~~.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) An individual~~[A]~~ provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain a current health record for each recipient.

(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of~~[on]~~ the date that the individual provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance information;

f. If applicable, the referral source's name~~[source]~~ and ~~address~~~~[of referral source]~~;

g. Primary care physician's name~~[physician]~~ and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis; and

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name~~[provider]~~;

k. The name of the informant and any other information deemed necessary by the~~[independent]~~ provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board, if applicable;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment;

c. Disposition if a disposition was performed; and

d. Six (6) month review of a recipient's~~[treatment]~~ plan of care each time a six (6) month review occurs;~~[and]~~

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished upon request to the:

a. Cabinet for Health and Family Services~~[upon request]~~; or

b. For an enrollee, managed care organization in which the recipient is enrolled or has been~~[upon request if the recipient is] enrolled in the past~~~~[with a managed care organization]~~;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable~~[the recipient is enrolled with a managed care organization]~~;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient

received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health practitioner's~~[provider's]~~ notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Behavioral health practitioner's~~[Therapist's]~~ intervention;

c. Changes in the~~[treatment]~~ plan of care if changes are made; and

d. Need for continued treatment if deemed necessary~~[continued treatment is needed]~~.

(b)1. Any edit to notes shall:

a. Clearly display the changes;

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days of each service visit.

2. If services are provided by a behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervision professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the behavioral health practitioner who performed the screening~~[provider]~~ shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7)(a) A recipient's~~[treatment]~~ plan of care shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's~~[treatment]~~ plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative~~[provider]~~.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering behavioral health practitioner~~[provider]~~ and include the practitioner's professional title (for example, licensed clinical social worker)~~[of the provider]~~.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not coverable under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's~~[treatment]~~ plan of care;

2. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated

from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, within ten (10) business days of the transfer or referral, transfer [if the recipient gives the provider written consent to do so, forward a copy or summary of] the recipient's health record in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and

b. 42 C.F.R. Part 2 [to the health care facility or other provider who is receiving the recipient within ten (10) business days of the transfer or referral].

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring provider shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If an individual behavioral health[a] provider's, a behavioral health provider group's, or a behavioral health multi-specialty group's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, or a licensure suspension, ~~or death of the provider~~, the health records of the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall:

1. Remain the property of the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b)1. If an individual behavioral health[A] provider dies, the health records maintained by the individual behavioral health provider shall remain the property of the individual behavioral health provider.

2. An individual behavioral health provider shall have a written plan addressing how to maintain health records in the event of the provider's death in a manner that complies with the retention requirements established in subsection (13) of this section.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, an individual behavioral health[a] provider, a behavioral health provider group, or a behavioral health specialty group shall maintain a health record regarding a recipient for at least six (6) [five (5)] years from the date of the service or until any audit dispute or issue is resolved beyond six (6) [five (5)] years.

(b) After a recipient's death or discharge from services, an individual behavioral health provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

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

(14)(a) An individual behavioral health[A] provider, a behavioral

health provider group, or a behavioral health multi-specialty group shall comply with 45 C.F.R. Chapter 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
 - a. The department;[or]
 - b. Federal government; or
 - c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, an individual behavioral health[a] provider, a behavioral health provider group, or a behavioral health multi-specialty group shall provide to an authorized representative of the department, ~~or~~ federal government, or managed care organization if applicable, information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service;
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or the managed care organization, if applicable.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) An individual behavioral health[A] provider, a behavioral provider group, or a behavioral health multi-specialty group shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If an individual behavioral health[a] provider, a behavioral health provider group, or a behavioral health multi-specialty group receives any duplicate payment or overpayment from the department, regardless of reason, the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group accepts the payment:

1. The payment shall be considered payment in full;
2. A[No] bill for the same service shall not be given to the recipient; and

3. [No] Payment from the recipient for the same service shall not be accepted by the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group.

(b)1. An individual behavioral health[A] provider, behavioral health provider group, or behavioral health multi-specialty group may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

- a. Individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall not bill the department for the service; and
- b. Department shall not:
 - (i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group regarding the service.

(4)(a) An individual behavioral health[A] provider, behavioral health provider group, or behavioral health multi-specialty group shall attest[attests] by the individual behavioral health provider's signature or signature of an individual on behalf of a behavioral health provider group or behavioral health multi-specialty group that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee;
5. United States General Accounting Office or its designee;

(c) If an individual behavioral health[a] provider, behavioral health provider group, or behavioral health multi-specialty group receives a request from the department to provide a claim,~~[or]~~ related information,~~[or]~~ related documentation, or record for auditing purposes, the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by an individual behavioral health[a] provider, behavioral health provider group, or behavioral health multi-specialty group shall result in the suspension or termination of the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group from Medicaid Program participation.

(5)(a) If an individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the individual behavioral health provider's, behavioral health provider group's, or behavioral health multi-specialty group's Medicaid provider number or any other entity or individual including a non-Medicaid provider, the recipient shall not be charged or billed for the service.

(b) The department shall terminate from Medicaid Program participation an individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group that:

1. Charges or bills a recipient for a Medicaid-covered service;
- or
2. Participates in an arrangement in which an entity or individual bills a recipient for a Medicaid-covered service rendered by the individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group.

Section 8. Third Party Liability. An individual behavioral health[A] provider, behavioral health provider group, or behavioral health multi-specialty group shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An individual behavioral health[A] provider, behavioral health provider group, or behavioral health multi-specialty group 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 responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the individual behavioral health provider's, behavioral health provider group's, or behavioral health multi-specialty group's electronic signature policy;

2. The signed consent form; and

3. The original filed signature~~[immediately upon request]~~.

Section 10. Auditing Authority. The department shall have the authority to audit any:

- (1) Claim;
- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

Section 11. 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 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 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: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing December 14, 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 December 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

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the requirements for Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups. These providers are a critical component of Medicaid Program substance use disorder and mental health disorder treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

(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 authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

(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 expands the Medicaid behavioral health practitioner base to include licensed clinical alcohol and drug counselors (LCADCs), licensed clinical and alcohol drug counselor associates (LCADCAs) working under supervision, and certified alcohol and drug counselors (CADCs) working under supervision; adds registered alcohol and drug peer support specialists to individuals authorized to provide services; clarifies that the administrative regulation applies to individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups; contains miscellaneous other clarifications; and consolidates requirements where possible.

(b) The necessity of the amendment to this administrative regulation: Adding LCADCs and LCADCAs to the authorized practitioners is necessary to comply with a charge in KRS 205.6311 to "expand the behavioral health network to allow providers to provide services within their licensure category; also to respond to 2015 legislation that created these new practitioner types; similarly, adding registered alcohol and drug peer support specialists is necessary in response to 2015 legislation (codified into KRS 309.080-089); consolidating requirements is necessary to shorten the administrative regulation by reducing duplicative language; miscellaneous clarifications are necessary for clarity and to synchronize requirements with related behavioral health administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) that were created by 2015 legislation (codified into KRS 309.080-089) in order to enhance Medicaid recipient access to behavioral health services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments assists in the effective administration of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) that were created by 2015 legislation (codified into KRS 309.080-089) in order to enhance Medicaid recipient access to behavioral health services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, licensed professional art therapists, licensed behavior analysts, and licensed clinical alcohol and drug counselors (who wish to enroll in the Medicaid Program as independent providers/group practices) will be affected by this administrative regulation. Behavioral health providers groups and behavioral health multi-specialty groups will also be affected by this administrative regulation. Licensed

psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed professional art therapy associates, licensed assistant behavior analysts, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, and registered alcohol and drug peer support specialists who wish to provide behavioral health services while working for one (1) of the aforementioned independent providers or groups will also be affected by this administrative regulation. Medicaid recipients who qualify for behavioral health services will be affected by this administrative regulation. There are approximately 2,170 individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment expands the authorized behavioral health professional base to include licensed clinical and alcohol drug counselors (LCADCs), licensed clinical alcohol and drug counselor associates (LCADCAs) working under supervision, certified alcohol and drug counselors (CADCs), and registered alcohol and drug peer support specialists working under supervision. LCADCs who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization. LCADCAs, CADCs, and registered alcohol and drug peer support specialists who wish to provide services will need to find an individual provider under whose supervision they would work.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Individual behavioral health providers, behavioral health provider groups, or behavioral health multi-specialty groups who wish to provide behavioral health services to Medicaid recipients per this administrative regulation could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the amendment LCADCs will be able to enroll in the Medicaid Program and be reimbursed for services provided to Medicaid recipients. LCADCAs, CADCs, and registered alcohol and drug peer support specialists who work under supervision will be able to provide services to Medicaid recipients (but not be directly reimbursed by the Medicaid program as they are not authorized by Kentucky law to practice independently.)

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

(a) Initially: DMS does not anticipate a substantial increase in costs as a result of adding licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and registered alcohol and drug peer support specialists to the array of Medicaid-recognized behavioral health professionals.

(b) On a continuing basis: The response to question (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this

administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. .. to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to 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.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(30)(A).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate how many individual LCADCs will enroll in the Medicaid Program nor the utilization of these services versus the realm of currently authorized providers (other individual behavioral health providers, provider groups, community mental health centers, federally-qualified health centers, rural health clinics, primary care centers, or physician offices.)

(d) How much will it cost to administer this program for subsequent years? The response to question (a) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(Amendment)

907 KAR 15:015. Reimbursement provisions and requirements for behavioral health services provided by individual behavioral health[independent] providers, behavioral health provider groups, or behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), 42 U.S.C. 1396a(a)(30)(A)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program as Medicaid providers, behavioral health provider groups, behavioral health multi-specialty groups, and by[-or] behavioral health service practitioners working[for-or] under supervision for individual[of the independent] behavioral health[service] providers, behavioral health provider groups, or behavioral health multi-specialty groups, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(1) ~~Medically necessary;~~

(2) ~~Provided:~~

(a) ~~To a recipient; and~~

(b) ~~By a:~~

~~1. Provider who meets the provider participation requirements established in 907 KAR 15:010; or~~

~~2. Practitioner working under the supervision of a provider who meets the provider participation requirements established in 907 KAR 15:010;~~

(3) ~~A service] covered in accordance with 907 KAR 15:010;~~

and

(2)[(4)] Billed to the department by an individual behavioral health provider, behavioral health provider group, or behavioral health multi-specialty group recognized as a Medicaid Program provider[the billing provider who provided the service or under whose supervision the service was provided by an authorized practitioner] in accordance with 907 KAR 15:010.

Section 2. Reimbursement. (1) One (1) unit of service shall be:

(a) Fifteen (15) minutes in length unless a different unit of service exists for the service in the corresponding:

1. Current procedural terminology code; or
2. Healthcare common procedure coding system code; or

(b) The unit amount identified in the corresponding:

1. Current procedural terminology code if an amount is identified in the current procedural terminology code; or

2. Healthcare common procedure coding system code if an amount is identified in the healthcare common procedure coding system code.

(2) The rate per unit for a screening shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
- 6.~~[or 5.]~~ Licensed professional art therapist; or
7. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor~~[licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service];~~

2. Licensed professional counselor associate working under the supervision of a billing supervisor~~[licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];~~

3. Licensed psychological associate working under the supervision of a billing supervisor~~[licensed psychologist if the licensed psychologist is the billing provider for the service];~~

4. Certified social worker working under the supervision of a billing supervisor~~[licensed clinical social worker if the licensed clinical social worker is the billing provider for the service];~~

5. Physician assistant working for a physician if the physician is the billing provider for the service;~~[or]~~

6. Licensed professional art therapist associate working under the supervision of a billing supervisor;

7. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

8. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

9. Certified alcohol and drug counselor working under the supervision of a billing supervisor~~[licensed professional art therapist if the licensed professional art therapist is the billing provider for the service].~~

(3) The rate per unit for an assessment shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
- 6.~~[5.]~~ Licensed professional art therapist;
- 7.~~[or 6.]~~ Licensed behavior analyst; or
8. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor~~[licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service];~~

2. Licensed professional counselor associate working under the supervision of a billing supervisor~~[licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];~~

3. Licensed psychological associate working under the supervision of a billing supervisor~~[licensed psychologist if the licensed psychologist is the billing provider for the service];~~

4. Certified social worker working under the supervision of a billing supervisor~~[licensed clinical social worker if the licensed clinical social worker is the billing provider for the service];~~

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor~~[licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];~~~~[or]~~

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor;

8. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

9. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

10. Certified alcohol and drug counselor working under the supervision of a billing supervisor~~[licensed behavior analyst if the licensed behavior analyst is the billing provider for the service].~~

(4) The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;

(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed psychological practitioner; or
2. Certified psychologist with autonomous functioning; or

(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~[or]~~

2. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor if the board-approved licensed psychologist is the billing provider for the service.

(5)~~[The rate per unit for screening, brief intervention, and referral to treatment shall be as established on the Non-Medicare Services Fee Schedule.~~

(6) The rate per unit for crisis intervention shall be:

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

- ~~1. Physician; or~~
- ~~2. Psychiatrist;~~

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Licensed marriage and family therapist; or
5. Licensed professional art therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

5. Physician assistant working for a physician if the physician is the billing provider for the service; or

6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service.

(7) The rate per unit for service planning shall be as established on the Non-Medicare Services Fee Schedule.

(8) The rate per unit for individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
6. ~~[5.]~~ Licensed professional art therapist;
7. ~~[or 6.]~~ Licensed behavior analyst; or
8. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor~~[licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service];~~

2. Licensed professional counselor associate working under the supervision of a billing supervisor~~[licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];~~

3. Licensed psychological associate working under the supervision of a billing supervisor~~[licensed psychologist if the licensed psychologist is the billing provider for the service];~~

4. Certified social worker working under the supervision of a

billing supervisor~~[licensed clinical social worker if the licensed clinical social worker is the billing provider for the service];~~

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a billing supervisor~~[licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];~~~~[or]~~

7. Licensed assistant behavior analyst working under the supervision of a billing supervisor;

8. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor if the board-approved licensed psychologist is the billing provider;

9. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

10. Certified alcohol and drug counselor working under the supervision of a billing supervisor~~[licensed behavior analyst if the licensed behavior analyst is the billing provider for the service].~~

(6) ~~[(9)]~~ The rate per unit for family outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
6. ~~[or 5.]~~ Licensed professional art therapist; or
7. Licensed clinical alcohol and drug counselor; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor~~[licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service];~~

2. Licensed professional counselor associate working under the supervision of a billing supervisor~~[licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service];~~

3. Licensed psychological associate working under the supervision of a billing supervisor~~[licensed psychologist if the licensed psychologist is the billing provider for the service];~~

4. Certified social worker working under the supervision of a billing supervisor~~[licensed clinical social worker if the licensed clinical social worker is the billing provider for the service];~~

5. Physician assistant working for a physician if the physician is the billing provider for the service;~~[or]~~

6. Licensed professional art therapist associate working under the supervision of a billing supervisor;

7. Certified psychologist working under the supervision of a board-approved licensed psychologist who is a billing supervisor;

8. Licensed clinical alcohol and drug counselor associate working under the supervision of a billing supervisor; or

9. Certified alcohol and drug counselor working under the supervision of a billing supervisor~~[licensed professional art therapist if the licensed professional art therapist is the billing provider for the service].~~

(7) Reimbursement for the following services shall be as established on the DMS Non-Medicare Behavioral Health Services Fee Schedule:

(a) Screening, brief intervention, and referral to treatment (SBIRT);

(b) Service planning;

(c) Day treatment;

(d) Comprehensive community support services;

(e) Peer support services;

(f) Intensive outpatient program services; or

(g) Therapeutic rehabilitation program services.

(8)(10) The rate per unit for group outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist;

5. Licensed professional art therapist; or

6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or

7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.

(11) The rate per unit for collateral outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Licensed marriage and family therapist;

5. Licensed professional art therapist; or

6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or

7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.

(12) The rate per unit for day treatment shall be as established on the Non-Medicare Services Fee Schedule.

(13) The rate per unit for comprehensive community support services shall be as established on the Non-Medicare Services Fee Schedule.

(14) The rate per unit for peer support services shall be as established on the Non-Medicare Services Fee Schedule.

(15) The rate per unit for parent or family peer support services shall be as established on the Non-Medicare Services Fee Schedule.

(16) The rate per unit for an intensive outpatient program shall be as established on the Non-Medicare Services Fee Schedule.

(17) The rate per unit for a therapeutic rehabilitation program shall be as established on the Non-Medicare Services Fee Schedule.

(18)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or

2. Final version, the department shall use the final version.

(9)(19) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3.[No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a community mental health center.

Section 4.] Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:010; and

(2) This administrative regulation.

Section 4[5]. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5[6]. Incorporation by Reference. (1) "Non-Medicare

Services Fee Schedule", May 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 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>.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing December 14, 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 December 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

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov); phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health professionals enrolled in the Medicaid Program.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the reimbursement provisions for Medicaid Program behavioral health services provided by individual behavioral health professionals. These providers are a critical component of Medicaid Program substance use disorder and mental health disorder treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers.

(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 authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers.

(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 expands the Medicaid behavioral health practitioner base to include licensed clinical alcohol and drug counselors (LCADCs), licensed clinical and alcohol drug counselor associates (LCADCAs) working under supervision, and certified alcohol and drug counselors (CADCs) working under supervision; adds registered alcohol and drug peer support specialists to individuals authorized to provide services; contains

miscellaneous clarifications; and consolidates requirements where possible.

(b) The necessity of the amendment to this administrative regulation: Adding LCADCs and LCADCAs to the authorized practitioners is necessary in response to 2015 legislation that created these new practitioner types; similarly, adding registered alcohol and drug peer support specialists is necessary in response to 2015 legislation (codified into KRS 309.080-089); consolidating requirements is necessary to shorten the administrative regulation by reducing duplicative language; miscellaneous clarifications are necessary for clarity and to synchronize requirements with related behavioral health administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) there were created by 2015 legislation (codified into KRS 309.080-089).

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments assists in the effective administration of the authorizing statutes by adding practitioners (LCADCs, LCADCAs, and registered alcohol and drug peer support specialists) there were created by 2015 legislation (codified into KRS 309.080-089).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Licensed clinical alcohol and drug counselors (who wish to enroll in the Medicaid Program as independent providers/group practices) will be affected by this administrative regulation as will licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, and registered alcohol and drug peer support specialists who wish to provide behavioral health services while working for one (1) an independent, individual behavioral health provider. Additionally, independent behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups will be affected by the administrative regulation. There are approximately 2,170 of such individuals and groups enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment expands the authorized behavioral health professional base to include licensed clinical and alcohol drug counselors (LCADCs), licensed clinical alcohol and drug counselor associates (LCADCAs) working under supervision, certified alcohol and drug counselors (CADCs), and registered alcohol and drug peer support specialists working under supervision. LCADCs who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization. LCADCAs, CADCs, and registered alcohol and drug peer support specialists who wish to provide services will need to find an individual provider or provider group for whom/which to work.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Individual behavioral health providers, behavioral health provider groups, or behavioral health multi-specialty groups that wish to provide behavioral health services to Medicaid recipients per this administrative regulation could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the amendment LCADCs will be able to enroll in the Medicaid Program and be reimbursed for services provided to Medicaid recipients.

LCADCAs, CADCs, and registered alcohol and drug peer support specialists who work under supervision will be able to provide services to Medicaid recipients (but not be directly reimbursed by the Medicaid program as they are not authorized by Kentucky law to practice independently.)

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

(a) Initially: DMS does not anticipate a substantial increase in costs as a result of adding licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and registered alcohol and drug peer support specialists to the array of Medicaid-recognized behavioral health professionals.

(b) On a continuing basis: The response to question (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Reimbursements are tiered to the level of the provider/practitioner based on the provider/practitioner's education and experience. Tiering is not applied as the requirements apply to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. .. to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to 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.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate how many individual LCADCs will enroll in the Medicaid Program nor the utilization of these services versus the realm of currently authorized providers (other individual behavioral health providers, provider groups, community mental health centers, federally-qualified health centers, rural health clinics, primary care centers, or physician offices.)

(d) How much will it cost to administer this program for subsequent years? The response to question (a) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

920 KAR 2:040. Standards for children's advocacy centers.

RELATES TO: KRS[Chapter] 13B, 17.165, 314.011(14), 314.142, 431.600, 620.020, 620.045, 620.050

STATUTORY AUTHORITY: KRS 194A.050(1), 620.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. To be eligible for grants from state government entities, KRS 620.045(2) requires children's advocacy centers to comply with the statutory definition established in KRS 620.020(4) and administrative regulations

promulgated by the cabinet. This administrative regulation establishes staff qualifications and program standards for children's advocacy centers.

Section 1. Definitions. (1) "Governing board" or "board" means the board of directors vested with the legal responsibility for management of the children's advocacy center.

(2) "Mental health discipline" means:

(a) Art therapy in accordance with KRS 309.130 to 309.1399;

(b) Marriage and family therapy in accordance with KRS 335.300 to 335.399;

(c) Professional counseling in accordance with KRS 335.500 to 335.599;

(d) Psychiatric nursing in accordance with KRS 202A.011(12)(d);

(e) Psychiatry in accordance with KRS 202A.011(12)(b);

(f) Psychology in accordance with KRS Chapter 319; ~~or~~ and

(g) Social work in accordance with KRS 335.010 to 335.170.

(3) "Referral agreement" means a written protocol or process (defined within the operating policies of the center) that details how those services required by Section 4 of this administrative regulation that the center does not have the capacity to provide are established for clients of the center.

(4) "Regional children's advocacy center" or "center" means an agency defined by KRS 620.020(4) and designated by the cabinet to serve as the regional children's advocacy center[,] in accordance with KRS 620.045(1).

Section 2. Governing Board of Directors. (1) A center shall be managed by a governing board in order to allow community involvement in the planning, development, and evaluation of services.

(2) A governing board shall adopt written bylaws. The bylaws shall include the:

(a) Purpose of the agency;

(b) Minimum and maximum number of board member positions;

(c) Qualifications for board members;

(d) Method of selecting board members;

(e) Terms of board members;

(f) Officers and duties;

(g) Method of election of officers and chairpersons;

(h) Quorum requirements for meetings of the board; and

(i) Method for removal of directors.

(3) The duties of the board shall be to:

(a) Schedule meetings of the board to be held at least six (6) times per state fiscal year;

(b) Maintain minutes of each meeting of the board containing:

1. The date and place of the meeting;

2. Names of board members present;

3. The subject matter discussed and actions taken; and

4. The name of the reporter;

(c) Establish standing committees of the board to include executive, nominating, finance, and personnel committees;

(d) Establish restrictions on reimbursement of board members, including the prohibition against a member contracting with the board to perform personal or professional services;~~and~~

(e) Ensure that the facility housing the center is properly clean, maintained, private, and child-friendly; ~~and~~[-]

(f) Recruit and maintain board members who provide broad regional representation of the Area Development District where the center is located.

Section 3. Personnel Management. (1) A personnel file shall be maintained by the center for each employee.

(2) The minimum contents of the personnel file shall include:

(a) Current professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;

(b) Conditions or terms of employment that shall include a confidentiality statement signed by the employee;

(c) A personnel action document reflecting a change in status of an employee, such as salary change, promotion, resignation, or

termination;

(d) A position description document including title of the position, description of duties, and requirements of training and experience necessary to qualify for the position; and

(e) Results from a criminal records background and central registry check conducted in accordance with KRS 17.165 and 922 KAR 1:470 on the employee during the application process and every two (2) years thereafter while employed by the center.

(3) Written personnel policies shall be established by the center and shall include:

(a) Attendance and leave policies;

(b) Compensation plan;

(c) Hiring, disciplinary, and firing practices;

(d) Staff development and continuing education provisions;

(e) Employee grievance procedures;

(f) Employee performance evaluations;

(g) Equal opportunity employment statements;

(h) Staff screening; and

(i) Staff training and orientation.

(4) The governing board shall employ one (1) staff person as executive director of the children's advocacy center. The executive director shall:

(a) Be responsible for financial management of the center, including budgets and grant writing;

(b) Supervise the duties and activities of center staff and volunteers;

(c) Coordinate the design and delivery of services;

(d) Fulfill duties as required by the governing board;

(e) Report directly to the board on all center activities;

(f) Have a master's degree from an accredited college or university and three (3) years of experience in[a]:

1. Human services;

2. Management; or

3. A criminal justice field; and

(g) Affirm a commitment to the welfare and protection of children.

(5)(a) A governing board may establish the staff positions specified in subparagraphs 1 through 5 of this paragraph.

1. Child advocate. A child advocate shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.

2. Therapist. A therapist shall:

a. Have a doctorate or master[~~master's~~] degree from an accredited college or university in a mental health discipline and two (2) years post-degree[~~postdegree~~] counseling or clinical experience; and

b. Possess a certificate or license to practice under the laws of the Commonwealth of Kentucky in a mental health discipline.

3. Forensic interviewer. A forensic interviewer, if employed by the center, shall have:

a. A doctorate or master degree from an accredited college or university in a mental health discipline;

b. Two (2) years of post-degree counseling or clinical experience; and

c. [meet the qualifications of the therapist position specified in subparagraph 2 of this paragraph and shall have] Three (3) years of experience interviewing children.

4. Multidisciplinary team facilitator. A multidisciplinary team facilitator shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.

5. Other staff necessary to support the administration or service delivery of the agency.

(b) The qualifications established in paragraph (a)1-4 of this subsection shall not apply to center staff hired prior to December 17, 2007.

(c) Within three (3) months of employment, staff providing direct services to a child shall have received twenty-four (24) hours of training on issues related to child abuse.

(d) Within three (3) months of beginning service, a center volunteer who has access to or contact with a child shall have received twenty-four (24) hours of training on issues related to child abuse.

(e) An employee of a center shall receive at least eight (8) hours of the training required by paragraph (c) of this subsection before providing services to a child.

(f) A center volunteer who has access to or contact with a child shall receive at least eight (8) hours of training required by paragraph (d) of this subsection before providing services at the center.

(g)1. A center contracting for direct services to a child by a professional not on the staff of the center shall document that the professional meets the qualifications outlined in this section.

2. An agreement for provision of service shall:

- a. Be on file at the center;[,] and
- b.[shall] Specify the qualifications of the staff.

(h) An employee of a children's advocacy center shall be at least twenty-one (21) years of age.

(i) An applicant for employment shall submit to a criminal records check in accordance with KRS 17.165[,] during the application process and every two (2) years thereafter while employed by the center.

(j) A center volunteer who has access to or contact with a child shall submit to a criminal records check in accordance with KRS 17.165 prior to beginning service to the center and every two (2) year thereafter while service is being provided to the center.

(k) An employee of a center under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the employee is cleared of the charge.

(l) A center volunteer under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the center volunteer is cleared of the charge.

(m) An employee or designated agent shall have immunity from civil liability and shall be provided a defense in civil actions pursuant to KRS 620.050(2).

Section 4. Center Services and Responsibilities. (1) A center shall:

(a) Provide:

- 1. Advocacy services;
- 2. Counseling services;
- 3. Clinical services;
- 4. Forensic interviewing;
- 5. Multidisciplinary team facilitation;
- 6. Medical examination services; and
- 7. Consultation and education services; or

(b) Develop a referral agreement to refer clients to a provider of the services listed in paragraph (a)1 through 7 of this subsection.

(2) Advocacy services assist child victims and their non-offending[nonoffending] caregivers and may include:

- (a) Accompaniment to court or court-related meetings;
- (b) Case management services; or
- (c) Information and referral services.

(3) Counseling services may include:

- (a) A crisis telephone line;
- (b) Crisis counseling services; and
- (c) Support group services.

(4)(a) Clinical services may include:

- 1. A[Mental health screening;
- 2.] mental health evaluation;

2.[3.] Individual therapy services for a child and non-offending[nonoffending] caretaker and family; or

3.[4.] Group therapy services for a child and non-offending[nonoffending] caretaker[;]

(b) Clinical services shall be provided by a professional who meets the requirements of Section 3(5)(a)2 of this administrative regulation.

(5) Forensic interviewing shall include[includes] structured interviews with a child for the purpose of facilitating a criminal investigation and may be provided on site at the center by:

- (a) The center staff forensic interviewer in accordance with Section 3(5)(a)(3) of this administrative regulation;
- (b) A law enforcement officer; or[and]

(c) A[family service] worker who is employed by the cabinet.

(6) A child's recorded interview shall not be duplicated except in accordance with KRS 620.050(10).

(7) Multidisciplinary team facilitation may include:

- (a) Scheduling of meetings;
- (b) Case tracking;
- (c) Case review; or
- (d) Data collection.

(8)(a)[~~Except as provided by paragraph b of this subsection,~~] Medical examination services shall be:

1. Reimbursed by the Department for Medicaid Services[provided] in accordance with 907 KAR 3:160; and

2. Provided by:

a. A licensed physician with pediatric experience and expertise in the evaluation and treatment of child abuse;

b. A licensed advanced practice registered nurse with pediatric experience and expertise in evaluation and treatment of child abuse; or

c.[(b) Medical examination services may be provided by] A sexual assault nurse examiner certified in accordance with KRS 314.011(14) and 314.142 if the child is fourteen (14) years of age or older.

b)[(e)] If a medical exam is conducted by the center staff or a contractor, a mental health evaluation[screening by a qualified mental health provider] shall be provided:

- 1. Within twenty-four (24) hours of the medical exam; or
- 2. If the medical exam will be billed to Medicaid, the same day and at the same location as the medical exam, in accordance with Section 907 KAR 3:160, Section 1(1)(d).

(9)(a) Consultation and education services may include:

- 1. School-based prevention programs;
- 2. Community education programs;
- 3. Media presentations;
- 4. In-service training; or
- 5. Case consultation services.

(b) A center shall provide a minimum of one (1) training session per year for community partners or the community at large.

(10) In addition to providing services to children in the county in which the center is located, regional center staff shall serve:

(a) Children in other counties in the area development district, including those who need medical examinations or forensic interviewing services; and

(b) As a technical assistant and consultation resource to criminal justice and human service professionals in the area development district in which the center is located.

(11) Services provided by a center shall be coordinated with multidisciplinary teams as defined in KRS 431.600 and 620.020.

(12) A center shall provide written policies and procedures for clients and volunteers that include:

- (a) Volunteer screening;
- (b) Volunteer training and orientation;
- (c) Grievance procedures for clients and volunteers;
- (d) Safety;
- (e) Clients of the center;
- (f) Client records;
- (g) Intake;
- (h) Comprehensive child sexual abuse examinations;
- (i) Therapy;
- (j) Forensic interviews; and
- (k) Mandatory reporting of child and adult abuse.

(13) A center shall provide to the non-offending[nonoffending] caregiver written instructions that include;

- (a) The name and contact information for the center;
- (b) The name of the cabinet[DCBS] staff member involved in the case;
- (c) The names of law enforcement personnel handling the case;
- (d) The name and contact information for the County or Commonwealth Attorney involved in the case;
- (e) The name and contact information for the receiving medical provider if a referral for additional assessment or treatment is made;
- (f) The name and contact information for the receiving mental

health provider if a referral for additional assessment or treatment is made; and

(g) Any known information regarding follow-up appointment times and recommended after-care referrals.

(14) A center shall develop and maintain written confidentiality policies and procedures to ensure client privacy as provided in Kentucky Rules of Evidence 506 and 507.

(15) A center shall develop and maintain written policies to limit disclosure of confidential information pursuant to KRS 620.050(5).

(16) A center shall maintain good standing as a private, nonprofit agency within the Commonwealth of Kentucky.

(17)(a) A center shall obtain the following insurance coverage:

1. Malpractice insurance for the center staff, Board of Directors, and volunteers;
2. Liability insurance for the center staff, Board of Directors, and volunteers;
3. Fidelity bonding;
4. Facility insurance; and
5. Workers compensation insurance.

(b) If contracted professionals provide their own insurance and are not covered by the center, the center shall maintain documentation that shows an active and appropriate policy.

(c) The center shall submit documentation showing proof of insurance to the cabinet.

Section 5. Client Files and Documentation. (1) A center shall open a client file for a child who is provided a service, excluding service that is limited to a telephone conversation.

(2) A client file shall include information sufficient to document the services provided or referral made by the center and shall include:

- (a) The names of the client and primary caregiver;
- (b) The name of the recipient of service;
- (c) The client's address;
- (d) The client's date of birth;
- (e) Each date of service provided by the center;
- (f) The name and title of each service provider of the center;
- (g) A description of any services provided by the center;
- (h) The referral sources used;
- (i) A description of any follow-up services provided; and
- (j) Descriptions of contacts with, report to, and referrals from the ~~cabinet~~[Department for Community-Based Services] and law enforcement agency.

(3)(a) A center shall maintain a system for tracking:

1. Services rendered by region, except that comprehensive medical services and forensic interviewing shall be tracked by county of the client's residence;
2. Clients seen by county of client's residence;
3. Referrals made; and
4. Contacts with other community agencies on behalf of clients.

(b) Documentation shall be sufficient to support statistics reported to the cabinet.

Section 6. Funding. (1)(a) The cabinet shall designate one (1) regional children's advocacy center in each area development district.

(b) ~~A children's advocacy center shall terminate on June 30, 2007. Children's Advocacy Centers~~ designated on or after July 1, 2007, shall retain the designation unless it has been rescinded by the cabinet based on:

1. Periodic review of the center's performance; or
2. The annual plan and budget submitted by the center to the cabinet for funding for the next fiscal year.

(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any designation of a regional children's advocacy center made pursuant to this administrative regulation.

(2) The requirements of this administrative regulation shall not prohibit the center from applying for nongovernmental grants or fundraising to support efforts consistent with the mission of the center.

(3)(a) In addition to the provisions of subsection 1(b) of this

Section, the Commissioner of the Department for Community Based[Human-Support] Services may rescind the designation of a center if a determination is made that the center failed to:

1. Submit a budget and plan for services which shall substantiate the capacity to provide services specified in KRS 620.020(4) and in accordance with this administrative regulation;

2. Operate in accordance with a budget and plan for services approved by the cabinet; or

3. Operate in accordance with the requirements of this administrative regulation.

(b) Any notice of rescission of a designation shall:

1. Be in writing;
2. Be mailed to the center's last known mailing address;
3. State the basis for the rescission;
4. State the effective date of the rescission; and
5. State any appeal rights.

(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any notice of rescission of a designation of a regional children's advocacy center issued pursuant to this administrative regulation. Failure by the cabinet to provide such notice shall not serve as grounds for the affected center to invalidate the notice of rescission.

(4) Cabinet funding for a center shall be contracted through the regional center or the centers' state association.~~[The cabinet shall send a designated center the proposed contract for services for the following year. A center shall have ten (10) working days after receipt to sign and return the contract to the cabinet.]~~

(5) A center may contract or establish referral agreements with other agencies or professionals to provide services as defined within Section 4 of this administrative regulation.

(6)(a) Except in cases where designation has terminated, as set forth in subsection 1(b) of this Section, a center that has received written notice its designation has been rescinded may appeal the determination of the Commissioner of the Department for Community Based[Human-Support] Services by requesting an administrative hearing.

(b) Any request for an administrative hearing shall be in writing and shall be received by the Department for Community Based[Human-Support] Services within thirty (30) days of the date of receipt of the notice of rescission. Any such request shall be sent to the Office of the Commissioner, Department for Community Based[Human-Support] Services, Cabinet for Health and Family Services, 275 East Main Street, 3rd Floor, Frankfort, Kentucky 40621.

(c) Any administrative hearing held pursuant to this administrative regulation shall be conducted in accordance with KRS Chapter 13B by a hearing officer employed by the cabinet.

(d) A request for an administrative appeal shall stay the rescission of the designation until the administrative appeal process is final.

(e) The stay on the rescission of the designation granted by Section 6(6)(d) in this administrative regulation shall not extend to judicial review, unless a stay is granted pursuant to KRS 13B.140(4).

Section 7. Audit and Monitoring. (1) The cabinet or its agent shall randomly, or upon receipt of a complaint, audit, monitor, or conduct program reviews of a center.

(2) A center shall allow the cabinet or its agent access to its property and records as required by subsection (1) of this section.

Section 8. Grievance and Appeals Process.~~[(4)]~~ Client grievances. A center shall establish a written grievance procedure that shall:

(1)~~[(a)]~~ Be given to the parent or guardian of each child who comes to the center for services; and

(2)~~[(b)]~~ Contain a description of the services provided by the center and the procedure for filing a client grievance.~~[(2) A center shall inform the parent or guardian in writing of the child's appeal process described] in accordance with 922 KAR 1:320, Section 10.~~

ADRIA JOHNSON, Commissioner

VOLUME 43, NUMBER 6 – DECEMBER 1, 2016

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 9, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 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 December 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

Contact Persons: Elizabeth Caywood (phone 502-564-3703; Elizabeth.caywood@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes staff qualifications and program standards for children's advocacy centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish staff qualifications and program standards for children's advocacy centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing staff qualifications and program standards for children's advocacy centers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation currently assists in the effective administration of the statutes by establishing the staff qualifications and the program standards for children's advocacy centers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will allow an advance practice registered nurse to conduct medical examinations in children's advocacy centers in addition to the currently authorized medical practitioners, licensed physicians and sexual assault nurse examiners. The amendment to this administrative regulation will also align clinical services and qualifications of a forensic interviewer with actual service provision and will make necessary 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 authorize provision of medical examinations by a new group of independently operating medical practitioners, advance practice registered nurses, in order to meet service demand and address the limited supply of physicians and sexual assault nurse examiners. The amendment is also necessary to generally update the administrative regulation to reflect actual staff qualifications and service provision and to conform to KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update and alignment of children's advocacy centers' staff qualifications and program standards with service needs and actual service provision.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its alignment of staffing qualifications and program standards with service needs of children's advocacy centers' clientele.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the 15 regionally based children's advocacy centers offering statewide service provision to vulnerable Kentucky children and their families. In fiscal years 2015 and 2016, the children's advocacy centers served 5,705 and 6,129 unduplicated children respectively.

(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 requires no new action on the part of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will result in no new costs to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Association for Children's Advocacy Centers requested this regulatory amendment to expand the medical practitioner types who could perform medical examinations in the state's centers in effort to address service limitations realized since the administrative regulation was last amended. The centers and their clientele will benefit from this expansion and other updates made to the administrative regulation to reflect actual service provision and to conform to KRS Chapter 13A.

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

(a) Initially: The administrative body will realize no new cost to initially implement this administrative regulation.

(b) On a continuing basis: The administrative body will realize no new costs 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: State General Funds and fund derived from the Tobacco Master Settlement are the sources of funding for this administrative regulation. The children's advocacy centers are also supported through state and federal funds made available through the Justice and Public Safety Cabinet and charitable contributions. Center services are reimbursable through Medicaid in accordance with 907 KAR 3:160.

(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 or funding necessary to implement this amendment.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, and the Justice and Public Safety Cabinet are 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), 620.045(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? This administrative regulation will generate no new revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will result in no new costs for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will result in no new 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:

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

922 KAR 6:010. Standards for community action agencies.

RELATES TO: KRS 45.357, 45A.455, 61.870-884, 194A.060, 273.405-273.453, Chapter 344, 45 C.F.R. 96, 42 U.S.C. 9901-9926[; Pub.L. 111-5]

STATUTORY AUTHORITY: KRS 194A.050(1), 273.448(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 273.448(1)(a) requires the state administering agency to establish in accordance with applicable state and federal laws and regulations, standards for community action agencies by which the administrative, fiscal and programmatic effectiveness of the federal act shall be measured. This administrative regulation establishes the requirements for the operation and oversight of the community action agencies relative to the community services block grant funding, intended to provide services for residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357, and the Kentucky Civil Rights Laws, KRS Chapter 344, are more inclusive than those required under 42 U.S.C. 9918(c)(1). The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

Section 1. Definitions. (1) "Commissioner" means the Commissioner for the Department for Community Based Services, Cabinet for Health and Family Services.

(2) "Community action agency" is defined by KRS 273.410(2).

(3) "Community action board" means the board of directors of a community action agency which is a political subdivision.

(4) "Community Services Block Grant" or "CSBG" means Community Services Block Grant funds made available by 42 U.S.C. 9901-9926.

(5) "Designating official" means the chief elected official of the

eligible political subdivision or subdivisions if the political subdivision is a community action agency.

(6) "Governing board" means the board of directors of a private nonprofit community action agency.

(7) "Public community action agency" means a community action agency that is established as a division of local government.

Section 2. Board of Directors. (1) Each community action agency shall establish and maintain a board of directors in accordance with KRS 273.437 and 273.439.

(2) Governing boards and community action boards shall adopt written bylaws. The bylaws shall include:

(a) The purpose of a community action agency;

(b) Duties and responsibilities of the board;

(c) Number of members on the board;

(d) Qualifications for a board membership;

(e) The types of membership;

(f) The method of selecting a member;

(g) Terms of a member;

(h) Officers and duties;

(i) Method of electing an officer and chairperson;

(j) A standing committee, if applicable;

(k) Provision for approval of programs and budgets;

(l) The frequency of board meetings and attendance requirements; and

(m) Provision for official record of meetings and action taken.

(3) The boards and designating officials:

(a) May delegate the responsibility to carry out a program of a community action agency and fiscal requirements to an executive director; and

(b) Shall not delegate final approval, responsibility, accountability, or direction of policy, except for a public community action agency.

Section 3. Board Meetings. (1) A board meeting shall be open to the public in accordance with KRS 61.800-61.850~~[Unless a requirement constitutes a breach of an individual's right to confidentiality, a board meeting shall be open to the public].~~

(2) A simple majority shall constitute a quorum for a board meeting.

(3)(a) A meeting of a governing board or a community action board shall be recorded.

(b) Minutes shall be made of the meeting.

(c) The minutes shall include:

1. Date, time, and place of meeting;

2. Names of members attending;

3. Topics discussed, problems, recommendations made or presented, and a plan for change and improvements;

4. Decisions reached and actions taken;

5. An executive director's report and other reports as are presented; and

6. Recommendations made by the community action board to designating officials of the eligible political subdivision.

(d) The minutes shall be:

1. Approved by the board of directors and signed by the appropriate officer; and

2. Copied and distributed to each board member, the executive director, and the department within thirty (30) days of the minutes' approval in accordance with subparagraph 1 of this paragraph.

Section 4. Administration. (1) ~~A~~Each community action agency shall meet the federal assurances and reporting requirements in accordance with 42 U.S.C. 9901-9926 and~~;~~ 45 C.F.R. 96~~;~~ and Pub.L. 111-5, Section 1512].

(2) A community action agency shall adopt the organizational standards for eligible entities pursuant to the Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services, dated January 26, 2015.

(3) ~~A~~Each community action agency in accordance with KRS 273.441 and 273.443, and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall:

(a) Submit reports, records, or other information the department deems necessary to:

1. Determine fiscal, administrative, and programmatic effectiveness in utilization of CSBG funds; and
2. Fulfill requirements of KRS 45.357;

(b) Except for a public community action agency, develop written personnel policies including:

1. A job classification plan with the provision of a systematic arrangement of job positions in the agency indicating title, related duties, and responsibilities for each position. For those positions which are sufficiently similar as to the duties performed and to the scope of responsibility, equal pay ranges shall be:

- a. Allocated to the same job classification; and
- b. Reviewed at least every four (4) years;

2. A job specification for each job classification, including required education, experience, training, skills and other qualifications required which shall be reviewed at least every four (4) years;

3. A compensation plan with the provision of a pay plan for community action agency employees outlining pay grades or salary rates, salary adjustments, salary advancements, and overtime adjustments as appropriate for the job classifications. Rates of pay shall be:

a. Consistent with the functions outlined in the job classification plan; and

- b. Reviewed at least every four (4) years;

4. Attendance and leave policies that shall:

- a. Be reviewed at least every four (4) years; and

b. Include the accumulation and credit of:

- (i) Annual leave;
- (ii) Sick leave;
- (iii) Compensatory or overtime leave;
- (iv) Military leave;
- (v) Leave related to the birth or adoption of a child;
- (vi) Court leave;
- (vii) Voting leave;
- (viii) Absence without leave; and
- (ix) Other conditions of specific leave;

5. A fringe benefit plan that shall:

- a. Be reviewed every four (4) years; and

b. Include the coverage and conditions of those items provided by the community action agency, such as:

(i) Basic salary or wage rates including hospitalization insurance;

- (ii) Dental insurance;
- (iii) Holidays;
- (iv) Disability leave;
- (v) Personal leave;
- (vi) Retirement or pension; and
- (vii) Deferred compensation;

6. An affirmative action plan with a policy statement that the community action agency's intention is to give equal opportunity in hiring, advancement opportunities, and in work assignments in accordance with KRS Chapter 344;

7. A personnel grievance procedure that shall:

a. Include a plan for resolving employee grievances and complaints; and

b. Describe the method that the community action agency follows if an employee is dissatisfied with some aspect of the employee's working conditions. The procedure shall outline:

- (i) How the employee files a complaint;
- (ii) Who reviews the complaint;
- (iii) Who hears the complaint;
- (iv) Who may attend a hearing;
- (v) Length of time for the hearing decision; and
- (vi) The next level of appeal, if the employee is still dissatisfied with the hearing results; and

8. Hiring and firing practices, with a plan for:

- a. Hiring an employee;
- b. Promotions;
- c. Demotions;
- d. Job postings and advertisements;
- e. Resignations;

f. Layoff procedures;

g. Disciplinary actions; and

h. Dismissal procedures;

(c) Make available a copy of the community action agency's personnel policies to staff;

(d) Ensure that there is no discrimination against an applicant or recipient of CSBG services in accordance with KRS 344.015(2), 344.020, and 42 U.S.C. 9918(c)(1);

(e) Be responsible for compliance with conditions of contracts and grants, appropriate state and federal laws, administrative regulations, and cost principles;

(f) Indemnify the cabinet against a claim, including attorney fees and other costs of litigation which may result from damage caused by the community action agency's employee, negligent acts, or omissions of the community action agency's agent, employee, or subcontractor;

(g) Ensure that a notice, information pamphlet, research report, and similar public notice prepared and released by the community action agency pursuant to its contract for CSBG funds shall include the statement: "This project is funded, in part, under a contract with the Cabinet for Health and Family Services with funds from the Community Services Block Grant Act of the U.S. Department of Health and Human Services"; and

(h) Ensure that no employee or representative of the community action agency with procurement authority shall participate either directly or indirectly in an activity that is in conflict with the provisions of KRS 45A.455 and 42 U.S.C. 9918.

(4)(3)(a) Except for a public community action agency, a[each] community action agency with the knowledge and concurrence of appropriate officials and boards, shall:

1. Develop written fiscal[and programmatic operation] policies and a manual[manuals]; and

2. Review and update the policies and the manual[manuals] at least annually.

(b) Fiscal records shall be maintained in accordance with generally acceptable accounting procedures and practices and in conformity with 42 U.S.C. 9916(a).

(c) A current written financial report shall be presented to a board of directors:

1. At least quarterly; or

2. More frequently, if requested by the board or the cabinet.

(5)(a) A community action agency shall:

1. Develop written programmatic operation policies and a manual; and

2. Review and update the policies and the manual at least annually.

(b) A community action agency's[(d) The] program manual, which may be characterized as an operations manual, shall include:

1. Criteria for determining eligibility of an individual for CSBG programs;

2. The intake process including information needed to approve an applicant;

3. Procedures for accepting a referral from another agency;

4. Instructions for records to be kept on applicants, clients, and statistical data on intake;

5. Procedures for reports to be made to the cabinet and frequency;

6. Procedures to be followed if an applicant is found ineligible;

7. Complaint procedures;

8. A description of each program's organizational structure, major lines of authority, and areas of responsibility within the CSBG programs; and

9. Procedures for documenting the extent of participation of individuals who are low income[the poor] in the community action agency's CSBG programs.

(6)(4)(a) A[The] community action agency shall ensure that a client dissatisfied with services rendered under a CSBG contract shall be provided an opportunity to file a formal complaint and to be heard at the local level.

(b) A client may attempt to resolve the issue by submitting a written complaint to the community action agency within thirty (30) calendar days after the date of the community action agency's

action or alleged act.

(c) The community action agency shall provide the client a written response to the complaint within thirty (30) calendar days of receipt of the client's complaint in accordance with paragraph (b) of this subsection.

(d) If extenuating circumstances concerning the client's case prolong review of the complaint, the executive director of the community action agency may grant an extension to the response timeframe given in paragraph (c) of this subsection.

(e) 1. A client dissatisfied with a final written decision rendered by the community action agency in response to a complaint may request that the commissioner review the complaint and the community action agency's response.

2. A request for review shall be submitted to the commissioner within ten (10) days of the receipt of the community action agency's response.

3. Upon completion of the review, the commissioner or designee shall render a written order regarding the complaint within thirty (30) days unless:

a. Extenuating circumstances prolong the review of the complaint; and

b. The commissioner or designee notifies the client of the need for an extension to the timeframe specified in this subparagraph.

4. The community action agency shall abide by the order.

(f) The complaint and hearing procedures shall be posted in each agency office.

~~(7) A[(5) The]~~ community action agency shall ensure the design, implementation, and documentation of in-service training program for staff. Additional training shall also be documented for staff.

Section 5. Income Eligibility, Validation, and Determination. (1) To be eligible to participate in services and programs funded with CSBG funds, an individual's or family's income shall be at or below[be]:

~~(a) 200 percent of the current poverty level issued each year by the U.S. Department of Health and Human Services and published in the Federal Register through September 30, 2010, in accordance with Pub.L. 11-5; or~~

~~(b)] 125 percent of the current poverty level issued each year by the United States Department of Health and Human Services and published in the Federal Register[after September 30, 2010].~~

(2) Information and referral services shall be provided to an individual or family without regard to income.

(3) If screening for programs where the eligibility factor is higher, the factor for that other program applies.

(4) The individual or family head shall sign a document attesting to the amount of declared income and eligibility to receive services.

(5) A community action agency or its worker shall require that a client produce proof of income eligibility in which a dated copy of the client's documentation shall be placed in the client's file.

(6) Initial eligibility shall be:

(a) Determined within thirty (30) days of application;

(b) Redetermined if there is a change in circumstance; and

(c) Redetermined at least annually, if there is not a change in circumstance.

Section 6. Maintenance of Case Records. (1) A log shall be maintained by a[the] community action agency on a referral made by an outside agency or individual including:

(a) Date of referral;

(b) A referring agent; and

(c) Reason for referral and disposition.

(2) A CSBG case record shall be maintained on each applicant accepted for a service or benefit.

(a) The record shall include:

1. Intake information as follows:

a. Name, address, and telephone number of the applicant;

b. Birthdate;

c. Sex;

d. Race or ethnic origin;

e. Proof of income;

f. Level of education completed;

g. A presenting problem;

h. Date of presenting problem;

i. Staff member gathering information;

j. Referral agent, if applicable;

k. Approval or disapproval for services or benefits and date; and

l. The signature of the person making the determination or the referral;

2. Client progress toward a documented goal during a service or benefit period;

3. Chronological recording of supervisory and staff contacts with a client during the service or benefit period;

4. Copies of correspondence and other pertinent information;

5. Redetermination of eligibility, if required by Section 5(6) of this administrative regulation; and

6. Information regarding any termination of services and benefits.

(b) A[Each] community action agency shall ensure that a client case record is maintained in conformity with existing laws pertaining to confidentiality in accordance with KRS 194A.060.

(c) The records shall be maintained in a location which is secure and convenient to service delivery staff.

(3) A[The] community action agency shall ensure development and implementation of a written client case record retention and disposal schedule.

(4) A public community action agency[If the community action agency,] or any program or subdivision of a[the] community action agency meeting[, meets] the definition of a public agency as defined in KRS 61.870(1)[, the community action agency, the program, or the subdivision of the community action agency meeting the definition] shall comply with the open records law, KRS 61.870-61.884.

Section 7. Monitoring and Evaluation Reports. A[Each] community action agency in accordance with 42 U.S.C. 9914, Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services, KRS 273.441, 273.443, and 273.448(1), and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall meet the following:

(1) Ensure the development of a data collection and recordkeeping system that allows for administrative, programmatic, and fiscal monitoring and evaluation;

(2) Ensure the design and implementation of program reviews and studies to determine under or over utilization of each program, and progress towards goals and objectives; and

(3) Permit monitoring, review, and evaluation of the total community action agency operation by the department or its designee.

Section 8. Matching Requirement. A contractor receiving CSBG funds pursuant to 922 KAR 3:040 shall provide a twenty (20) percent local match in accordance with KRS 273.446(3).

Section 9. CSBG Program State Plan. A copy of the state's CSBG program plan may be obtained by submitting a written request to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 10. Incorporation by Reference. (1) "Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services", January 26, 2015, 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: November 9, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 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 December 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

Contact Persons: Elizabeth Caywood (phone 502-564-3703; Elizabeth.caywood@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the operation and oversight of Kentucky's community action agencies providing services for residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services in accordance with the Community Services Block Grant.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for community action agencies and qualify for the receipt of federal funds under the Community Services Block Grant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes, which require the state administering agency to establish standards for community action agencies.

(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 through its establishment of standards for the operation and oversight of the community action agencies under the Community Services Block Grant.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates federally prescribed organizational standards for the community action agencies, removes references and provisions pertaining to the American Recovery and Reinvestment Act of 2009, defines "public community action agency" and includes exemptions for such an agency in recognition of the Louisville Metro Community Action Partnership's affiliation with Louisville Metro Government, and makes other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement and enforce the organizational standards required by the U.S. Department of Health and Human Services for eligible entities to preserve the state's award of the federal Community Services Block Grant and to reflect technical corrections and updates.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by complying with the requirements of the Community Services Block Grant.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring that the eligible

entities have the organizational capacity to provide high-quality services to low-income individuals, communities, and meet federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Twenty-three community action agencies and the Community Action of Kentucky, Inc., the state association, are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The twenty three community action agencies will be required to be monitored annually based on the organizational standards established by the U.S. Department for Health and Human Services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with compliance will be absorbed within the sub-award of the federal Community Services Block Grant to the regulated entities. Noncompliance with the organizational standards presents risk, namely poor standing of the state or individual agency and possibility for correction action with the federal administering agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The requirement to comply with the organizational standard will ensure that each community action agency has the appropriate organizational capacity for delivery of quality services to low-income individuals and families. Regulated entities have indicated readiness for the organizational standards.

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

(a) Initially: The cabinet will utilize the available state administrative funds under the Community Services Block Grant to implement this amendment.

(b) On a continuing basis: The cabinet, in partnership with Kentucky's Community Action Network, will ensure that the programs and state administrative activities funded under the Community Services Block Grant are within federal appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds provided by the Community Services Block Grant and state general funds for community action agencies' audits are 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 administrative regulation.

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

(9) TIERING: Is tiering applied? 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.

45 C.F.R. 96, 42 U.S.C. 9901-9926

2. State compliance standards. KRS 45.357, 194A.050(1), 273.405-273.453, Chapter 344

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 96, 42 U.S.C. 9901-9926

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

and requirements than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional reporting requirements are necessary in order to comply with KRS 45.357. The Kentucky Civil Rights Laws, KRS Chapter 344, are more inclusive than those required under 42 U.S.C. 9918(c)(1). The imposition of the additional requirements and responsibilities is necessary to ensure compliance with applicable state laws.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services and one public and 22 quasi-governmental entities in Kentucky's Community Action Network 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 45.357, 45A.455, 61.870-884, 194A.050(1), 194A.060, 273.405-273.453, Chapter 344, 45 C.F.R. 96, 42 U.S.C. 9901-9926

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

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

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the state administrative funds available under the Community Services Block Grant to administer these programs in the first year. Costs will be within available appropriations. .

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the state administrative funds under the Community Services Block Grant to administer these programs in subsequent years. Costs will be within available appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

OFFICE OF SECRETARY OF STATE
(New Administrative Regulation)

30 KAR 7:020. Standard form occupational license fee returns for dual tax districts.

RELATES TO: KRS 67.750, 67.767

STATUTORY AUTHORITY: KRS 67.767(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 67.767(1)(a) requires the Secretary of State to promulgate an administrative regulation prescribing a standard form that shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities, as well as instructions for completing the form. This administrative regulation prescribes the standard form for occupational license tax returns for dual tax districts and form instructions as mandated by KRS 67.767(1)(a).

Section 1. Definitions. (1) "Business entity" is defined by KRS 67.750(1).

(2) "Tax district" is defined by KRS 67.750(10).

Section 2. A business entity shall:

(1) Follow the filing requirements specified by the business entity's local tax district; and

(2) Use the Form OL-D, Dual Tax District, Occupational License Fee Return, and the General Instructions for Form OL-D for a Dual Tax District to report business and occupational license taxes to the business entity's local tax district, if so required.

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

(a) "Form OL-D, Dual Tax District, Occupational License Fee Return", November 2016; and

(b) "General Instructions for Form OL-D for a Dual Tax District", November 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained from the Secretary of State's Web site at <http://www.sos.ky.gov>.

MARGARET C. MCKAY, Executive Director, Office of Business

APPROVED BY AGENCY: November 7, 2016

FILED WITH LRC: November 7, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2016, at 9:00 a.m., at the Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 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: Margaret C. McKay, Executive Director of Office of Business, 700 Capital Avenue, State Capitol, Suite 153, Frankfort, Kentucky 40601, phone (502) 782-7439, fax (502) 564-5687, email Megan.McKay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret C. McKay

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the standard form for

occupational license tax returns for dual tax districts as mandated by KRS 67.767.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 67.767(1) which requires the Secretary of State to promulgate an administrative regulation prescribing a standard form which shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 67.767(1) mandates that the Secretary of State promulgate an administrative regulation prescribing a standard form which shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities. This administrative regulation prescribes the standard form for occupational license tax returns as mandated by KRS 67.767(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 67.767(1) by prescribing the mandated standard form which shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities.

(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: This administrative regulation will affect countless entities, local government occupational license tax administrators, and certified public accountants that are located within the state.

(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: Regulated entities and individuals identified in question (3) will have to familiarize themselves with the form and the law regarding its usage pursuant KRS 67.767.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will incur no costs in order to use the form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By adopting this standardized form, entities identified in question (3) that conduct business in multiple tax jurisdictions will no longer have to file a multitude of jurisdiction specific occupational license tax return forms for net profits or gross receipts. The filing of occupational license tax returns will be greatly streamlined because these entities will simply fill out this single form and file it in any tax jurisdiction where they conduct business.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost 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: There is no source of funding since there is no cost to implement

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: An increase in fees or funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact only the local government occupational license tax administrator and the office of Secretary of State since it has prescribed the form incorporated by reference in this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 67.767(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 any additional revenue for state or local governments during the first year.

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

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

PERSONNEL CABINET (Repealer)

101 KAR 5:016. Repeal of 101 KAR 5:015.

RELATES TO: 2010 ES Ky. Acts ch. 1, Part IV, 11

STATUTORY AUTHORITY: KRS 18A.110(7)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(k) authorizes the Secretary of Personnel to promulgate administrative regulations consistent with the provisions of KRS Chapter 18A. 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g) required the secretary to promulgate an administrative regulation establishing procedures for the implementation of furloughs or a temporary reduction of hours of all executive branch employees due to a lack of funds as certified by the state budget director. This administrative regulation repeals 101 KAR 5:015, as authority for furloughs was only valid July 1, 2010 through June 30, 2012.

Section 1. 101 KAR 5:015, Furloughs, is hereby repealed.

THOMAS B. STEPHENS, Secretary

APPROVED BY AGENCY: November 15, 2016

FILED WITH LRC: November 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 21, 2016 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m., December 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: Lesley Bilby, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Lesley.Bilby@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lesley Bilby

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 101 KAR 5:015, Furloughs.

(b) The necessity of this administrative regulation: This administrative regulation eliminates an outdated regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.110(7)(k) authorizes the Secretary of Personnel to promulgate administrative regulations consistent with the provisions of KRS Chapter 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation eliminates an outdated 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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state Executive Branch employees are 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: No action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no benefits to any entity identified in question (3).

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

(a) Initially: This regulation is not anticipated to generate any

new costs.

(b) On a continuing basis: This regulation is not anticipated to generate any new costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation is not anticipated to generate any new costs.

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

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

(9) TIERING: Is tiering applied? No. This regulation treats all impacted employees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state Executive Branch employees are 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 18A.110(7)(k)

(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.

(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.

(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:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Repealer)

103 KAR 3:011. Repeal of 103 KAR 3:010, 103 KAR 3:020, 103 KAR 3:030, 103 KAR 3:040, and 103 KAR 3:050.

RELATES TO: KRS 131.130, 131.131, 141.050, 141.068

STATUTORY AUTHORITY: KRS 131.130, 131.131, 141.050, 141.068

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130, 141.050, and 141.068 were amended by 2016 Ky. Acts ch. 82 to delete requirements that forms from the Department of Revenue be prescribed in an administrative regulation and be incorporated by reference. KRS 131.131 provides that the department shall publish tax forms and instructions without promulgation of an administrative regulation. To comply with 2016 Ky. Acts ch. 82, this administrative regulation repeals the following five (5) forms administrative regulations: 103 KAR 3:010, 103 KAR 3:020, 103 KAR 3:030, 103 KAR 3:040, and 103 KAR 3:050.

Section 1. The following administrative regulations are hereby repealed:

(1) 103 KAR 3:010, General Administrative Forms Manual;

(2) 103 KAR 3:020, Sales and Telecommunications Forms Manual;

(3) 103 KAR 3:030, Property and Severance Forms Manual;

(4) 103 KAR 3:040, Income Tax Forms Manual; and

(5) 103 KAR 3:050, Miscellaneous Taxes Forms Manual.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2016

FILED WITH LRC: October 19, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2016 at 10:00am in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, 702 Capital Avenue, Room 383, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-6785, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals forms regulations promulgated by the Kentucky Department of Revenue to reflect the enactment of KRS 131.131. KRS 131.131 requires the Department of Revenue to publish tax forms and instructions to those forms without promulgation of an administrative regulation.

(b) The necessity of this administrative regulation: Forms regulations promulgated by the Department of Revenue need to be repealed because effective July 15, 2016, KRS 131.131 requires the Department of Revenue to publish tax forms and instructions to those forms without promulgation of an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Effective July 15, 2016, KRS 131.131 requires the Department of Revenue to publish tax forms and instructions to those forms without promulgation of an administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 131.131.

(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: Not applicable. This is a new administrative regulation.

(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: None.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since no regulated entities will be affected by the repeal of the five (5) 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 Department of Revenue and Property Valuation Administrators will be impacted since those agencies will no longer reference the forms regulations as the reason for the publication of various tax forms.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 131.130, 131.131, 141.050, and 141.068.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies since the Department of Revenue will still publish tax forms.

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Occupational Therapy (New Administrative Regulation)

201 KAR 28:230. Telehealth occupational therapy services.

RELATES TO: KRS 319A.080, 319A.300

STATUTORY AUTHORITY: KRS 319A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS

319A.300(2) requires the board to promulgate an administrative regulation to implement telehealth in occupational therapy, including to establish procedures to prevent abuse and fraud through the use of telehealth, prevent fee-splitting through the use of telehealth, and utilize telehealth in the provision of occupational therapy services and in the provision of continuing education. Additionally, KRS 319A.300(1) requires an occupational therapist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation establishes the requirements for telehealth for occupational therapy services.

Section 1. Definitions. (1) "Telehealth" is defined by KRS 319A.300(3).

(2) "Telehealth occupational therapy" means the practice of occupational therapy as defined by KRS 319A.010(2), between the occupational therapist and the patient that is provided using:

(a) An electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A credential holder using telehealth to deliver occupational therapy services shall, upon initial contact with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the credential holder other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telehealth provided by the credential holder;

(5) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications; and

(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of telehealth occupational therapy services;

(b) Potential risks to confidentiality of information due to technology in the provision of telehealth occupational therapy services;

(c) Potential risks of disruption in the use of telehealth occupational therapy services;

(d) When and how the credential holder will respond to routine electronic messages;

(e) In what circumstances the credential holder will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the credential holder;

(g) How communications can be directed to a specific credential holder; and

(h) How the credential holder stores electronic communications from the client.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:

(1) Limit the practice of telehealth occupational therapy to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in the practice of telehealth occupational therapy through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis;

(4) Follow the record-keeping requirements of 201 KAR 28:140; and

(5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall comply with:

(1) State law where the credential holder is credentialed and be licensed to practice occupational therapy where the client is domiciled or adhere to standards set forth in 201 KAR 28:030; and

(2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

Section 5. Representation of Services and Code of Conduct.

(1) A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:

(a) Not by or on behalf of the credential holder engage in false, misleading, or deceptive advertising of telehealth occupational therapy;

(b) Comply with 201 KAR 28:140; and

(c) Not allow fee-splitting through the use of telehealth occupational therapy services.

(2) Occupational therapy continuing competence educational processes established in 201 KAR 28:200, Section 3(1), (2), (3), (5), (8), and (11), may occur through telehealth services.

KEVIN PRIDDY, COTA/L, Board Chair

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: November 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2016 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on December 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: Kelly Walls, Board Administrator, Kentucky Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-564-3296, fax 502-564-4818, email kelly.walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Kelly Walls, Kevin Priddy (phone 270-202-1701; kevinblot@gmail.com)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensees who use telehealth in delivering health care to patients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements under KRS 319A.300(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.300(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the requirements of KRS 319A.300.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new 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 impacts all licensees regulated by KRS Chapter 319A.

(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: Each licensee will have to adhere to the requirements of KRS 319A.300 that prohibits fee splitting and each licensee shall have to meet the requirements for clients, obtain competency in the use of telehealth, assure confidentiality, follow record keeping requirements of 201 KAR 28:140, and follow federal law requiring access for persons with disabilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs will vary and the licensee is not required to offer telehealth services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. All licensees will have the option of offering telehealth services to their patients.

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

(a) Initially: No additional costs are necessary to implement the changes made by this regulation.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because all licensees will be held to the same 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? Kentucky Board of Licensure for Occupational Therapy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.300 (2).

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

(a) 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.

(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:

**KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(New Administrative Regulation)**

202 KAR 7:810. Survivor benefits for death of emergency medical services personnel.

RELATES TO: KRS 61.315

STATUTORY AUTHORITY: KRS 61.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315(6) authorizes the payment of survivor benefits of \$80,000 to the survivor of any paid or volunteer emergency medical services personnel who is employed directly by, or volunteering directly for, any county, city, fire protection district, or emergency ambulance service district created under KRS 108.080 to 108.180 to provide emergency medical services and who is killed in the line of duty after November 1, 2015. This administrative regulation establishes the procedures and criteria that shall be utilized to determine the eligibility of the emergency medical service personnel's survivor benefits.

Section 1. Definitions. (1) "AEMT" means an advanced emergency medical technician certified by the board.

(2) "Board" means the Kentucky Board of Emergency Medical Services as defined by KRS 311A.010(3).

(3) "Child or children" means a:

(a) Biological child or children, including a child or children born after the EMS provider's death;

(b) Stepchild or stepchildren; and

(c) Legally adopted child or children.

(4) "Death in the line of duty" means death that occurs as a direct result of an act or acts in the performance of duty as defined in subsection (11) of this section and shall include death that results from a heart or circulatory malfunction that is treated within forty-eight (48) hours after participation in the performance of these duties, or as the result of illness, sickness, or injury caused by the performance of these duties that result in death within twelve (12) months of the activities if the death is not caused by suicide or self-inflicted injury.

(a) If death occurs twelve (12) months or more after the performance of duty and is believed to be related to the provision of emergency medical services, the board may review the personnel's medical records to determine whether the death qualifies as death in the line of duty.

(b) Performance of duty shall not include participation in any sports or athletic event or contest for any purpose.

(5) "Emergency medical services" means the services utilized in providing care for the perceived individual need for immediate medical care to protect against loss of life, or aggravation of physiological or psychological illness or injury.

(6) "EMR" means an emergency medical responder certified by the board.

(7) "EMS provider" means an emergency medical responder (EMR), emergency medical technician (EMT), advanced emergency medical technician (AEMT), or paramedic.

(8) "EMT" means an emergency medical technician certified by the board.

(9) "Heart or circulatory malfunction" means myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, the symptoms of which are first medically treated within forty-eight (48) hours after participation in the performance of the duties of an EMS provider as described in subsection (11) of this section.

(10) "Paramedic" mean a paramedic licensed by the board.

(11) "Performance of duty" means an EMS provider engaging in the following activities if the activities are performed at the direction or with the knowledge of an officer of a licensed ambulance service, or when immediate action is required at the scene of an emergency not involving an ambulance service or other emergency organization:

(a) Provision of emergency medical care;

(b) Participation in EMS-related education or training;

(c) Rescue or emergency activities for which the ambulance service is licensed;

(d) Reparation or other work about or in the ambulance or building and grounds of the licensed ambulance service;

(e) Answering an emergency call;

(f) Riding in the ambulance that is owned or used by the licensed ambulance service;

(g) Performance of other duties of the licensed ambulance service as authorized by the jurisdiction that the licensed agency serves; and

(h) Travel to or from and attendance at meetings related to emergency medical services if the EMS provider is representing an organization related to the field of emergency medical services.

Section 2. Requirements for Eligibility. (1) Survivors. Benefits shall be paid to the surviving spouse, surviving child or children, or both; or the surviving parents, as set forth in KRS 61.315(2).

(2) Heart or circulatory malfunction limitations. If an EMS provider becomes an active employee of a licensed ambulance service and has not been medically diagnosed or received any medication for a heart or circulatory malfunction within five (5) years prior to the date of employment, the EMS provider's eligible survivors shall receive the death benefits detailed in this administrative regulation if the EMS provider is killed in the line of duty.

(a) If an EMS provider has been medically diagnosed with or received medication for any of the illnesses outlined in subsection (2) of this section within five (5) years prior to becoming an active employee of a licensed ambulance service and presents a medical statement to the board from a licensed physician establishing that the individual has recovered or has been sufficiently medically rehabilitated to meet the physical demands of providing emergency medical services, the EMS provider's survivors shall be eligible to receive death benefits as outlined in this administrative regulation if the EMS provider is killed in the line of duty.

(b) If an EMS provider employed by a licensed ambulance service is medically diagnosed with or is prescribed medication for a heart or circulatory malfunction and returns to active employment with a licensed ambulance service, the EMS provider's survivors shall not be eligible to receive death benefits as outlined in this administrative regulation if the EMS provider's death was caused by a heart or circulatory malfunction.

(3) Autopsy.

(a) The board shall reserve the right to request an autopsy of an EMS provider if sufficient cause is shown for this request.

(b) If an autopsy is performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be submitted to the board.

Section 3. Application. (1)(a) Upon the death in the line of duty of an EMS provider, the licensed ambulance service by which the EMS provider was employed at the time of death shall immediately notify the executive director of the board.

(b) Upon receipt of the notification, the executive director shall send Form KBEMS-01LDD to the notifying licensed ambulance service in care of the administrator and Form KBEMS-02LDD to the known survivors of the deceased EMS provider.

(2) Upon receipt of Forms KBEMS-01LDD and KBEMS-02LDD, the administrator of the licensed ambulance service and the EMS provider's survivors or their representative shall complete the forms and return them to the board in care of the executive director.

(3)(a) Upon receipt by the executive director of the completed forms, a committee of the board appointed by its chairman shall review the forms for compliance with KRS 61.315 and this

administrative regulation and make recommendations to the board for determination of eligibility for death benefits under this administrative regulation.

(b) The committee and the executive director may seek clarification of the forms' content with the EMS provider's survivors and licensed ambulance service. The board shall make the final determination of eligibility for death benefits pursuant to KRS 61.315 and this administrative regulation.

Section 4. Certification of Payment of Benefits. Upon certification of survivorship rights to the EMS provider's death benefit, the sum of \$80,000 shall be paid by check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2), and the treasurer shall transmit the check to the board for payment to the eligible survivor or survivors.

Section 5. Appeals. (1) A decision of the board affecting the eligibility of a survivor to be a recipient of the fund shall not be final until the survivor shall have been afforded an opportunity to be heard on the matter.

(2) An appeal may be taken from a final decision of the board to withhold payment from the fund to any survivor.

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

(a) "Form KBEMS-01LDD, Report of the Death of Emergency Medical Personnel", November 2016; and

(b) "Form KBEMS-02LDD, Claim for Survivor Benefits", November 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE-TYLER MORGAN, Legal Counsel

APPROVED BY AGENCY: November 15, 2016

FILED WITH LRC: November 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2016 at 10:00 a.m. Eastern Standard Time at McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street, Suite 900, Lexington, Kentucky 40507. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on December 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: Anne-Tyler Morgan; Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480, e-mail atmorgan@mmlk.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anne-Tyler Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:810 establishes the procedures and criteria which shall be utilized to determine the eligibility of emergency medical services personnel's survivor benefits

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 61.315, which authorizes the payment of survivor benefits to the survivor of emergency medical

services personnel killed in the line of duty.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 61.315, which authorizes KBEMS to promulgate administrative regulations establishing criteria and procedures including defining when emergency medical services personnel have died in line of duty.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 61.315 authorizes KBEMS to promulgate administrative regulations establishing criteria and procedures including defining when emergency medical services personnel have died in line of duty. This administrative regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of the emergency medical services personnel's survivor benefits.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

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

(a) All beneficiaries of emergency medical services personnel who have died in the line of duty as defined by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All beneficiaries shall establish that the emergency medical services personnel at issue meets the criteria of the administrative regulation in order to be eligible for the benefits thereunder.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All beneficiaries who can establish that the emergency medical services personnel at issue meets the criteria of this administrative regulation shall be entitled to the benefits provided by KRS 61.315.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: KBEMS shall pay for all administrative costs of reviewing benefit eligibility.

(a) Initially: The above paragraph is accurate for initial costs.

(b) On a continuing basis: The above paragraph is accurate for continuing costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: KBEMS is a state agency that receives its annual budget from the state government.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation because this administrative regulation impacts all levels of emergency medical personnel.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Kentucky Board of Emergency Medical Services, which will implement this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.315. No federal statutes necessitate this administrative regulation.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government, other than the Commission itself.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government, other than KBEMS itself.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

**KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE
AUTHORITY
(New Administrative Regulation)**

202 KAR 10:030. Tolling projects.

RELATES TO: KRS 65.245, 175B.010(11), (14), (16), 175B.015(12), 175B.035(8), 175B.040, 281A.010(8)

STATUTORY AUTHORITY: KRS 175B.015(12), 175B.040(4)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.015(12)(c) authorizes the state authority to promulgate administrative regulations to collect and enforce tolls. KRS 175B.015(12)(a) authorizes the authority to establish the process for collection and enforcement procedures for fines, charges, assessments, and other enforcement mechanisms for the violation of KRS 175B.040(4), and for any violation of this administrative regulation. KRS 175B.015(12)(b) authorizes the state authority to establish an appeals process by which a person contesting a violation of this administrative regulation may obtain an administrative hearing to be conducted in accordance with KRS Chapter 13B. For the purpose of efficiently administering the toll systems, this administrative regulation establishes the process by which the state authority shall collect and enforce tolls, establish enforcement mechanisms, and an appeals process.

Section 1. Definitions. (1) "Commercial motor vehicle" is defined by KRS 281A.010(8).

(2) "Development agreement" means a written agreement containing the information required by KRS 175B.035(8).

(3) "Interlocal agreement" means a written agreement as contemplated by KRS 65.245.

(4) "Out-of-service notice" means an affixed notice as contemplated by 601 KAR 1:005, Section 6.

(5) "Photo toll" means a charge associated with a particular vehicle that is identified by the vehicle's license plate if the vehicle's registered owner does not have a toll account.

(6) "Project" is defined by KRS 175B.010(11).

(7) "Project document" means the development agreement, public-private partnership agreement, or interlocal agreement for a project.

(8) "Protestant" means a person who protests the imposition of a toll, fine, or fee.

(9) "Protestant's vehicle" means the registered vehicle of a protestant used when the unpaid toll, fine, or fee was assessed or the toll account was debited.

(10) "Public-private partnership" is defined by KRS 175B.010(14).

(11) "Public private partnership agreement" means the agreement contemplated by KRS 175B.020(1)(c)(4).

(12) "State authority" is defined by KRS 175B.010(16).

(13) "Toll account" means a prepaid account that is linked to a transponder, license plate, or other means of identification of a vehicle in order to pay a toll by automatic debit.

(14) "Toll operator" means any entity designated by the state authority to implement and operate a toll system for a project.

(15) "Transponder" means a device used to identify and automatically debit a toll account for purposes of toll collection.

Section 2. Toll Rates and Fees. (1) The state authority shall cause the identity of the toll operator, toll rates, escalation schedules, fees, and fines for each project on which tolls are implemented to be published yearly online at transportation.ky.gov/KPTIA/Pages/default.aspx and in at least two (2) statewide circulars. For projects between the commonwealth and another state, the state authority shall cause toll rates, escalation schedules, fee schedules, and fine schedules to be published in at least one (1) statewide circular with distribution in that state.

(2) Toll rates, toll payment methods, escalation schedules, fine schedules, and fee schedules for a project shall be determined as established in the project document based on traffic and revenue studies, total project financial obligations, and community socioeconomic factors.

(a) Fees shall be assessed for account statements, late payment notices, collection efforts, inactivity, returned checks, or the purchase or lease of transponders as established in the project document.

(b) Fines shall be assessed for failure to pay tolls or fees as established in the project document.

(3) The state authority shall use all-electronic toll equipment or toll booths to charge and collect tolls.

(4) There shall be a rebuttable presumption that charged tolls, fees, and fines are correct and accurate.

Section 3. Administrative Hearings. (1) If a protestant asserts that a toll, fine, or fee was assessed incorrectly or the protestant's account was debited incorrectly, the protestant shall file a written protest with the toll operator of the project that assessed the toll, fine, or fee within sixty (60) days of the toll operator mailing the disputed invoice or the debit being taken from the toll account.

(2) The written protest shall include:

(a) The grounds for the protest; and

(b) A copy of the disputed invoice or the account statement showing the disputed debit.

(3) The following shall be the exclusive grounds to protest a toll, fine, or fee:

(a) The license plate was misidentified;

(b) The protestant was incorrectly identified as the registered owner of the vehicle that was assessed the toll;

(c) The vehicle shown in the image associated with a toll assessed is not the vehicle to which the license plate shown in the image is assigned;

(d) The vehicle that used the tolled road or bridge had been sold, transferred, or stolen at the time of the use that resulted in the

toll, fine, or fee; or

(e) The protestant's vehicle classification was incorrectly assigned.

(4) The toll operator shall have the authority to request additional information from the protestant.

(5) The toll operator shall notify the protestant by mail of the toll operator's determination on the protest and the protestant's right to a hearing pursuant to KRS Chapter 13B within thirty (30) days of receipt of the written protest.

(6) If the toll operator determines, pursuant to subsection (3)(a) through (e) of this section, that the protestant owes the toll, fee, or fine and the protestant agrees with the determination made by the toll operator, the protestant shall pay the toll, fine, or fee within ten (10) days of receipt of the determination from the toll operator.

(7) If the protestant does not agree with the determination made by the toll operator, the protestant shall request an administrative hearing pursuant to KRS Chapter 13B.

(a) A request for an administrative hearing shall be made to the state authority with a copy to the toll operator within thirty (30) days of the notice of determination from the toll operator.

(b) The state authority shall assign a hearing officer to conduct a hearing and provide a recommended order pursuant to KRS Chapter 13B. The hearing officer shall provide notice of the hearing to the protestant and any entity with a financial interest in the toll, fee, or fine in dispute.

(c) The toll operator shall submit the following to the state authority at least ten (10) days prior to the date of the administrative hearing:

1. The video or photographic images of the crossing in question, which shall include time, date, and location of the crossing; and

2. Evidence of the license plate look-up and registration records from the agency responsible for registration information in the state where the vehicle is registered.

(d) The hearing officer shall provide a recommended order to the chairman of the state authority. The chairman of the state authority shall make a final determination, pursuant to subsection (3)(a) through (e) of this section, regarding the validity and amount of the toll, fine, or fee assessed.

(e) During the time the administrative hearing process is pending, the unpaid toll, fine, or fee shall not be escalated and additional fees or fines associated with the disputed charge shall not be assessed.

(f) If the chairman of the state authority determines, pursuant to subsection (3)(a) through (e) of this section, that the protestant owes a toll, fee, or fine, the protestant shall pay the toll, fee, or fine within thirty (30) days of the date of the determination.

Section 4. Toll, Fine, and Fee Enforcement. (1) A person shall be in violation of KRS 175B.040(4) if that person has not made a timely payment of a currently due and payable toll, fine, or fee as established in the project document. A toll operator for a project shall notify the Kentucky Transportation Cabinet Division of Motor Vehicle Licensing and the Kentucky Transportation Cabinet Division of Motor Carriers of people in violation of KRS 175B.040(4) and securely provide the following information to the Kentucky Transportation Cabinet Division of Motor Vehicle Licensing, the Kentucky Transportation Cabinet Division of Motor Carriers, and the Offices of the County Clerks:

(a) Identification of the vehicle used when the photo toll was assessed, evidence of the license plate look-up, and information showing to whom the vehicle was registered at the time the photo toll was assessed;

(b) Any photographic evidence showing the vehicle using the road or bridge when the toll, fine, or fee was assessed, along with the date, time, and location of the use;

(c) If an administrative hearing was requested, the determination of the chairman of the state authority;

(d) A copy of any invoice or violation notice related to the unpaid toll, fine, or fee, and any returned mail notice associated with those invoices and violations; and

(e) A record of any toll, fine, or fee currently due and payable, which shall be updated daily by the toll operator until payment in

full is made.

(2) Upon receiving notice from the toll operator, the Kentucky Transportation Cabinet Division of Motor Vehicle Licensing shall place a hold on the protestant's vehicle registration.

(3) Upon receiving notice that a commercial motor vehicle is in violation of KRS 175B.040(4), an officer or inspector of the Division of Motor Vehicle Enforcement shall be authorized to affix to the commercial motor vehicle an out-of-service notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated. A person shall not operate a commercial motor vehicle in violation of the out-of-service notice affixed to it.

GREG THOMAS, Secretary and Chairman

MAX BRIDGES, KPTIA General Counsel

APPROVED BY AGENCY: October 21, 2016

FILED WITH LRC: November 14, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2016 at 10:00 a.m. Eastern Time at Room C121, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day (11:59 p.m.) on December 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: Megan M. McLain, Assistant General Counsel, 200 Mero Street, Frankfort, Kentucky 40622, phone (859) 940-7763, fax (502) 564-5238, email megan.mclain@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan M. McLain

(1) Provide a brief summary of:

(a) What this administrative regulation does: Pursuant to KRS 175B.015(12)(c), this administrative regulation establishes the process by which the state authority may collect and enforce tolls, fees, and fines. Pursuant to KRS 175B.015(12)(a), this administrative regulation also establishes the process for collecting and enforcing a fine, fee, and any other enforcement mechanism if a toll is not paid, KRS 175B.040(4) is violated or this administrative regulation is violated. Pursuant to KRS 175B.015(12)(b), this administrative regulation also establishes an appeals process by which a person may contest a violation of KRS 175B.040(4), or a violation of this administrative regulation, by way of an administrative hearing to be conducted in accordance with KRS Chapter 13B.

(b) The necessity of this administrative regulation: KRS 175B.040(1) authorizes the state authority to impose tolls to provide a fund sufficient with other revenues to pay the cost of maintaining, repairing and operating a project, unless the cost or any part thereof is paid by the commonwealth, pay the principal and interest on project revenue bonds and create reserves to exceed amounts specified in the development agreement. KRS 175B.040(4)(a) provides that every person utilizing a project and tolled under KRS Chapter 175B shall pay the appropriate toll. KRS 175B.040(4)(b) provides that any person who violates the provisions of KRS 175B.040(4) shall be subject to this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to the authorizing statutes at KRS 175B.015(12) and KRS 175B.040, this administrative regulation establishes the process by which the state authority shall collect and enforce tolls, fees and fines, establish

enforcement mechanisms, establish an appeals process, and efficiently administer the toll system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the process by which the state authority shall collect and enforce tolls, fees, and fines, establishes an enforcement mechanism and establishes an appeals process.

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

(a) How the amendment will change the 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: It affects the Kentucky Public Transportation Infrastructure Authority, a toll operator, and a person who uses a project and is required to pay a toll.

(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 entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The administrative regulation provides the process by which the Kentucky Public Transportation Infrastructure Authority and any toll operator may collect and enforce a toll, fee, and fine and the enforcement mechanisms for collecting and enforcing an unpaid toll, fee, and fine. This administrative regulation provides the process by which a person who uses a project must pay a toll and the appeals procedure for appealing the assessment of a toll and a violation of 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 project document shall describe the state authority's and toll operator's costs in complying with this administrative regulation. The toll rates, toll payment methods, escalation schedules, fine schedules, and fee schedules for a person using a project shall be determined, as described in the project document, based on traffic and revenue studies, total project financial obligations, and community socioeconomic factors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The revenue generated from a toll, fee, and fine will finance the maintenance and operation of state authority projects. A person using a project will benefit from increased safety measures, convenience, and a reduction in travel times.

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

(a) Initially: No additional costs.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The revenue generated from a toll, fee, and fine.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement 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 establishes the process by which the state authority may collect and enforce tolls, fines, and fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied because this administrative regulation will charge different toll rates based on vehicle weight, vehicle length, vehicle height, number of axles,

number of passengers, time of day, frequency of use and toll payment method used in order to maximize revenue to the commonwealth, encourage efficiencies with the drivers and charge a greater toll to those who create more damages on the roads and bridges. The state authority will tier tolls in order to encourage drivers to choose a payment method which costs the state less to administer and is more efficient for the state and the driver. The state authority will be encouraging the use of transponders in projects where transponders are accepted to decrease the amount of money and resources the state will need to expend to collect the tolls. Transponders will also be more efficient and cost-effective for the drivers. The state authority will tier tolls to encourage a person using a project to drive at specific times of day and carpool in order to reduce travel times and provide greater convenience to drivers. Tiering will be used to balance the financial impact on those persons who use a project more frequently. The purpose of the tiering regarding height, weight, and number of axles is to cause those vehicles that do the most damage to the roadway to be charged a higher rate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet and the state authority will be impacted by this administrative regulation. The project document will describe whether a state or local government entity will be exempt from a project toll, fine, and fee.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 175B.015(12)(a) authorizes the state authority to promulgate an administrative regulation to establish the process for collecting and enforcing tolls, fines, and fees and other enforcement mechanisms if a toll, fine, or fee is not paid, KRS 175B.040(4) is violated or this administrative regulation is violated. KRS 175B.015(12)(b) authorizes the state authority to promulgate an administrative regulation to establish an appeal process by which a person contesting a violation of KRS 175B.040(4), or a violation of this administrative regulation by way of an administrative hearing to be conducted in accordance with KRS Chapter 13B. KRS 175B.015(12)(c) authorizes the state authority to establish by regulation any matters necessary to the efficient administration of a toll when implemented for a project developed under KRS 175B. KRS 175B.015(12)(d) authorizes the state authority to promulgate regulations to fulfill any requirements of KRS Chapter 175B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local governmental agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The project document will describe the expenditures and revenues of a state or local governmental agency for the first full year of the 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. The project document will describe the revenues generated for a state or local governmental agency for the first full year of the 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? The project document will describe the revenues generated for a state or local governmental agency for subsequent years of the administrative regulation.

(c) How much will it cost to administer this program for the first year? This administrative regulation will result in a net decrease in costs to the state government for the first year because operation and maintenance expenses for a project will now be taken from toll revenue rather than the Transportation Cabinet's road fund.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will result in a net decrease in costs to the state government for subsequent years

because operation and maintenance expenses for a project will now be taken from toll revenue rather than the Transportation Cabinet's road fund.

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
Kentucky Department of Insurance
Agent Licensing Division
(New Administrative Regulation)**

806 KAR 9:360. Pharmacy Benefit Manager License.

RELATES TO: KRS 304.1-050, 304.9-053, 304.9-054, 45 C.F.R. 156.122

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-053(2), 304.9-054(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-053(2) requires a pharmacy benefit manager seeking a license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(6) requires the department to promulgate administrative regulations to implement and enforce the provisions of KRS 304.9-054, 304.9-053, 304.9-055, and 304.17A-162. This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by KRS 304.1-050(2).

(3) "Maximum allowable cost" is defined by KRS 304.17A-161(3).

(4) "Pharmacy benefit manager" is defined by KRS 304.9-020(15)

Section 2. Initial License and Renewal. (1) An applicant for a pharmacy benefit manager license or renewal license from the commissioner shall submit the following in hard copy format to the department:

(a) The Pharmacy Benefit Manager License Application;

(b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053(5);

(c) The following evidence of financial responsibility:

1. The certificate of an insurer authorized to write legal liability insurance in this commonwealth, stating that the insurer has and will keep in effect on behalf of the pharmacy benefit manager a policy of insurance covering the legal liability of the licensed pharmacy benefit manager's erroneous acts or failure to act in his or her capacity as a pharmacy benefit manager, and payable to the benefit of any aggrieved party in the sum of not less than \$1,000,000; or

2. A cash surety bond issued by a corporate surety authorized to issue surety bonds in this commonwealth, in the sum of \$1,000,000, which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable;

(d) The name of at least one (1) responsible individual who shall be responsible for the pharmacy benefit manager's compliance with the insurance laws and administrative regulations of this state and who is:

1. Licensed as an administrator in Kentucky; and

2. Designated in accordance with KRS 304.9-133;

(e) If performing utilization review in accordance with KRS 304.17A-607, the pharmacy benefit manager's utilization review registration number;

(f) The following written policies and procedures to be used by the pharmacy benefit manager:

1. Appeals dispute resolution process;
2. Maximum allowable cost appeals process;
3. Exceptions policy and override policy required by 45 C.F.R. 156.122(c) and KRS 304.17A-163 and KRS 304.17A-165; and
4. Pharmacy and Therapeutics committee membership standards and duties as required by 45 C.F.R. 156.122(a); and
- (g) Proof of registration with the Kentucky Secretary of State.

(2)(a) Upon receipt of a complete application as required by subsection (1) of this section, the commissioner shall review the application and

1.a. Approve the application; and

b. Issue the applicant the pharmacy benefit manager license;

2. Notify the applicant that additional information is needed in accordance with paragraph (b) of this subsection; or

3. Deny the application in accordance with paragraph (c) of this subsection.

(b)1. If supplemental or additional information is necessary to complete the application, the applicant shall submit that information within thirty (30) days from the date of the notification from the commissioner.

2. If the missing or necessary information is not received within thirty (30) days from the date of the notification, the commissioner shall deny the application unless good cause is shown.

(c) If the commissioner determines that the applicant does not meet the requirements for licensure, or if the application is denied pursuant to paragraph (b)2. of this subsection, the commissioner shall:

1. Provide written notice to the applicant that the application has been denied; and

2. Advise the applicant that a request for a hearing may be filed in accordance with KRS 304.2-310.

(4)(a) Except as provided in paragraph (b) of this subsection, a pharmacy benefit manager license shall:

1. Be renewed annually as required by subsection (5) of this section; or

2. Expire on March 31.

(b) If the license was issued on or before January 1, 2017, the license shall expire on March 31, 2018, if not renewed as required by subsection (5) of this section.

(5)(a) A renewal application shall include the items required by subsection (1) of this section.

(b) If the renewal application is submitted between April 1 and May 31, the application required by subsection (1) of this section shall be accompanied by a penalty fee of \$500 in accordance with KRS 304.9-053(5).

Section 3. Notice of Changes. Within thirty (30) days of any change, a licensee shall notify the commissioner of all changes among its members, directors, officers, and other individuals designated or registered to the license, and any changes to its written policies and procedures submitted pursuant to Section 2(1)(f) of this administrative regulation.

Section 4. Incorporation by Reference. (1) "Pharmacy Benefit Manager License Application", Form PBM, 09/2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

H. BRIAN MAYNARD, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 24, 2016

FILED WITH LRC: October 25, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2016, at 10:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Matt Niehaus, Deputy Commissioner, Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email Matthew.Niehaus@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt Niehaus

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the licensing process for pharmacy benefit managers, as required by KRS 304.9-054.

(b) The necessity of this administrative regulation: Senate Bill ("SB") 117, enacted during the 2016 Regular Session, requires entities acting as pharmacy benefit managers to obtain a license from the Department of Insurance to do business. Pharmacy benefit managers currently licensed as administrators in Kentucky are required to obtain a pharmacy benefit manager license no later than January 1, 2017, to continue to do business in the state. SB 117 requires the Department of Insurance to promulgate administrative regulations to specify the contents of the licensing application and to implement and enforce the provisions of SB 117.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation creates the licensure process for pharmacy benefit managers and incorporates by reference the licensing application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the application and other information that an entity must submit to the Department of Insurance to obtain a license as a pharmacy benefit manager. Additionally, it provides the time frames and deadlines for the licensing process and clarifies the actions the Department may take in reviewing the applications. The administrative regulation also sets forth the process for the annual renewal of a pharmacy benefit manager license.

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

(a) How the amendment will change this existing administrative regulation: Not Applicable.

(b) The necessity of the amendment to this administrative regulation: Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not Applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately twelve (12) entities that offer pharmacy benefit manager services 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: Entities currently performing pharmacy benefit manager services in Kentucky will need to apply for and be licensed as pharmacy benefit managers no later than January 1, 2017. Entities wishing to begin performing pharmacy benefit manager services will need to apply for and be licensed in Kentucky prior to doing business. Entities wishing to continue

doing business as pharmacy benefit managers will need to complete the renewal process outlined in the administrative regulation on an annual basis.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee to apply for an initial pharmacy benefit manager license or to renew a pharmacy benefit manager license is \$1,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities licensed as pharmacy benefit managers will be permitted to do business in Kentucky.

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

(a) Initially: It is estimated that the updates to the Department of Insurance database necessary to track licensees will take approximately 40 days to develop and cost approximately \$25,000.

(b) On a continuing basis: Once developed, the cost on a continuing basis as a result of this administrative regulation is estimated at approximately \$15,000.00.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The costs to implement and enforce this administrative regulation will be paid by the entities licensed as pharmacy benefit managers and from the existing budget of the Department of Insurance.

(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 licensing fees set forth in KRS 304.9-053 will be necessary to implement this regulation. Any deficit in revenue received from license fees from the cost of implementing this regulation shall be assessed among licensees pursuant to KRS 304.9-054(7).

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all entities doing business as a pharmacy benefit manager.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, KRS 304.9-053, KRS 304.9-054.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department of Insurance anticipates receiving approximately \$12,000 in licensing fees as a result of 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? The Department of Insurance anticipates receiving approximately \$12,000 in licensing renewal fees as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? It is estimated that the updates to the Department of Insurance database necessary to track licensees will take approximately 40 days to develop and cost approximately \$25,000. Any deficit in revenue received from license fees from the cost of implementing this regulation shall be assessed among licensees pursuant to KRS 304.9-054(7).

(d) How much will it cost to administer this program for subsequent years? Once developed, the cost on a continuing basis

as a result of this administrative regulation is estimated at approximately \$15,000.00. Any deficit in revenue received from license fees from the cost of implementing this regulation shall be assessed among licensees pursuant to KRS 304.9-054(7).

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

Revenues (+/-): .

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Kentucky Health Benefit and Information
Exchange
(New Administrative Regulation)

900 KAR 10:200. Kentucky State Based Exchange on the Federal Platform.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156.

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of Health Benefit and Information Exchange, has responsibility to administer the State-Based Exchange on the Federal Platform. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to the transition from the Kentucky Health Benefit Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) and the ongoing operation of the SBE-FP, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Definitions. (1) "Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act, Public Law 111-148, enacted March 23, 2010, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152, enacted March 30, 2010.

(2) "Agent" is defined by KRS 304.9-020(1).

(3) "Application assister" means a CAC, in-person assister, or navigator.

(4) "benefind" means information technology infrastructure utilized for application and enrollment in programs including the:

(a) Supplemental Nutrition Assistance Program (SNAP);

(b) Medicaid program under title XIX of the Social Security Act, 42 U.S.C. 301 et seq.;

(c) Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.;

(d) Kentucky Transitional Assistance Program (K-TAP).

(5) "Cabinet for Health and Family Services" or "CHFS" is defined by KRS 194A.005.

(6) "Certified application counselor" or "CAC" means an individual employed by, or volunteer of, an entity designated by the office to perform the functions described in 45 C.F.R. 155.225.

(7) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(8) "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).

(9) "Enrollee" means an eligible individual enrolled in a qualified health plan or qualified stand-alone dental plan.

(10) "Health plan" is defined by 42 U.S.C. 18021(b)(1).

(11) "Health plan form" or "form" means an application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement filed in accordance with 806 KAR 14:007.

(12) "In-person assister" or "IPA" means an entity or individual selected by the office to perform the functions described in 45 C.F.R. 155.205(d) and (e) and 45 C.F.R. 155.215.

(13) "Indian" is defined by 25 U.S.C. 450b(d).

(14) "Individual exchange" means the Kentucky Health Benefit Exchange or SBE-FP that serves the individual health insurance market.

(15) "Individual market" is defined by KRS 304.17A-005(26).

(16) "Insurance affordability program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the Social Security Act, 42 U.S.C. 301 et seq.;

(b) A state children's health insurance program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code, 26 U.S.C. 36B, available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act, 42 U.S.C. 18701.

(17) "Issuer" is defined by 45 C.F.R. 144.103.

(18) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or SADP that utilizes the state provided information technology infrastructure known as kynect to provide for eligibility determinations and consumer enrollment in qualified health plans and stand-alone dental plans and that includes:

(a) An individual exchange; and

(b) SHOP.

(19) "Kentucky Office of Health Benefit and Information Exchange," "KOHBE," or "office" means the office created to administer the KHBE and the SBE-FP.

(20) "Kentucky online gateway" or "KOG" means the system for identity authentication services for users requesting to be listed on the office's search tool for an application assister or agent.

(21) "Navigator" means an entity selected by the office that shall comply with the requirements of 1311(i) of the ACA, 45 C.F.R. 155.205(d)-(e), and 45 C.F.R. 155.210.

(22) "Organization" means an entity as follows:

(a) Community health center;

(b) Hospital;

(c) Health care provider;

(d) Indian health service provider;

(e) Ryan White HIV/AIDS provider;

(f) Behavioral or mental health provider; or

(g) An agency with experience providing social services, energy assistance, or tax assistance that is a:

1. Non-federal government entity;

2. 501(c) organization; or

3. Local government agency.

(23) "Participating agent" means an agent as defined by KRS 304.9-020(1) who has been registered with the office on KOG.

(24) "Plan management data template" means the data collection templates used to facilitate data submission through SERFF for certification of qualified health plan issuers, qualified health plans, qualified stand-alone dental plan issuers, and qualified stand-alone dental plans as established in CMS Form Number CMS-10433, as amended.

(25) "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(26) "Qualified employer" means an employer that elects to make, at a minimum, all full-time employees of the employer eligible for one (1) or more QHPs or SADPs in the small group market offered through the SHOP.

(27) "Qualified health plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification.

(28) "Qualified individual" means an individual who has been determined eligible to enroll through the SBE-FP in a QHP or SADP in the individual market.

(29) "SHOP" means a Small Business Health Options Program operated by the Kentucky Health Benefit Exchange or the SBE-FP

through which a qualified employer can provide a qualified employee and their dependents with access to one (1) or more QHPs or SADPs.

(30) "Small group" is defined by KRS 304.17A-005(42).

(31) "Stand-alone dental plan" or "SADP" means a dental plan as described by 45 C.F.R. 155.1065 that has been certified to provide a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), including a pediatric dental essential health benefit.

(32) "State Based Exchange on the Federal Platform" or "SBE-FP" means the state-based health insurance exchange approved by HHS pursuant to 45 C.F.R. 155.105 that will utilize the federally provided information technology infrastructure known as healthcare.gov to provide for eligibility determinations and consumer enrollment in qualified health plans and stand-alone dental plans and that includes:

- (a) An individual exchange; and
- (b) SHOP.

(33) "System for Electronic Rate and Form Filing" or "SERFF" means an online system established and maintained by the National Association of Insurance Commissioners (NAIC) that enables an issuer to send and a state to receive, comment on, and approve or reject rate and form filings.

Section 2. Eligibility and Enrollment. (1) The SBE-FP shall provide for an eligibility determination and consumer enrollment in a qualified health plan or a stand-alone dental plan.

(2) The SBE-FP shall rely on the federal call center to perform telephonic consumer support in applying for, and enrolling in, a qualified health plan or a stand-alone dental plan.

Section 3. Assistance for New Issuer Participation on SBE-FP. The office shall ensure any new issuer in the state is prepared to participate on the SBE-FP for each new plan year. The office shall provide information on:

- (1) Issuer registration;
- (2) Onboarding;
- (3) Training; and
- (4) Testing related transfer of electronic files.

Section 4. Participation Standards for Issuers Offering a Qualified Health Plan. (1) In order to participate on the SBE-FP, an issuer offering a QHP shall meet the following criteria:

- (a) Hold a certificate of authority that would permit the issuer to offer a health benefit plan and be in good standing with the Kentucky Department of Insurance;
- (b) Comply with benefit design standards as defined in 45 C.F.R. 156.20;
- (c) Comply with applicable standards described in 45 C.F.R. Part 153;
- (d) Not discriminate, with respect to a QHP, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation;
- (e) Comply with the non-discrimination requirements in 42 U.S.C. 300gg-5;
- (f) Comply with the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515;
- (g) If not a managed care plan, meet the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515;
- (h) Submit verification to DOI of compliance with the standards applicable to essential community providers of 45 C.F.R. 156.235;
- (i) Submit verification to DOI of compliance with the meaningful difference standards of 45 C.F.R. 156.298;
- (j) Submit verification of issuer compliance with the requirements of 45 C.F.R. 156.340(a)(4), including compliance of a delegated and downstream entity;
- (k) Submit to DOI:
 - 1. A quality improvement strategy plan in compliance with 45 C.F.R. 156.200(b)(5) and 45 C.F.R. 156.1130; and
 - 2. An attestation that the issuer shall comply with the quality requirements identified in 45 C.F.R. 156.200(b)(5);
- (l) Be accredited on the basis of local performance of a QHP by an accrediting entity recognized by HHS in categories identified by 45 C.F.R. 156.275(a)(1);

(m) Pursuant to 45 C.F.R. 156.275(a)(2), authorize the accrediting entity that accredits the QHP issuer to release to the office and HHS:

- 1. A copy of the most recent accreditation survey; and
 - 2. Accreditation survey-related information that HHS may require, including corrective action plans and summaries of findings;
 - (n) For a QHP issuer that has not received accreditation, submit an attestation to the office that the issuer shall obtain accreditation in accordance with paragraph (l) of this subsection;
 - (o) Maintain accreditation so long as the QHP issuer offers a QHP;
 - (p) Comply with the provisions of 45 C.F.R. 156.210;
 - (q) For the individual exchange, offer at least a:
 - 1. QHP with a silver metal level of coverage;
 - 2. QHP with a gold metal level of coverage; and
 - 3. Child-only plan;
 - (r) For the SHOP exchange, offer at least a:
 - 1. QHP with a silver metal level of coverage; and
 - 2. QHP with a gold metal level of coverage;
 - (s) Make its provider directory for an SADP available:
 - 1. To potential enrollees in hard copy upon request; and
 - 2. In accordance with 45 C.F.R. 156.230;
 - (t) Submit to DOI through the SERFF system:
 - 1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;
 - 2. Rate filings in compliance with KRS 304.17A-095 and applicable administrative regulations promulgated thereunder; and
 - 3. Plan management data templates;
 - (u) 1. Receive approval from DOI for a rate filing prior to implementation of the approved rate; and
 - 2. For a rate increase, post the justification prominently on the QHP issuer's Web site;
 - (v) Upon request by the DOI, submit an SBC for review of compliance with 45 C.F.R. 147.200;
 - (w) Make available a published up-to-date, accurate, and complete formulary drug list on its Web site in a format and at time pursuant to 45 C.F.R. 156.122; and
 - (x) Comply with the maintenance of records standards pursuant to 45 C.F.R. 156.705.
 - (2) To be certified as a QHP by DOI for participation on the SBE-FP, a health plan shall provide coverage of the:
 - (a) Essential health benefits; or
 - (b) Essential health benefits excluding pediatric dental benefits if there is at least one (1) SADP offered in each county through the SBE-FP.
 - (3) The office shall ensure that each issuer that offers a QHP shall report changes in ownership pursuant to 45 C.F.R. 156.330 to HHS.
 - (4) The DOI shall certify a QHP within the timeframe specified by HHS.
- Section 5. Participation Standards for Issuers Offering a Stand-Alone Dental Plan. (1) In order to participate on the SBE-FP, an issuer offering a stand-alone dental plan shall meet the following criteria:
- (a) Hold a certificate of authority that would permit the issuer to offer a dental plan and be in good standing with the Kentucky Department of Insurance;
 - (b) Offer a dental plan in the individual exchange or SHOP exchange that complies with the requirements of KRS Chapter 304 Subtitle 17C;
 - (c) Submit to DOI through the SERFF system:
 - 1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;
 - 2. Rate filings in compliance with KRS 304.17-380 and administrative regulations promulgated thereunder; and
 - 3. Dental plan management data templates;
 - (d) Comply with the:
 - 1. Provider network adequacy requirements identified by KRS 304.17C-040 and maintain a network that is sufficient in number and types of dental providers to ensure that all dental services will be accessible without unreasonable delay in accordance with 45

C.F.R. 156.230;

2. Requirements for stand-alone dental plans referenced in 45 C.F.R. 156 Subpart E; and

3. Essential community provider requirements in 45 C.F.R. 156.235;

(e) Not discriminate, with respect to a pediatric dental plan, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation; and

(f) Make its provider directory for an SADP available:

1. To potential enrollees in hard copy upon request; and

2. In accordance with 45 C.F.R. 156.230.

(2) To be certified as an SADP by DOI for participation on the SBE-FP, a stand-alone dental plan shall:

(a) Provide the pediatric dental essential health benefits required by 42 U.S.C. 18022(b)(1)(J) for individuals up to twenty-one (21) years of age;

(b) Pursuant to 45 C.F.R. 156.150, provide within a variation of plus or minus two (2) percentage points:

1. A low level of coverage with an actuarial value of seventy (70) percent; or

2. A high level of coverage with an actuarial value of eighty-five (85) percent; and

(c) Have an annual limitation on cost-sharing for a stand-alone dental plan covering the pediatric dental EHB under 45 C.F.R. 155.1065 at or below:

1. \$350 for a plan with one (1) child enrollee; or

2. \$700 for a plan with two (2) or more child enrollees.

(3) The office shall ensure that each issuer that offers an SADP shall report changes in ownership pursuant to 45 C.F.R. 156.330 to HHS.

(4) The DOI shall certify an SADP within the timeframe specified by HHS.

Section 6. Consistency of Premium Rates on or off the SBE-FP for the Same QHP or SADP. A QHP or SADP issuer shall charge the same premium rate without regard to whether the plan is offered on or off the SBE-FP.

Section 7. Enforcement by DOI. The DOI shall be responsible for enforcing the requirements of KRS Chapter 304 and any administrative regulations promulgated thereunder against any issuer.

Section 8. Toll-Free Hotline. The office shall operate a toll-free hotline to respond to requests from consumers including the capability to direct a consumer to the federally-operated call center or healthcare.gov to apply for and enroll in QHP or SADP coverage.

Section 9. SBE-FP Web site. The office shall operate a Web site that shall provide:

(1) Information for a consumer;

(2) The capability to direct a consumer to healthcare.gov to apply for and enroll in QHP or SADP coverage; and

(3) A tool for a consumer to use to find a local Navigator, CAC, IPA, or agent for assistance in applying for and enrolling in a QHP or SADP.

Section 10. KHBE Termination of Operations on the Individual and SHOP Exchange Utilizing kynect. KHBE shall not accept an enrollment from an individual on the individual exchange or from a qualified employee of a qualified employer for participation on the SHOP exchange with an effective date of coverage after December 31, 2016, unless the enrollment is the result of a special enrollment period granted to a qualified employee of a qualified employer participating on kynect in accordance with the criteria in 900 KAR 10:020.

Section 11. KOHBE Application Assister Program. (1) The KOHBE Application Assister Program, in accordance with the accessibility standards of 42 C.F.R. 155.205(c) and (d), shall include the following programs:

(a) The certified application counselor program described in

Section 12 of this administrative regulation; or

(b) The in-person assister and navigator program described in Section 13 of this administrative regulation.

(2) An application assister shall:

(a) Complete QHP, SADP, and SHOP training provided by HHS;

(b) Complete Medicaid and CHIP training provided by CHFS;

(c) Submit certification of completion of the HHS and CHFS training to the office; and

(d) Sign a participation agreement with the office.

(3) The office and an application assister shall refer a consumer to other consumer assistance programs in Kentucky when available and appropriate.

(4) An application assister shall be prepared to serve both the individual exchange, SHOP, Medicaid program, and CHIP.

(5) An application assister shall comply with the privacy and security standards consistent with 45 C.F.R. 155.260.

Section 12. Certified Application Counselor Program. (1) The certified application counselor program shall comply with the provisions of 45 C.F.R. 155.225.

(2) An organization may apply to the office to be designated as a certified application counselor.

(3) Upon designation by the office to participate in the certified application counselor program, an organization shall:

(a) Act in the best interest of an applicant;

(b) Provide information in a manner that is accessible to individuals with disabilities directly or through a referral to an application assister; and

(c) Provide monthly reports of activities to the office.

(4) Staff and volunteers of a certified application counselor organization shall act as an application assister to:

(a) Provide information about insurance affordability programs and QHP or SADP coverage options;

(b) Assist an individual or employee to apply for coverage in a QHP or SADP through the SBE-FP or an insurance affordability program through benefit; and

(c) Help to facilitate enrollment of a qualified individual in a QHP, SADP, or an insurance affordability program.

(5) An individual operating as a certified application counselor shall:

(a) Be identified by a designated organization described in subsection (2) of this section as an employee or a volunteer of the designated organization;

(b) Agree to act in the best interest of an applicant;

(c) Provide information with reasonable accommodation for an individual with a disability, as defined by the Americans with Disabilities Act, if providing in-person assistance; and

(d) Register with the office through the Kentucky online gateway.

Section 13. In-Person Assister and Navigator Program. (1) In accordance with 45 C.F.R. 155.205(d) and (e), 45 C.F.R. 155.315, 45 C.F.R. 155.210(d) to (e), and 45 C.F.R. 210, the office shall establish an IPA and navigator program to authorize an eligible public or private entity to carry out consumer assistance functions as described in 45 C.F.R. 205 and this section.

(2) An entity wishing to participate as an IPA or navigator shall:

(a) Be awarded a contract by the office pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;

(b) Designate an individual as the participating entity representative who shall:

1. Register with the office through the Kentucky online gateway as the individual authorized by the agency;

2. Serve as a primary contact for the office;

3. Be responsible for ensuring that only office certified application assister employees of the entity or navigators are registered through the Kentucky online gateway;

4. Comply with 45 C.F.R. 155.210(d) regarding a conflict of interest; and

5. As an individual IPA or navigator employee, comply with this subsection;

(c) Designate the individual employees who shall participate

through the IPA application assister or navigator entity and who shall register with the office through the Kentucky online gateway;

(d) Submit to the office a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e); and

(e) Provide monthly reports of activities to the office.

(3) An employee designated as an IPA or navigator by the application assister entity shall:

(a) Be eighteen (18) years of age or older;

(b) Provide an authorization to the IPA or navigator entity to conduct a state background check for evidence of good character; and

(c) Travel, if necessary, to assist applicants with enrollment.

(4) An IPA or navigator entity and its employees shall:

(a) Inform applicants of the functions and responsibilities of all application assister and participating agents;

(b) Obtain authorization for the disclosure of applicant information prior to assisting the applicant with prescreening and completion of the application process; and

(c) Provide technical support to other application assister, application assister entities, or the office upon request.

(5) Upon authorization by the office, an IPA or navigator employee may assist:

(a) A qualified individual with enrollment in any QHP or SADP offered through the SBE-FP in the individual market;

(b) A qualified employer with selecting a QHP or SADP and enroll a qualified employee in a QHP or SADP offered through the SBE-FP in the small group market;

(c) An individual with applying for advance payments of the premium tax credit and cost-sharing reductions; and

(d) An individual with applying for insurance affordability programs, including Medicaid or KCHIP.

(6) An IPA or navigator entity and its employees shall:

(a) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about a QHP, SADP, or insurance affordability program;

(b) Provide information and services in a fair, accurate, and impartial manner; and

(c) Provide information regarding other health programs.

(7) An IPA or navigator entity and its employees shall not:

(a) Impose any charge or fee on an applicant for their assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(8) An IPA or navigator entity and its employees shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, section 504 of the Rehabilitation Act, and 29 U.S.C. 794.

(9) An IPA or navigator entity or its employees shall provide referrals to the DOI or HHS for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.

(10) An IPA or navigator entity or its employees shall demonstrate to the office that the entity has existing relationships, or could readily establish relationships, with:

(a) Employers and employees;

(b) Consumers, including uninsured and underinsured consumers; or

(c) Self-employed individuals eligible for a QHP, SADP, or other insurance affordability program.

(11)(a) In accordance with Section 14 of this administrative regulation, the office shall withdraw certification if it finds noncompliance with the terms and conditions of the participation agreement from:

1. An individual in-person assister;

2. All in-person assisters associated with a particular entity;

3. An individual navigator; or

4. All navigators associated with a particular entity.

(b) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

Section 14. Withdrawal of Certification for Application Assisters and Appeals. (1) If the office finds noncompliance with the terms and conditions of a participation agreement with an application assister, the office shall:

Withdraw certification from:

1. An individual in-person assister;

2. All in-person assisters associated with a particular entity;

3. An individual navigator;

4. All navigators associated with a particular entity;

5. An individual certified application counselor; or

6. All certification application counselors of a designated organization;

(b) Provide the application assister entity or application assister employee with notice that the applicable certification shall be withdrawn as of the date on the notice;

(c) Allow the application assister entity or application assister employee an opportunity to submit evidence of compliance or additional information within ten (10) business days of notice of withdrawal;

(d) Review any information submitted by the application assister entity or application assister employee; and

(e) Based on a review of the information provided, issue a final decision to withdraw or reinstate the applicable certification of the application assister entity or application assister employee.

(2) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

(3) An application assister entity or application assister employee may appeal a final decision to withdraw the applicable certification by submitting a written request to the office within ten (10) business days of the final decision.

(4) After one (1) year following a decision to withdraw certification of an application assister entity or application assister employee, the employee or entity may reapply in accordance with this administrative regulation.

Section 15. Agents. An agent wishing to participate on the SBE-FP in accordance with 42 U.S.C. 18031, 45 C.F.R. Part 155 shall:

(1) Complete QHP, SADP, and SHOP training provided by HHS;

(2) Submit certification of completion of the HHS training to the office; and

(3) Not be listed on the agent broker suspension and termination list on healthcare.gov.

Section 16. Right to Appeal to HHS. (1) If an applicant or enrollee disagrees with an eligibility determination made on the SBE-FP, the applicant or enrollee may request an appeal from HHS.

(2) An applicant or an enrollee denied a request for an exemption by HHS under 45 C.F.R. 155.625(b) may appeal the decision to HHS.

CARRIE BANAHAN, Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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 December 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 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Chandra Venettozzi (phone (502) 564-7940, chandra.venettozzi@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to the transition from the Kentucky State Based Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures relating to the transition from the Kentucky State Based Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the policies and procedures relating to the transition from the Kentucky Health Benefit Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the policies and procedures relating to the transition from the Kentucky Health Benefit Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will affect:

(a) Kentucky issuers seeking to offer health insurance plans on the SBE-FP in the individual market or small group market (3 issuers),

(b) Individuals and small employers seeking to enroll in health insurance on the SBE-FP (approximately 84,000 individuals and 100 small groups),

(c) Application assisters wishing to provide application and enrollment assistance on the SBE-FP (approximately 730), or

(d) Insurance agents wishing to provide application and enrollment assistance on the SBE-FP (approximately 2,470).

(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: Regulated entities will now be utilizing the SBE-FP for eligibility and enrollment in health insurance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will create minimal cost or additional burden on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from this administrative regulation as they will have policies and procedures related to the operation of the SBE-FP.

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

(a) Initially: This administrative regulation has no initial cost to implement.

(b) On a continuing basis: This administrative regulation has no fiscal impact 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 to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit and Information Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156

2. State compliance standards. 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures related to the transition from the Kentucky State Based Exchange to the Kentucky State Based Exchange on the Federal Platform (SBE-FP) as well as the ongoing operation of the SBE-FP, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156

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 will impose no stricter requirements, or 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 Cabinet for Health and Family Services, Kentucky Office of Health Benefit and Information Exchange 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), 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year 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 does not generate revenue and will not generate any additional revenue during the first year.

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(New Administrative Regulation)

907 KAR 1:047. Community mental health center primary care services.

RELATES TO: KRS 205.520, 210.410

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

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's coverage provisions and requirements regarding primary care services provided in a community mental health center to Medicaid recipients.

Section 1. Definitions. (1) "CLIA" means the Clinical Laboratory Improvement Amendments, 42 C.F.R. Part 493.

(2) "Community mental health center" or "CMHC" means a facility that meets the community mental health center requirements established in 902 KAR 20:091.

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

(4) "Enrollee" means a recipient who is enrolled with a managed care organization. (5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not excluded as a non-covered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(7) "Managed care organization" means an entity for which the

Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(8) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Occupational therapist" is defined by KRS 319A.010(3).

(10) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(11) "Physical therapist" is defined by KRS 327.010(2).

(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.

(13) "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(14) "Recipient" is defined by KRS 205.8451(9).

(15) "Speech-language pathologist" is defined by KRS 334A.020(3).

(16) "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.

Section 2. General Requirements. (1) For the department to reimburse for a primary care service provided by a community mental health center under this administrative regulation, the:

(a) CMHC shall be currently:

1. Enrolled in the Medicaid Program in accordance with 907 KAR 1:672;

2. Participating in the Medicaid Program in accordance with 907 KAR 1:671; and

3. Licensed in accordance with 902 KAR 20:091; and

(b) Service shall:

1. Be medically necessary;

2. Meet the coverage and related requirements established in this administrative regulation; and

3. Be provided by an individual who is currently licensed or certified in accordance with the respective Kentucky licensure or certification Kentucky Revised Statute or administrative regulation to provide the given service.

(2) In accordance with 907 KAR 17:015, Section 3(3), a CMHC that provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A CMHC shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

Section 3. Covered Services and Injectable Drugs. (1)(a) Primary care services provided by a community mental health center and covered under this administrative regulation shall include:

1. Physician services;

2. Laboratory services if the CMHC is certified under CLIA to perform laboratory services;

3. Radiological services;

4. Occupational therapy;

5. Physical therapy; and

6. Speech-language pathology services.

(b) An injectable drug listed on the Physician Injectable Drug List that is administered in a CMHC shall be covered under this administrative regulation.

(2)(a) The coverage of:

1. Physician services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005;

2. Laboratory services provided by a community mental health center shall be in accordance with the requirements established in 907 KAR 3:005; or

3. Radiological services provided by a community mental

health center shall be in accordance with the requirements established in 907 KAR 3:005.

(b) Occupational therapy provided by a community mental health center shall be covered under this administrative regulation if provided by an:

1. Occupational therapist; or
2. Occupational therapy assistant who renders services under supervision in accordance with 201 KAR 28:130.

(c) Physical therapy provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Physical therapist; or
2. Physical therapist assistant who renders services under supervision in accordance with 201 KAR 22:053.

(d) Speech-language pathology services provided by a community mental health center shall be covered under this administrative regulation if provided by a:

1. Speech-language pathologist; or
2. Speech-language pathology clinical fellow who renders services under the supervision of a speech-language pathologist.

Section 4. Service Limitations. (1) The limitations established in 907 KAR 3:005 regarding:

(a) Physician services shall apply to physician services provided by a community mental health center;

(b) Laboratory services shall apply to laboratory services provided by a community mental health center; and

(c) Radiological services shall apply to radiological services provided by a community mental health center.

(2)(a) Except as established in paragraph (b) of this subsection, the limitations and coverage requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

(b) The provision in 907 KAR 8:040 establishing that the eligible providers of occupational therapy, physical therapy, or speech-language pathology services shall be any of the following shall not apply to a community mental health center:

1. An adult day health care program;
2. A multi-therapy agency;
3. A comprehensive outpatient rehabilitation facility;
4. A mobile health service;
5. A special health clinic; or
6. A rehabilitation agency.

Section 5. Prior Authorization Requirements. (1)(a) Except for the prior authorization requirements regarding occupational therapy, physical therapy, and speech-language pathology services and except as established in paragraph (b) of this subsection, the prior authorization requirements established in 907 KAR 3:005 for physician services, laboratory services, and radiological services shall apply to physician services, laboratory services, and radiological services provided by a CMHC under this administrative regulation.

(b) The prior authorization requirements established in 907 KAR 3:005 shall not apply to services provided to recipients who are enrolled with a managed care organization.

(2) The prior authorization requirements established in 907 KAR 8:040 regarding occupational therapy, physical therapy, and speech-language pathology services shall apply to occupational therapy, physical therapy, and speech-language pathology services provided by a community mental health center.

Section 6. No Duplication of Service. (1) The department shall not reimburse for a primary care service provided to a recipient by more than one (1) provider of any program in which primary care services are covered during the same time period.

(2) For example, if a recipient is receiving a primary care service from a rural health clinic enrolled with the Medicaid Program, the department shall not reimburse for the same primary care service provided to the same recipient during the same time period by a community mental health center.

Section 7. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record on the date that the individual provided 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 five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) 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 8. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department 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 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A 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 11. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with any claim or health record.

Section 12. Federal Approval and Federal Financial Participation. 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 13. Appeal Rights. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 14. Incorporation by Reference. (1) The "Physician Injectable Drug List", April 1, 2016, is incorporated by reference.

(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, Monday through Friday, 8:00 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>.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 28, 2016

FILED WITH LRC: November 1, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2016 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing December 14, 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 December 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

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov); phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program primary care services provided by community mental health centers (CMHCs). Primary care services covered under this administrative regulation include physician services, laboratory services, radiological services, occupational therapy (OT), physical therapy (PT), and speech-language pathology (SLP) services. Additionally, physician injectable drugs administered at a community mental health center shall be covered under this administrative regulation. Key requirements include that any physician service limit established in the Medicaid program physician services administrative regulation (907 KAR 3:005, Physician services) shall apply to physician services provided by a CMHC; that any laboratory service limit established in 907 KAR 3:005 shall apply to any laboratory service provided by a CMHC; that any radiological service limit established in 907 KAR 3:005 shall apply to any radiological service provided by a CMHC; that any OT limit, PT limit, or SLP service limit established in 907 KAR 8:040, Coverage of occupational therapy,

physical therapy, and speech-language pathology services provided by various entities shall apply to OT, PT, or SLP services provided by a community mental health center; that the prior authorization requirements established in 907 KAR 3:005, Physician services shall apply to physician services, laboratory services, or radiological services provided by a community mental health center; and that the prior authorization requirements regarding OT, PT, and SLP services established in 907 KAR 8:040 shall apply to OT, PT, or SLP services provided by a community mental health center.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program as authorized by KRS 205.6313.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Community mental health centers will be affected by this amendment as will Medicaid recipients who receive services from CMHCs.

(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. CMHCs that wish to provide primary care services to Medicaid recipients will have to do so according to the requirements such as having staff authorized to provide such services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). CMHCs that wish to provide primary care services to Medicaid recipients will benefit by being enabled to receive Medicaid reimbursement for such services.

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

(a) Initially: Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action. Additionally, DMS cannot predict how many individuals who currently receive primary care services from other Medicaid primary care providers (physician's practices, advanced practice registered nurse practices, primary care centers, federally-qualified health care centers, or rural health clinics) – each category of which is reimbursed uniquely – will choose to receive such care

from a CMHC.

(b) On a continuing basis: The response to (a) above also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply 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 for Medicaid Services (DMS) will be affected by the amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), and KRS 205.6313.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not anticipate additional revenues for state or local government as a result of the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response to question (a) also applies here.

(c) How much will it cost to administer this program for the first year? Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Commissioner's Office (Repealer)

907 KAR 3:031. Repeal of 907 KAR 3:030.

RELATES TO: 42 U.S.C. 1396a

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services

has responsibility to administer the Kentucky 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 repeals 907 KAR 3:030. The Department for Medicaid Services is repealing 907 KAR 3:030 because the services provided in the administrative regulation are now covered under other administrative regulations.

Section 1. 907 KAR 3:030, Coverage and payments for IMPACT Plus services, is hereby repealed.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 9, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held December 21, 2016, at 9:00 a.m. in the Cabinet for Health and Family Services, Health Services Auditorium, Suite B located on the First Floor at 1E-B; 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 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 11:59 p.m. on December 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

Contact persons: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(c), repeals 907 KAR 3:030 Coverage and payments for IMPACT Plus services.

(b) The necessity of this administrative regulation: The Department for Medicaid Services is repealing 907 KAR 3:030 because we have expanded behavioral health services and the services provided by 907 KAR 3:030 were absorbed into the expanded benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by repealing obsolete Medicaid program regulatory material as authorized by KRS 194A.030(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by repealing obsolete or duplicate Medicaid program regulatory material as authorized by KRS 194A.030(2).

(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 not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the

authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This repealer administrative regulation is not expected to affect individuals, businesses, organizations, or local government because IMPACT Plus services have been absorbed by the expansion of behavioral health services and providers. Other department regulations address these services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This regulation only serves to repeal 907 KAR 3:030.

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

(a) Initially: The administrative regulation imposes no cost on the Department for Medicaid Services.

(b) On a continuing basis: The administrative regulation imposes no cost on the Department for Medicaid Services.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee nor funding increase is necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation neither establishes nor increases any fee.

(9) Tiering: Is tiering applied? Tiering is not applied as this is a repealer administrative regulation.

on the Department for Medicaid Services.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no administrative cost on the Department for Medicaid Services.

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:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action being taken by this administrative regulation.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no administrative cost

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of November 7, 2016

Members: Senators Julie Raque-Adams, Perry Clark, Alice Forgy Kerr, and Ernie Harris; and Representatives Mary Lou Marzian and Tommy Turner.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

Guests: Sharron Burton, Department of Employee Insurance; Jeremy Branham, Jeanne Thompson, Gwen Pinson, Department of Revenue; Richard Carroll, Board of Accountancy, Cheryl Lalonde, Board of Pharmacy; Jonathan Buckley, Board of Licensure for Professional Engineers and Land Surveyors; Barry Dunn, Tommy Gift, Chad Miller, Dr. Tad Seifert, Boxing and Wrestling Commission; Amy Barker, Department of Corrections; Michael Kurtsinger, Ann Tyler Morgan, Fire Commission; Dave Mathies, Patrick Shirley, Education and Workforce Development Cabinet; Mike Pettit, Kristi Redmon, Michael Swansburg, Labor Cabinet; Stephen Humphress, Carol Beth Martin, Department of Alcoholic Beverage Control; Tim Cocanougher, Tim House, Steve Milby, David Moore, Housing, Buildings and Construction; Brian Thorpe, David Tretter, Amanda Valdiviero, Randy Vanhook, Kentucky Association of Master Contractors; Mary Sparrow, Child Support Enforcement Division.

The Administrative Regulation Review Subcommittee met on Monday, November 7, 2016, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified

101 KAR 2:210 & E. 2017 Plan year handbook for the public employee health insurance program. Sharron Burton, deputy executive director, Office of Legal Services, represented the office.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Sales and Use Tax; Miscellaneous Retail Transactions

103 KAR 28:041. Repeal of 103 KAR 28:040. Jeremy Branham, tax policy analyst (sales tax); Jeanne Thompson, tax policy analyst (miscellaneous taxes); and Gwen Pinson, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Cigarettes

103 KAR 41:021. Repeal of 103 KAR 41:020.

In response to a question by Co-Chair Harris, Ms. Thompson stated that, in the past, there was a tax-free cigarette program for hospitals. The only tax-free cigarette programs still in use were for the military, including veterans' facilities.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Motor Vehicle Usage

103 KAR 44:131. Repeal of 103 KAR 44:130.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this

administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Secretary: Purchasing

200 KAR 5:355. Public-private partnership delivery method. Gwen Pinson, general counsel, represented the office.

In response to questions by Co-Chair Harris, Ms. Pinson stated that the program's authorizing statutes established a board to provide oversight for projects that met a certain cost threshold. Unsolicited proposals were first filed with the Department for Local Government to protect local governments and to assist local governments with making informed decisions. If the protections established by statute and by this administrative regulation were used in concert, local governments would have adequate oversight protection.

In response to questions by Senator Kerr, Ms. Pinson stated that the public-private partnership conference in Lexington resulted in plenty of interest from the public. The public was probably waiting on this administrative regulation to become effective to enquire further. The office was in the process of developing a Web site to inform and educate the public regarding public-private partnership opportunities.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to: (a) add a citation; and (b) make technical corrections; and (2) to amend Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Accountancy: Board

201 KAR 1:015. Per diem compensation. Richard Carroll, executive director, represented the board.

201 KAR 1:065. Individual license renewal and fee.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 1 to require payment of the fees charged by Kentucky.gov; (4) to delete Section 2 because the provisions were already established in 201 KAR 1:140, Section 2; (5) to amend Section 3 to correct the date for the late fee; and (6) to add a new Section 4 to clarify that a licensee who failed to complete the continuing professional education hours as required by 201 KAR 1:100 shall not use the online license renewal process, and shall instead comply with the license reinstatement requirements in 201 KAR 1:140, Section 3. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 1:100. Continuing professional education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend Section 4 to clarify that medical and extreme hardship waivers shall be temporary; (3) to amend Section 7 to clarify that a licensee who misrepresented completion of hours at the time of renewal shall not be eligible for all of the types of waivers after being selected to participate in an audit; and (4) to amend Sections 4 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Pharmacy: Board

201 KAR 2:045. Technicians. Cheryl LaLonde, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 for clarity. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:050. Licenses and permits; fees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:351. Repeal of 201 KAR 2:350.

Board of Licensure for Professional Engineers and Land Surveyors: Board

201 KAR 18:051. Repeal of 201 KAR 18:050. Jonathan Buckley, general counsel, represented the board.

PUBLIC PROTECTION CABINET: Boxing and Wrestling Commission: Commission

201 KAR 27:005. Definitions for 201 KAR Chapter 27. Barry Dunn, executive director; Tommy Gift, vice chair; Chad Miller, chair; and Dr. Tad Seifert, chair and member, Medical Advisory Panel, represented the commission.

In response to questions by Co-Chair Harris, Mr. Dunn stated that these administrative regulations consolidated and condensed requirements and forms incorporated by reference, while maintaining fighter health and safety as the highest priority. Medical components of these administrative regulations were revised in response to the 2001 tragic injuries to fighter Greg Page, whose injuries may have been prevented by appropriate medical provisions. The broadened inspector authority was necessary because the commission consisted of five (5) members but currently only four (4) members were appointed. It was not possible for a member of the commission to be at every event; therefore, inspectors needed to have authority to act immediately even if the commission representatives were not present at an event. There was a process to appeal to the full commission any decision of an inspector. Mr. Gift stated that the requirement that a licensee shall submit his or her license application to the commission no less than fifteen (15) calendar days prior to the applicant's first event was necessary to ensure safety of the fighters. There was a pre-bout and post-bout physical, but it was somewhat cursory.

In response to a question by Co-Chair Marzian, Dr. Seifert stated that drug spot-testing could detect THC, narcotics, and opioids.

In response to a question by Senator Clark, Dr. Seifert stated that alcohol use was also prohibited for a contestant or exhibitor during a contest or show.

201 KAR 27:007. Powers and duties of inspector.

201 KAR 27:008. License requirements and fees.

A motion was made and seconded to approve the following subcommittee amendments: to amend Section 7 to clarify that bouts or rounds considered to determine if an amateur qualifies for professional status, shall be sanctioned bouts or sanctioned rounds. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 27:011. General requirements for boxing and kickboxing shows.

A motion was made and seconded to approve the following amendments: to amend Section 10 to make technical corrections. Without objection, and with agreement of the agency, the

amendments were approved.

201 KAR 27:012. General requirements for wrestling shows.

201 KAR 27:016. General requirements for all mixed martial arts matches, shows, or exhibitions.

A motion was made and seconded to approve the following amendment: to amend Section 20 to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 27:017. Requirements for elimination events.

A motion was made and seconded to approve the following amendment: to amend Section 7 to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 27:020. Tickets.

201 KAR 27:021. Drug testing for boxing, kickboxing, mixed martial arts, and elimination event shows.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to make a technical correction; (2) to amend the TITLE to add "wrestling"; and (3) to amend Section 7 to: (a) make technical corrections; and (b) include "cannabinoids" and "opioids" in the respective lists. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 27:036. Repeal of 201 KAR 27:035, 201 KAR 27:045, 201 KAR 27:050, 201 KAR 27:055, 201 KAR 27:060, 201 KAR 27:065, 201 KAR 27:070, 201 KAR 27:090, and 201 KAR 27:100.

201 KAR 27:040. Managers.

201 KAR 27:105. Disciplinary action.

A motion was made and seconded to approve the following amendment: to amend Section 2 to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Amy Barker, assistant general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Barker stated that the \$7.50 fee for an inmate with a significant appearance change was to cover the cost to replace the identification locking device.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 and CPP 3.9, 6.2, 13.6, 13.13, 15.3, 15.6, and 25.6: (a) for clarity; (b) to correct citations; and (c) to make technical corrections; (2) to amend CPP 16.2, Inmate Correspondence, to clarify definitions and procedures used in prohibiting sexually explicit materials; and (3) to amend Section 1 to update the edition dates of the revised policies. Without objection, and with agreement of the agency, the amendments were approved.

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

This administrative regulation was reviewed and amended, without objection and with agreement of the agency, by the Subcommittee in closed session pursuant to KRS 61.810(1)(k), 61.815(2), and 197.025(6).

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Fire Commission: Commission on Fire Protection Personnel Standards and Education

739 KAR 2:040. Survivor benefits for death of a firefighter. Michael Kurtsinger, division director, and Anne – Tyler Morgan, attorney, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY

paragraph to correct a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to clarify definitions, including deleting requirements already established by statute; (4) to amend Sections 1, 2, 3, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (5) to delete Sections 5 and 6, which included provisions already established by statute; (6) to correct the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT and the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT; and (7) to revise a form incorporated by reference commensurate with changes to this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Assistive Technology: Kentucky Assistive Technology Loan Corporation

789 KAR 1:010. General eligibility criteria for assistive technology loans. Dave Mathies, branch manager, and Patrick Shirley, staff attorney, represented the office.

A motion was made and seconded to approve the following amendments: to amend Sections 6 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workforce Standards: Division of Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:412. Fall protection. Mike Pettit, occupational safety and health standards specialist; Kristi Redmon, occupational safety and health standards specialist; and Michael Swansburg, general counsel, represented the division.

In response to a question by Senator Kerr, Mr. Pettit stated that a slide guard was a device used by roofers to prevent sliding off of a roof. Standards had been updated to require fall protection, rather than a slide guard.

In response to a question by Co-Chair Harris, Mr. Pettit stated that fall protection consisted of either a harness or guardrails.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete two (2) superfluous definitions; and (2) to amend Sections 1 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.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Malt Beverage Equipment, Supplies, and Service

804 KAR 11:010 & E. Equipment and supplies. Stephen Humphress, general counsel, and Carol Beth Martin, malt beverage administrator, represented the department.

Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:010. Definitions for 815 KAR Chapter 20. Tim Cocanougher, general counsel; Tim House, deputy commissioner; Steve Milby, commissioner; and David Moore, division director, represented the division.

In response to a question by Co-Chair Marzian, Mr. House stated that the previous version of 815 KAR 20:060 and 815 KAR 20:130 authorized PVC and ABS plumbing fixtures in buildings under seventy-five (75) feet. This version authorized PVC and ABS plumbing fixtures in buildings seventy-five (75) feet or taller, if firestopping was used and if the installation was inspected by an independent third party.

In response to questions by Co-Chair Harris, Mr. House stated that cast iron was also still authorized for use; the PVC and ABS plumbing fixtures were an optional alternative. If cast iron plumbing fixtures were used, firestopping consisted of fire caulk. If PVC or ABS plumbing fixtures were used, a fire-stopping collar that

expands under heat was required. Only one (1) state and a few city ordinances prohibited PVC or ABS plumbing fixtures in similar buildings. The firestopping technology had been proven effective.

A motion was made and seconded to approve the following amendments: to amend Section 1 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:060. Quality and weight of materials.

815 KAR 20:130. House sewers and storm water piping; methods of installation.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:410. Child support collection and enforcement. Mary Sparrow, internal policy analyst, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend Section 4 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the December 13, 2016, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Durable Medical Equipment Suppliers: Board

201 KAR 47:010 & E. Home medical equipment and supplier licenses, requirements, and fees.

201 KAR 47:020 & E. Inspections, discipline, reinstatement, and administrative appeals.

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Administration and Finance

702 KAR 3:171. Repeal of 702 KAR 3:170.

Instructional Programs

705 KAR 4:231. General program standards for secondary career and technical education programs.

Instructional Programs

780 KAR 4:012. Repeal of 780 KAR 4:010.

The Subcommittee adjourned at 1:55 p.m. until December 13, 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.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of October 10, 2016

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of October 10, 2016, having been referred to the Committee on October 5, 2016, pursuant to KRS 13A.290(6):

702 KAR 7:065

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 10, 2016 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of November 14, 2016

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of November 14, 2016, having been referred to the Committee on November 2, 2016, pursuant to KRS 13A.290(6):

755 KAR 1:080

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 14, 2016 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of November 16, 2016

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of November 16, 2016, having been referred to the Committee on November 2, 2016, pursuant to KRS 13A.290(6):

201 KAR 20:411
902 KAR 2:020 & E
902 KAR 20:058
921 KAR 1:380
922 KAR 1:151
922 KAR 1:500

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 16, 2016 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of November 16, 2016

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of November 16, 2016, having been referred to the Committee on November 2, 2016, pursuant to KRS 13A.290(6):

815 KAR 20:020
815 KAR 20:080
815 KAR 20:090
815 KAR 20:120

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 16, 2016 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

F - 2

The Locator Index lists all administrative regulations published in VOLUME 43 of the *Administrative Register of Kentucky* from July 2016 through June 2017. 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 that may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 42 are those administrative regulations that were originally published in VOLUME 42 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2016 *Kentucky Administrative Regulations Service* was published.

KRS Index

F - 10

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 43 of the *Administrative Register of Kentucky*.

Technical Amendment Index

F - 18

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the 2016 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

Subject Index

F - 20

The Subject Index is a general index of administrative regulations published in VOLUME 43 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
VOLUME 42					
The administrative regulations listed under VOLUME 42 are those administrative regulations that were originally published in Volume year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2016 Kentucky Administrative Reg Service</i> was published.					
SYMBOL KEY:			200 KAR 30:060		
* Statement of Consideration not filed by deadline			Repealed	2997	10-7-2016
** Withdrawn before being printed in Register			200 KAR 30:070		
*** Emergency expired after 180 days			Amended	2919	
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))			Withdrawn		7-29-2016
(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.			201 KAR 9:016		
			Amended	2796	7-20-2016
			201 KAR 9:025		
			Amended	2798	See 43 Ky.R.
			201 KAR 9:081		
			Amended	2800	See 43 Ky.R.
			201 KAR 9:240		
			Amended	2804	See 43 Ky.R.
			201 KAR 9:250		
			Amended	2807	See 43 Ky.R.
			201 KAR 13:040		
			Amended	2621	
			AmComments	2906	See 43 Ky.R.
			201 KAR 13:050		
			Amended	2624	See 43 Ky.R.
			201 KAR 14:015		
			Amended	2920	See 43 Ky.R.
			201 KAR 14:030		
			Amended	2922	See 43 Ky.R.
			201 KAR 14:045		
			Amended	2923	See 43 Ky.R.
			201 KAR 14:090		
			Amended	2924	See 43 Ky.R.
			201 KAR 14:110		
			Amended	2926	See 43 Ky.R.
			201 KAR 14:125		
			Amended	2927	
			Withdrawn		7-12-16
			201 KAR 14:150		
			Amended	2929	See 43 Ky.R.
			201 KAR 14:180		
			Amended	2930	See 43 Ky.R.
			201 KAR 18:020		
			Amended	2810	8-5-2016
			201 KAR 20:240		
			Amended	2626	
			As Amended	2887	6-15-2016
			201 KAR 20:520	2684	See 43 Ky.R.
			201 KAR 23:055	2845	See 43 Ky.R.
			201 KAR 23:070		
			Amended	2251	
			AmComments	2591	
			As Amended	2888	6-15-2016
			201 KAR 23:075		
			Amended	2812	See 43 Ky.R.
			201 KAR 29:015		
			Amended	2628	See 43 Ky.R.
			201 KAR 32:030		
			Amended	2817	See 43 Ky.R.
			201 KAR 44:020		
			Repealed	2685	7-1-2016
			201 KAR 44:021(r)	2685	7-1-2016
			201 KAR 44:030		
			Repealed	2685	7-1-2016
			201 KAR 45:110		
			Amended	855	See 43 Ky.R.
			201 KAR 46:020		
			Amended	2932	See 43 Ky.R.
			201 KAR 46:070		
			Amended	2933	See 43 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.)					
9 KAR 1:040E	2866	5-13-2016			
Replaced		See 43 Ky.R.			
301 KAR 2:221E	1699	11-3-2015			
Resubmitted	2868	5-11-2016			
Replaced		See 43 Ky.R.			
301 KAR 2:222E	1701	11-3-2015			
Resubmitted	2870	5-11-2016			
Replaced		See 43 Ky.R.			
301 KAR 2:225E	1111	8-21-2015			
Resubmitted	2875	5-11-2016			
Replaced	2944	8-4-2016			
401 KAR 31:040E	2877	4-26-2016			
Replaced		See 43 Ky.R.			
601 KAR 2:030E	1114	9-1-2015			
Resubmitted	2702	3-29-2016			
Expired		10-25-2016			
921 KAR 3:035E	2708	4-1-2016			
Replaced		See 43 Ky.R.			
922 KAR 1:320E	2530	2-26-2016			
Replaced		See 43 Ky.R.			
922 KAR 2:020E	2534	2-26-2016			
Replaced		See 43 Ky.R.			
922 KAR 2:160E	2540	2-26-2016			
Replaced		See 43 Ky.R.			
922 KAR 2:260E	2550	2-26-2016			
Replaced		See 43 Ky.R.			
ORDINARY ADMINISTRATIVE REGULATIONS:					
9 KAR 1:040					
Amended	2911	See 43 Ky.R.			
11 KAR 4:080					
Amended	2611	7-1-2016			
11 KAR 5:145					
Amended	2612	7-1-2016			
103 KAR 3:050					
Amended	2614				
As Amended	2881	7-1-2016			
200 KAR 30:010					
Amended	2913	See 43 Ky.R.			
200 KAR 30:020					
Amended	2914	See 43 Ky.R.			
200 KAR 30:030					
Amended	2916	See 43 Ky.R.			
200 KAR 30:040					
Amended	2918	See 43 Ky.R.			
200 KAR 30:050					
Repealed	2997	10-7-2016			
200 KAR 30:051(r)	2997	10-7-2016			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
301 KAR 2:095			Repealed	2999	9-2-2016
Amended	2819	7-19-2016	780 KAR 4:031	2999	9-2-2016
301 KAR 2:122			780 KAR 7:060		
Amended	2820	See 43 Ky.R.	Amended	2951	See 43 Ky.R.
301 KAR 2:176			780 KAR 7:070		
Amended	2935	See 43 Ky.R.	Repealed	3000	9-2-2016
301 KAR 2:221			780 KAR 7:071(r)	3000	9-2-2016
Amended	2937	See 43 Ky.R.	803 KAR 2:300		
301 KAR 2:222			Amended	2953	9-2-2016
Amended	2940	See 43 Ky.R.	803 KAR 2:307		
301 KAR 2:225			Amended	2955	See 43 Ky.R.
Amended	2944	8-4-2016	803 KAR 2:308		
301 KAR 2:226			Amended	2957	9-2-2016
Amended	2822	See 43 Ky.R.	803 KAR 2:317		
301 KAR 5:040			Amended	2958	9-2-2016
Amended	2947	See 43 Ky.R.	803 KAR 2:318		
401 KAR 31:040			Amended	2960	9-2-2016
Amended	2949	See 43 Ky.R.	803 KAR 2:320		
401 KAR 51:010			Amended	2962	9-2-2016
Amended	2824	See 43 Ky.R.	803 KAR 2:400		
401 KAR 53:010			Amended	2968	See 43 Ky.R.
Amended	2830	See 43 Ky.R.	803 KAR 2:403		
501 KAR 6:020			Amended	2970	9-2-2016
Amended	2630		803 KAR 2:404		
AmComments	2908	See 43 Ky.R.	Amended	2972	9-2-2016
501 KAR 6:170			803 KAR 2:421		
Amended	2632		Amended	2974	9-2-2016
As Amended	2890	7-1-2016	803 KAR 2:425		
600 KAR 1:030			Amended	2976	9-2-2016
Repealed	2846	8-2-2016	803 KAR 2:500		
600 KAR 1:031(r)	2846	8-2-2016	Amended	2978	9-2-2016
600 KAR 1:045			803 KAR 25:010		
Repealed	2846	8-2-2016	Amended	2634	See 43 Ky.R.
600 KAR 2:010			803 KAR 25:009		
Repealed	2847	8-2-2016	Repealed	2686	10-7-2016
600 KAR 2:011(r)	2847	8-2-2016	803 KAR 25:014(r)	2686	10-7-2016
600 KAR 2:020			803 KAR 25:089		
Repealed	2847	8-2-2016	Amended	2980	10-7-2016
600 KAR 2:030			804 KAR 4:400		
Repealed	2847	8-2-2016	Amended	2839	
600 KAR 2:040			Withdrawn		7-13-2016
Repealed	2847	8-2-2016	804 KAR 9:040		
601 KAR 1:030			Amended	2648	9-2-2016
Repealed	2849	8-2-2016	808 KAR 9:050	2852	See 43 Ky.R.
601 KAR 1:031			815 KAR 6:010		
Repealed	2849	8-2-2016	Amended	2265	
601 KAR 1:032(r)	2849	8-2-2016	AmComments	2596	
601 KAR 1:045			As Amended	2891	7-1-2016
Repealed	2849	8-2-2016	815 KAR 6:040		
601 KAR 1:050			Amended	2269	
Repealed	2849	8-2-2016	As Amended	2894	7-1-2016
601 KAR 1:065			815 KAR 6:080		
Repealed	2849	8-2-2016	Amended	2270	
601 KAR 1:070			As Amended	2895	7-1-2016
Repealed	2849	8-2-2016	815 KAR 6:090		
601 KAR 2:030			Amended	2272	
Amended	2833		AmComments	2600	
Withdrawn by agency		10-27-2016	As Amended	2895	7-1-2016
601 KAR 9:055			815 KAR 7:120		
Repealed	2850	8-2-2016	Amended	2650	6-22-2016
601 KAR 9:056(r)	2850	8-2-2016	815 KAR 7:125		
601 KAR 15:010			Amended	2653	6-22-2016
Repealed	2851	8-2-2016	815 KAR 8:095	2687	
601 KAR 15:020			As Amended	2897	6-22-2016
Repealed	2851	8-2-2016	815 KAR 20:084	2688	
601 KAR 15:030(r)	2851	8-2-2016	As Amended	2898	6-22-2016
704 KAR 3:470			815 KAR 20:191		
Repealed	2998	9-2-2016	Amended	2655	
704 KAR 3:471(r)	2998	9-2-2016	As Amended	2899	6-22-2016
780 KAR 4:030			815 KAR 20:195		

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Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
Amended	2661				
As Amended	2904	6-22-2016			
902 KAR 4:120					
Amended	2982	See 43 Ky.R.			
902 KAR 100:030					
Amended	2985	See 43 Ky.R.			
902 KAR 100:080					
Amended	2990	See 43 Ky.R.			
902 KAR 100:085					
Amended	2993	See 43 Ky.R.			
921 KAR 3:035					
Amended	2841	See 43 Ky.R.			
922 KAR 1:320					
Amended	2663	See 43 Ky.R.			
922 KAR 2:020					
Amended	2668	See 43 Ky.R.			
922 KAR 2:160					
Amended	2673	See 43 Ky.R.			
922 KAR 2:260	2690	See 43 Ky.R.			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
VOLUME 43					
SYMBOL KEY:			ORDINARY ADMINISTRATIVE REGULATIONS:		
* Statement of Consideration not filed by deadline					
** Withdrawn before being printed in Register					
*** Emergency expired after 180 days					
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))					
(r) Repealer regulation: KRS 13A.310 - on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.					
EMERGENCY ADMINISTRATIVE REGULATIONS:					
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)					
9 KAR 1:040E		See 42 Ky.R.	2 KAR 2:010		
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13 KAR 4:010E	657	10-14-2016	2 KAR 2:020		
101 KAR 2:034E	873	11-15-2016	Amended	70	
101 KAR 2:180E	877	11-15-2016	AsAmended	390	10-7-2016
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101 KAR 2:210E	517	9-15-2016	Amended	72	
103 KAR 15:180E	168		AsAmended	390	10-7-2016
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201 KAR 47:010E	519	8-25-2016	2 KAR 2:060	146	
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301 KAR 2:221E		See 42 Ky.R.	9 KAR 1:010		
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301 KAR 2:222E		See 42 Ky.R.	9 KAR 1:040		See 42 Ky.R.
Replaced	203	8-4-2016	AsAmended	392	10-7-2016
401 KAR 31:040E		See 42 Ky.R.	9 KAR 1:060		
Replaced	207	8-4-2016	Amended	754	
601 KAR 2:030E	888	10-27-2016	10 KAR 6:010		
804 KAR 4:400E	171	7-15-2016	Amended	756	
Replaced	546	11-4-2016	11 KAR 4:080		
804 KAR 4:410E	172	7-15-2016	Amended	998	
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804 KAR 11:010E	174	7-15-2016	Amended	73	
806 KAR 9:360E	894	10-25-2016	AsAmended	525	11-4-2016
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907 KAR 15:005E	925	11-1-2016	16 KAR 6:010		
907 KAR 15:010E	928	11-1-2016	Amended	588	
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922 KAR 1:360E	666	9-28-2016	Amended	592	
921 KAR 3:035E		See 42 Ky.R.	30 KAR 7:010		
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922 KAR 1:320E		See 42 Ky.R.	30 KAR 7:020	1113	
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102 KAR 1:165			AsAmended	195	9-2-2016
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103 KAR 15:180			201 KAR 20:215		
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103 KAR 28:041(r)	636		201 KAR 20:220		
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200 KAR 30:040		See 42 Ky.R.	AmComments	235	
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907 KAR 15:010			* Statement of Consideration not filed by deadline		
Amended	1085		** Withdrawn before being printed in Register		
907 KAR 15:015			*** Emergency expired after 180 days		
Amended	1098		‡ Withdrawn deferred more than twelve months (KRS		
908 KAR 2:040			13A.300(4) and 13A.315(1)(d))		
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908 KAR 3:081(r)	861		administrative regulation that repeals another, the regulations		
910 KAR 1:210			compiler shall delete the repealed administrative regulation and		
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